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

FORM 10-Q

(Mark One)

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

For the Quarterly Period Ended June 30, 2007

OR

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

For the transition period from ______ to ______

Commission file number 1-9516

AMERICAN REAL ESTATE PARTNERS, L.P.

(Exact Name of Registrant as Specified in its Charter)

Delaware	**13-3398766**
(State or Other Jurisdiction of Incorporation or Organization)	(IRS Employer Identification No.)

767 Fifth Avenue, Suite 4700
New York, NY 10153
(Address of Principal Executive Offices) (Zip Code)

(212) 702-4300
(Registrant's Telephone Number, Including Area Code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ NO ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check One).
Large Accelerated Filer ☐ Accelerated Filer ☒ Non-accelerated Filer ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ NO ☒

As of August 8, 2007, there were 61,856,831 depositary units and 11,907,073 preferred units outstanding.

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PART I.

FINANCIAL INFORMATION

Item 1. Financial Statements

AMERICAN REAL ESTATE PARTNERS, L.P. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS
(In $000s, Except Unit Amounts)

	June 30, 2007 (Unaudited)	December 31, 2006
ASSETS		
Current assets:		
Cash and cash equivalents	$ 3,134,713	$ 1,857,323
Investments	309,473	535,657
Inventories, net	267,330	245,502
Trade, notes and other receivables, net	150,143	169,744
Other current assets	41,255	114,826
Assets of discontinued operations held for sale	627,988	599,956
Total current assets	4,530,902	3,523,008
Property, plant and equipment, net:		
Real Estate	265,603	283,974
Home Fashion	192,560	200,382
Total property, plant and equipment, net	458,163	484,356
Investments	177,496	179,932
Intangible assets	23,402	23,402
Other assets	30,709	34,049
Total assets	$ 5,220,672	$ 4,244,747
LIABILITIES AND PARTNERS' EQUITY		
Current liabilities:		

Accounts payable	$ 76,022	$ 61,327
Accrued expenses and other current liabilities	148,742	152,051
Current portion of long-term debt	23,111	23,474
Securities sold not yet purchased	6,806	25,398
Current liabilities of discontinued operations held for sale	315,888	318,085
Total current liabilities	570,569	580,335
Long-term debt	2,017,677	927,661
Other noncurrent liabilities	15,047	16,219
Preferred limited partnership units:		
$10 liquidation preference, 5% cumulative pay-in-kind; 12,100,000 authorized; 11,907,073 and 11,340,243 issued and outstanding as of June 30, 2007 and December 31, 2006, respectively	120,561	117,656
Total long-term liabilities	2,153,285	1,061,536
Total liabilities	2,723,854	1,641,871
Minority interests	182,729	292,221
Commitments and contingencies (Note 19)		
Partners' equity:		
Limited partners:		
Depositary units: 72,400,000 authorized; 62,994,031 issued and 61,856,831 outstanding as of June 30, 2007 and December 31, 2006	2,527,982	2,524,615
General partner	(201,972)	(202,039)
Treasury units at cost: 1,137,200 depositary units	(11,921)	(11,921)
Partners' equity	2,314,089	2,310,655
Total liabilities and partners' equity	$ 5,220,672	$ 4,244,747

See notes to the consolidated financial statements.

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AMERICAN REAL ESTATE PARTNERS, L.P. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS
Three Months Ended June 30, 2007 and 2006
(In 000s, Except Per Unit Amounts)

	Three Months Ended June 30,	
	2007	**2006**
	(Unaudited)	
Revenues:		
Home fashion	$ 165,789	$ 237,148
Real estate	25,583	48,269
	191,372	285,417
Expenses:		
Home fashion	218,792	285,487
Real estate	24,580	33,977
General and administrative expenses	3,860	3,836
	247,232	323,300
Operating loss	(55,860)	(37,883)
Other income (expense), net:		
Interest expense	(35,499)	(21,056)
Interest income	41,235	11,958
Other income (expense), net	(16,705)	44,840
Equity in earnings of affiliate	—	7,996
(Loss) income from continuing operations before income taxes and minority interests	(66,829)	5,855
Income tax expense	(1,155)	(13)
Minority interests	20,594	25,703
(Loss) income from continuing operations	(47,390)	31,545
Discontinued operations:		
Income from discontinued operations, net of income taxes	20,989	46,129
Minority interests	41	125
Gain on sales of assets, net of income taxes	841	1,308
Income from discontinued operations, net of income taxes	21,871	47,562
Net (loss) earnings	$ (25,519)	$ 79,107
Net (loss) earnings attributable to:		
Limited partners	$ (25,011)	$ 77,533
General partner	(508)	1,574
	$ (25,519)	$ 79,107
Net (loss) earnings per LP unit:		
Basic earnings:		
Income (loss) from continuing operations	$ (0.75)	$ 0.53
Income from discontinued operations	0.35	0.75

Basic (loss) earnings per LP unit	$ (0.40)	$ 1.28
Weighted average LP units outstanding:	61,857	61,857
Diluted (loss) earnings:		
Income (loss) from continuing operations	$ (0.75)	$ 0.51
Income from discontinued operations	0.35	0.72
Diluted (loss) earnings per LP unit	$ (0.40)	$ 1.23
Weighted average LP units and equivalent partnership units outstanding	61,857	64,535

See notes to the consolidated financial statements.

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AMERICAN REAL ESTATE PARTNERS, L.P. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS
Six Months Ended June 30, 2007 and 2006
(In 000s, Except Per Unit Amounts)

	Six Months Ended June 30,	
	2007	2006
	(Unaudited)	
Revenues:		
Home fashion	$ 376,393	$ 480,638
Real estate	53,261	68,799
	429,654	549,437
Expenses:		
Home fashion	468,410	566,935
Real estate	48,049	51,089
General and administrative expenses	11,539	14,980
	527,998	633,004
Operating loss	(98,344)	(83,567)
Other income (expense), net:		
Interest expense	(63,040)	(41,529)
Interest income	72,273	22,662
Other income (expense), net	68,077	66,151
Equity in earnings of affiliate	—	8,021
Loss from continuing operations before income taxes and minority interests	(21,034)	(28,262)
Income tax (expense) benefit	(1,891)	40
Minority interests	32,185	40,772
Income from continuing operations	9,260	12,550
Discontinued operations:		
Income from discontinued operations, net of income taxes	49,527	114,553
Minority interests	(1,753)	179
Gain on sales of assets, net of income taxes	14,026	1,559
Income from discontinued operations, net of income taxes	61,800	116,291
Net earnings	$ 71,060	$ 128,841
Net earnings attributable to:		
Limited partners	$ 69,646	$ 126,277
General partner	1,414	2,564
	$ 71,060	$ 128,841
Net earnings per LP unit:		
Basic earnings:		
Income from continuing operations	$ 0.15	$ 0.22
Income from discontinued operations	0.98	1.84
Basic earnings per LP unit	$ 1.13	$ 2.06
Weighted average LP units outstanding:	61,857	61,857
Diluted earnings:		
Income from continuing operations	$ 0.15	$ 0.22
Income from discontinued operations	0.98	1.84
Diluted earnings per LP unit	$ 1.13	$ 2.06
Weighted average LP units and equivalent partnership units outstanding	61,857	61,857

See notes to the consolidated financial statements.

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AMERICAN REAL ESTATE PARTNERS, L.P. AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF PARTNERS' EQUITY AND COMPREHENSIVE INCOME
Six Months Ended June 30, 2007
(Unaudited) (In $000s)

	General Partner's Equity (Deficit)	Limited Partners' Equity Depositary Units	Held in Treasury Amounts	Held in Treasury Units	Total Partners' Equity
Balance, December 31, 2006	$ (202,039)	$ 2,524,615	$ (11,921)	1,137	$ 2,310,655
Cumulative effect of adjustment from adoption of SFAS No. 159	(840)	(41,344)	—	—	(42,184)
Comprehensive income:					
Net earnings	1,414	69,646	—	—	71,060
Net unrealized losses on securities available for sale	(90)	(4,414)	—	—	(4,504)
Comprehensive income	1,324	65,232	—	—	66,556
Partnership distributions	(314)	(15,464)	—	—	(15,778)
Change in subsidiary equity	(102)	(5,037)	—	—	(5,139)
Other	(1)	(20)	—	—	(21)
Balance, June 30, 2007	$ (201,972)	$ 2,527,982	$ (11,921)	1,137	$ 2,314,089

Accumulated other comprehensive income at June 30, 2007 was $20.9 million.

See notes to the consolidated financial statements.

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AMERICAN REAL ESTATE PARTNERS, L.P. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS
Six Months Ended June 30, 2007 and 2006
(Unaudited) (In $000s)

	Six Months Ended June 30, 2007	Six Months Ended June 30, 2006
Cash Flows from Operating Activities:		
Net earnings	$ 71,060	$ 128,841
Income from discontinued operations	(61,800)	(116,291)
Income from Continuing Operations	9,260	12,550
Adjustments to reconcile net earnings to net cash provided by operating activities:		
Depreciation and amortization	15,270	23,216
Investment gains	(62,094)	(62,661)
Preferred LP unit interest expense	2,906	2,753
Minority interests	(32,185)	(40,772)
Equity in earnings of affiliate	—	(8,021)
Stock based compensation expense	—	6,248
Deferred income tax expense (benefit)	1,025	(530)
Impairment loss on fixed assets	17,653	26,726
Net cash used in activities on trading securities	(5,202)	(26,750)
Other, net	7,942	(823)
Changes in operating assets and liabilities:		
Decrease in trade notes and other receivables	11,966	31,868
Decrease in other assets	1,461	32,541
Increase in inventory	(21,828)	(41,477)
Increase (decrease) in accounts payable, accrued expenses and other liabilities	6,706	(2,218)
Net cash used in continuing operations	(47,120)	(47,350)

Cash Flows from Discontinued Operations:		
Income from discontinued operations	61,800	116,291
Depreciation, depletion and amortization	8,398	69,236
Change in fair market value of oil and gas derivative contracts	—	(57,611)
Other, net	(15,632)	17,753
Net cash provided by discontinued operations	54,566	145,669
Net cash provided by operating activities	7,446	98,319
Cash Flows from Investing Activities:		
Cash Flows from Continuing Operations:		
Capital expenditures	(23,109)	(10,082)
Purchases of marketable equity and debt securities	(74,412)	(161,849)
Proceeds from sales of marketable equity and debt securities	326,786	162,701
Net proceeds from sales and disposition of assets	15,023	11,751
Acquisitions of business, net of cash acquired	—	(59,752)
Other	—	(265)
Net cash provided by (used in) investing activities – continuing operations.	244,288	(57,496)

See notes to the consolidated financial statements.

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AMERICAN REAL ESTATE PARTNERS, L.P. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS – (Continued)
Six Months Ended June 30, 2007 and 2006
(Unaudited) (In $000s)

	Six Months Ended June 30,	
	2007	**2006**
Cash Flows from Discontinued Operations:		
Capital expenditures	$ (15,238)	$(121,302)
Net proceeds from the sales of fixed assets	4,359	8,376
Purchase of minority interest of investment in subsidiary	(47,283)	—
Release of escrow funds relating to asset sales	50,000	—
Acquisitions of business, net of cash acquired	—	(109,897)
Other	8,172	(662)
Net cash provided by (used in) investing activities – discontinued operations	10	(223,485)
Net cash provided by (used in) in investing activities	244,298	(280,981)
Cash Flows from Financing Activities:		
Cash Flows from Continuing Operations:		
Partners' equity:		
Partnership distributions	(15,778)	(12,623)
Dividend paid to minority holders of subsidiary	(18,529)	—
Debt:		
Proceeds from senior notes payable	492,130	—
Proceeds from issuance of convertible notes	600,000	—
Proceeds from mortgages payable	—	34,250
Repayment of credit facilities	—	(1,765)
Periodic principal payments	(2,571)	(451)
Debt issuance costs	(275)	(2,020)
Other	—	(15)
Net cash provided by financing activities – continuing operations	1,054,977	17,376
Cash Flows Continuing Operations:		
Net cash (used in) provided by financing activities – discontinued operations	(245)	52,841
Net Cash Provided by Financing Activities	1,054,732	70,217
Net increase (decrease) in cash and cash equivalents	1,306,476	(112,445)
Net change in cash of assets held for sale	(29,086)	76,765
Cash and cash equivalents, beginning of period	1,857,323	351,775
Cash and cash equivalents, end of period	$3,134,713	$ 316,095
Supplemental information		
Cash payments for interest	$ 61,894	$ 50,547
Cash payments for income taxes, net of refunds	$ 14,427	$ 8,389
Net unrealized (losses) gains on securities available for sale	$ (4,504)	$ 8,634

See notes to the consolidated financial statements.

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AMERICAN REAL ESTATE PARTNERS, L.P. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)
June 30, 2007

Note 1 — General

American Real Estate Partners, L.P., or the Company or AREP, is a master limited partnership formed in Delaware on February 17, 1987. We are a diversified holding company owning subsidiaries engaged in the following continuing operating businesses: Real Estate and Home Fashion. Further information regarding our reportable segments is contained in Note 17.

As discussed in Note 3, in November 2006, we divested our Oil and Gas business and our Atlantic City gaming properties. On April 22, 2007, we entered into an agreement to sell all of the issued and outstanding membership interests of American Casino and Entertainment Properties LLC, or ACEP, our indirect wholly owned subsidiary, which comprises all of our remaining gaming properties. Accordingly, in the second quarter of the fiscal year ending December 31, 2007, or fiscal 2007, the financial position and the results of ACEP's operations are presented as assets and liabilities of discontinued operations held for sale in the consolidated balance sheets and discontinued operations in the consolidated statements of operations for all periods in accordance with SFAS No. 144.

We own a 99% limited partnership interest in American Real Estate Holdings Limited Partnership, or AREH. AREH, the operating partnership, holds our investments and conducts our business operations. Substantially all of our assets and liabilities are owned by AREH and substantially all of our operations are conducted through AREH and its subsidiaries. American Property Investors, Inc., or API, owns a 1% general partnership interest in both us and AREH, representing an aggregate 1.99% general partnership interest in us and AREH. API is owned and controlled by Mr. Carl C. Icahn.

The accompanying consolidated financial statements and related notes should be read in conjunction with the consolidated financial statements and related notes contained in our Annual Report on Form 10-K, for the fiscal year ended December 31, 2006, or fiscal 2006. The financial statements have been prepared in accordance with the rules and regulations of the Securities and Exchange Commission, or the SEC, related to interim financial statements. The financial information contained herein is unaudited; however, management believes all adjustments have been made that are necessary to present fairly the results for the interim periods. All such adjustments are of a normal and recurring nature, except for the adoption of SFAS No. 159, as described below.

The consolidated financial statements include the accounts of the Company and its wholly and majority owned subsidiaries in which control can be exercised. The Company is considered to have control if it has a direct or indirect ability to make decisions about an entity's activities through voting or similar rights. All material intercompany accounts and transactions have been eliminated in consolidation.

Because of the diversified and seasonal nature of our business, the results of operations for quarterly and other interim periods are not indicative of the results to be expected for the full year. Variations in the amount and timing of gains and losses on our investments can be significant. The results of our Real Estate and Home Fashion segments are seasonal.

Discontinued Operations

On November 17, 2006, our indirect majority owned subsidiary, Atlantic Coast Entertainment Holdings, Inc., or Atlantic Coast, completed the sale to Pinnacle Entertainment, Inc., or Pinnacle, of the outstanding membership interests in ACE Gaming LLC, or ACE, the owner of The Sands Hotel and Casino, or The Sands, in Atlantic City, New Jersey, and 100% of the equity interests in certain subsidiaries of AREH that owned parcels of real estate adjacent to The Sands, including the Traymore site, to Pinnacle.

On November 21, 2006, our indirect wholly owned subsidiary, AREP O & G Holdings LLC, consummated the sale of all of the issued and outstanding membership interests of NEG Oil & Gas LLC, or NEG Oil & Gas, to SandRidge Energy, Inc. or SandRidge, formerly Riata Energy, Inc.

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AMERICAN REAL ESTATE PARTNERS, L.P. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)
June 30, 2007

Note 1 — General – (continued)

On April 22, 2007, American Entertainment Properties Corp, or AEP, a wholly owned indirect subsidiary of AREP, entered into an agreement to sell all of the issued and outstanding membership interests of ACEP, which comprises our remaining gaming operations.

Operating properties of our real estate segment are reclassified to held for sale when subject to a contract or letter of intent. The operations of such properties are classified as discontinued operations. The properties classified as discontinued operations have changed during fiscal 2007 and, accordingly, certain amounts in the statement of operations and cash flows for the three and six months ended June 30, 2007 and 2006 have been reclassified to conform to the current classification of properties. During the six months ended June 30, 2007, five properties were reclassified to held for sale.

The financial position and results of these operations are presented as assets and liabilities of discontinued operations held for sale in the consolidated balance sheets and discontinued operations in the consolidated statements of operations.

Filing Status of Subsidiaries

National Energy Group, Inc., or NEGI, and Atlantic Coast are reporting companies under the Securities Exchange Act of 1934, as amended, or the ’34 Act. In addition, ACEP voluntarily files annual, quarterly and current reports under the ’34 Act.

Sales of Subsidiary Stock

SEC Staff Accounting Bulletin No. 51, *Accounting for Sales of Stock by a Subsidiary* (“SAB 51”), provides guidance on accounting for the effect of issuances of a subsidiary’s stock on the parent’s investment in that subsidiary. SAB 51 allows registrants to elect an accounting policy of recording such increases or decreases in a parent’s investment (SAB 51 credits or charges, respectively) as either a gain or loss in the statement of operations or reflected as an equity transaction. In accordance with the election provided in SAB 51, we adopted a policy of recording such SAB 51 credits or charges directly to partners’ equity. As further discussed in Note 11, during the second quarter of fiscal 2007 we recognized certain SAB 51 charges to partners’ equity of approximately $6.1 million related to our investment in Atlantic Coast under our adopted policy.

New Accounting Pronouncements

SFAS No. 155. On February 16, 2006, the FASB issued Statement No. 155, *Accounting for Certain Hybrid Instruments — an Amendment of FASB Statements No. 133 and 140* (“SFAS 155”). The statement amends Statement 133 to permit fair value measurement for certain hybrid financial instruments that contain an embedded derivative, provides additional guidance on the applicability of SFAS 133 and 140 to certain financial instruments and subordinated concentrations of credit risk. The new standard is effective for the first fiscal year beginning after September 15, 2006. The adoption of SFAS 155 as of January 1, 2007 did not have any impact on our consolidated financial statements.

EITF 06-3. In June 2006, the Emerging Issues Task Force (“EITF”) issued EITF 06-3, “How Taxes Collected from Customers and Remitted to Governmental Authorities Should Be Presented in the Income Statement (That is, Gross versus Net Presentation)” to clarify diversity in practice on the presentation of different types of taxes in the financial statements. The EITF concluded that, for taxes within the scope of the issue, a company may adopt a policy of presenting taxes either gross within revenue or net. That is, it may include charges to customers for taxes within revenues and the charge for the taxes from the taxing authority within cost of sales, or, alternatively, it may net the charge to the customer and the charge from the taxing authority. If taxes are reported on a gross basis, and are significant, an entity should disclose the amounts of those taxes subject to EITF 06-3. The guidance is effective for periods beginning after December 15, 2006. We present sales tax on a net basis in our consolidated financial statements, and the adoption of EITF 06-3 did not have any impact on our financial position, results of operations or cash flows.

Note 1 — General – (continued)

FIN No. 48. In July 2006, the FASB issued FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes — an Interpretation of FASB Statement 109* (“FIN 48”), which clarifies the accounting for uncertainty in tax positions taken or expected to be taken in a tax return, including issues relating to financial statement recognition and measurement. FIN 48 provides that the tax effects from an uncertain tax position can be recognized in the financial statements only if the position is “more-likely-than-not” to be sustained if the position were to be challenged by a taxing authority. The assessment of the tax position is based solely on the technical merits of the position, without regard to the likelihood that the tax position may be challenged. If an uncertain tax position meets the “more-likely-than-not” threshold, the largest amount of tax benefit that is greater than 50 percent likely to be recognized upon ultimate settlement with the taxing authority is recorded. The provisions of FIN 48 are effective for fiscal years beginning after December 15, 2006, with the cumulative effect of the change in accounting principle recorded as an adjustment to opening retained earnings. We adopted FIN 48 as of January 1, 2007. The adoption of FIN 48 did not have a material impact on our consolidated financial statements. See note 18 for additional information.

SFAS No. 157. In September 2006, the FASB issued FASB Statement No. 157, *Fair Value Measurements* (“SFAS 157”), which defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles, and expands

disclosures about fair value measurements. This statement applies under other accounting pronouncements that require or permit fair value measurements and, accordingly, SFAS 157 does not require any new fair value measurements. We adopted SFAS 157 as of January 1, 2007, in conjunction with the adoption of SFAS No. 159, as required. The adoption of SFAS 157 did not have any impact on our consolidated financial statements.

SFAS No. 159. In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities — Including an Amendment of FASB Statement No. 115* ("SFAS 159"), which gives entities the option to measure eligible financial assets, financial liabilities and firm commitments at fair value (i.e., the fair value option), on an instrument-by-instrument basis, that are otherwise not permitted to be accounted for at fair value under other accounting standards. The election to use the fair value option is available when an entity first recognizes a financial asset or financial liability or upon entering into a firm commitment. Subsequent changes in fair value must be recorded in earnings. Additionally, SFAS 159 allows for a one-time election for existing positions upon adoption, with the transition adjustment recorded to beginning partners' equity.

We adopted SFAS 159 as of January 1, 2007 and elected to apply the fair value option to our investment in ImClone Systems Incorporated, or ImClone. In the fourth quarter of fiscal 2006, we first applied the equity method of accounting to our investment in ImClone due to changes in ImClone's board resulting in our having the ability to exercise significant influence over ImClone. We believe that the quality of the earnings and the value of the investment that we report over time relating to our investment in ImClone are more accurately reflected by the market value methodology of SFAS 159 rather than the equity method of accounting. The equity method of accounting would require an appraisal of the fair values of ImClone's assets and liabilities at the dates that we acquired shares of common stock of ImClone as well as future appraisals should there be any material indications of impairment. We believe that such an appraisal would be subjective given the nature of ImClone's pharmaceutical operations.

As of the date of adoption, the carrying value of our investment in ImClone was approximately $164.3 million and the fair value of our investment was approximately $122.2 million. In accordance with the transition requirements of SFAS 159, we recorded a cumulative effect adjustment to beginning partners' equity for the difference between the fair value and carrying value on the date of adoption, which reduced partners' equity by approximately $42.2 million.

As a result of the adoption of SFAS 159, we are required to record unrealized gains or losses for the change in fair value of our investment in ImClone. During the three and six months ended June 30, 2007, we

Note 1 — General – (continued)

recorded approximately $24.7 million of unrealized losses and $39.2 million of unrealized gains, respectively, resulting from the change in the market value of ImClone's stock which is recorded as a component of other income (expense), net in the consolidated statements of operations.

Reclassifications

Certain amounts in the consolidated financial statements of prior years have been reclassified to conform to the current year presentation.

Note 2 — Operating Units

Through the second quarter of fiscal 2006, we had four principal operating businesses: Oil and Gas, Gaming, Real Estate and Home Fashion. As described in Note 3, in November 2006 we divested our Oil and Gas businesses and our Atlantic City Gaming properties. Additionally, as described in Note 3, on April 22, 2007, AEP, a wholly owned indirect subsidiary of AREP, entered into an agreement to sell all of the issued and outstanding membership interests of ACEP, which comprises our remaining gaming operations. As a result, our Oil and Gas operations and all of our Gaming properties are now classified as discontinued operations and thus are not considered reportable segments of our continuing operations. We now have two principal operating businesses: Real Estate and Home Fashion.

a. Real Estate

Our real estate operations consist of three segments: rental real estate, property development and associated resort activities.

A summary of real estate property and equipment as of June 30, 2007 and December 31, 2006 included in the consolidated balance sheets is as follows (in $000s):

	June 30, 2007	December 31, 2006
	(Unaudited)	
Rental properties:		
Finance leases, net	$ 63,960	$ 66,335
Operating leases	41,132	46,170
Property development	117,040	126,537

Resort properties	43,471	44,932
Total real estate	$ 265,603	$ 283,974

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Note 2 — Operating Units – (continued)

Summarized unaudited statements of operations attributable to our continuing real estate operations for the periods indicated are as follows (in $000s):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Revenues:				
Rental real estate:				
Interest income on financing leases	$ 1,527	$ 1,715	$ 3,105	$ 3,451
Rental income	1,862	1,750	3,757	3,217
Property development	14,735	37,852	32,881	49,236
Resort activities	7,459	6,952	13,518	12,895
Total revenues	25,583	48,269	53,261	68,799
Operating expenses:				
Rental real estate	1,444	822	2,908	1,788
Property development	15,073	25,976	30,685	35,952
Resort activities	8,063	7,179	14,456	13,349
Total expenses	24,580	33,977	48,049	51,089
Operating income	$ 1,003	$ 14,292	$ 5,212	$ 17,710

Rental Real Estate

As of June 30, 2007 and December 31, 2006, we owned 36 and 37 rental real estate properties, respectively. These primarily consist of fee and leasehold interests in real estate in 18 states. Most of these properties are net-leased to single corporate tenants. Approximately 86% of these properties are currently net-leased, 3% are operating properties and 11% are vacant.

Property Held for Sale

The following is a summary of property held for sale for the periods indicated (in $000s):

	June 30, 2007	December 31, 2006
	(Unaudited)	
Leased to others	$ 36,219	$ 28,015
Vacant	703	703
	36,922	28,718
Less: accumulated depreciation	(8,735)	(5,053)
Total	$ 28,187	$ 23,665

As of June 30, 2007 and December 31, 2006, $19.8 million of real estate held for sale was pledged to collateralize the payment of non-recourse mortgages payable.

We market portions of our commercial real estate portfolio for sale. Unaudited sales activity for the periods indicated was as follows (in $000s, except unit data):

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Note 2 — Operating Units – (continued)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Properties sold	—	4	1	8
Proceeds received	$ —	$ 7,354	$ 4,359	$ 8,327
Total gain recorded	$ —	$ 1,308	$ 3,862	$ 1,559
Gain recorded in discontinued operations	$ —	$ 1,308	$ 3,862	$ 1,559

Property Development and Associated Resort Activities

We own, primarily through our Bayswater subsidiary, residential development properties. Bayswater is a real estate investment, management and development company that focus primarily on the construction and sale of single-family houses, multi-family homes and lots in subdivisions and planned communities and raw land for residential development. Our New Seabury development property in Cape Cod, Massachusetts and our Grand Harbor and Oak Harbor development property in Vero Beach, Florida each include land for future residential development of approximately 400 and 1,000 units of residential housing, respectively. Both developments operate golf and resort activities as well. We are also developing residential communities in Naples, Florida and Westchester County, New York.

Unaudited property development sales activity for the periods indicated was as follows (in $000s, except unit data):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Units sold:				
New Seabury, Massachusetts	5	20	11	30
Grand Harbor/Oak Harbor, Florida	6	6	11	8
Falling Waters, Florida	6	9	29	9
Westchester, New York	2	6	4	6
Tampa Bay, Florida	—	—	1	—
	19	41	56	53
Revenues:				
New Seabury, Massachusetts	$ 5,334	$ 21,352	$ 8,917	$ 30,385
Grand Harbor/Oak Harbor, Florida	4,944	4,123	9,293	6,444
Falling Waters, Florida	1,660	2,261	7,127	2,261
Westchester, New York	2,797	10,116	6,040	10,146
Tampa Bay, Florida	—	—	1,504	—
	$ 14,735	$ 37,852	$ 32,881	$ 49,236

For the second quarter of fiscal 2007, the property development operating unit recorded an asset impairment charge of approximately $1.8 million related to certain condominium land in our Oak Harbor, Florida subdivision. There were no impairment charges in fiscal 2006.

b. Home Fashion

We conduct our Home Fashion operations through our majority ownership in West Point International Inc., or WPI, a manufacturer and distributor of home fashion consumer products.

Summary balance sheets for Home Fashion as of June 30, 2007 and December 31, 2006, as included in the consolidated balance sheets are as follows (in $000s):

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Note 2 — Operating Units – (continued)

	June 30, 2007	December 31, 2006
	(Unaudited)	
Current assets	$ 511,555	$ 567,419
Assets held for sale	16,779	23,838
Property plant and equipment, net	192,560	200,382
Intangible and other assets	40,779	38,199
Total assets	$ 761,673	$ 829,838
Current liabilities	$ 121,563	$ 101,609
Other liabilities	6,662	8,980
Total liabilities	$ 128,225	$ 110,589

Unaudited summarized statements of operations for the periods indicated are as follows (in $000s):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Net Sales	$ 165,789	$ 237,148	$ 376,393	$ 480,638
Costs of sales	164,114	224,222	370,024	452,582
Gross earnings	1,675	12,926	6,369	28,056
Selling, general and administrative expenses	34,296	40,698	73,693	84,015
Restructuring and impairment charges	20,382	20,567	24,693	30,338
Operating loss	$ (53,003)	$ (48,339)	$ (92,017)	$ (86,297)

Total depreciation for the three months ended June 30, 2007 was $4.6 million, of which $3.5 million was included in cost of sales and $1.1 million was included in selling, general and administrative expenses. Total depreciation for the three months ended June 30, 2006 was $9.5 million, of which $7.7 million was included in cost of sales and $1.8 million was included in selling, general and administrative expenses. Total expenses for the three months ended June 30, 2007 include $15.4 million of fixed asset impairment and $5.0 million restructuring charges, of which approximately $2.5 million relate to severance and $2.5 million relate to continuing costs of closed plants. Total expenses for the three months ended June 30, 2006 include $18.8 million of fixed asset impairment and $1.7 million restructuring charges, of which approximately $0.1 million relate to severance and $1.6 million relate to continuing costs of closed plants.

Total depreciation for the six months ended June 30, 2007 was $9.4 million, of which $7.2 million was included in cost of sales and $2.2 million was included in selling, general and administrative expenses. Total depreciation for the six months ended June 30, 2006 was $19.9 million, of which $16.3 million was included in cost of sales and $3.6 million was included in selling, general and administrative expenses. Total expenses for the six months ended June 30, 2007 include $15.4 of fixed asset impairment and $9.3 million restructuring charges of which approximately $3.8 million relates to severance and $5.5 million relates to continuing costs of closed plants. Total expenses for the six months ended June 30, 2006 include $26.5 million of fixed asset impairment and $3.8 restructuring charges of which approximately $1.3 million relates to severance and $2.5 million relates to continuing costs of closed plants.

Impairment and restructuring charges for the three and six months ended June 30, 2007 and 2006 are included in Home Fashion operating expenses in the consolidated statements of operations.

Note 2 — Operating Units – (continued)

To improve WPI's competitive position, we intend to continue to restructure its operations to significantly reduce its cost of goods sold by closing certain plants located in the United States, sourcing goods from lower cost overseas facilities and, potentially, acquiring manufacturing facilities outside of the United States. WPI has incurred impairment charges to write-down the value of WPI plants taken out of service to their estimated realizable value.

Included in restructuring expenses are cash charges associated with the ongoing costs of closed plants, employee severance, benefits and related costs. The amount of the accrued liability balance was $1.2 million as of December 31, 2006. During the six months ended June 30, 2007, we incurred additional restructuring costs of $9.3 million, and $9.5 million was paid during this period. As of June 30, 2007, the accrued liability balance was $1.0 million, which is included in other accrued liabilities in our consolidated balance sheet.

Total cumulative impairment and restructuring charges for the period from our acquisition of WPI on August 8, 2005 through June 30, 2007 were $72.0 million.

We expect that restructuring charges will continue to be incurred throughout fiscal 2007. As of June 30, 2007, WPI expects to incur additional restructuring costs over the next twelve months relating to the current restructuring plan in the range of $10.0 million and $17.5 million.

Ongoing litigation may result in our ownership of WPI being reduced to less than 50% as described in Part I, Item 3 of our Annual Report on Form 10-K for fiscal 2006 filed with the SEC on March 6, 2007.

Note 3 — Discontinued Operations and Assets Held for Sale

The Sands and Related Assets

On November 17, 2006, Atlantic Coast, ACE, AREH, and certain other entities owned by or affiliated with AREH completed the sale to Pinnacle of the outstanding membership interests in ACE and 100% of the equity interests in certain subsidiaries of AREH that own parcels of real estate adjacent to The Sands, including 7.7 acres known as the Traymore site. We owned, through subsidiaries, approximately 67.6% of Atlantic Coast, which owned 100% of ACE. The aggregate price was approximately $274.8 million, of which approximately $200.6 million was paid to Atlantic Coast and approximately $74.2 million was paid to affiliates

of AREH for subsidiaries that owned the Traymore site and the adjacent properties. Under the terms of the agreement, $51.8 million of the purchase price paid to Atlantic Coast was deposited into escrow to fund indemnification obligations with regard to the claims of creditors and stockholders of GB Holdings, Inc., or GB Holdings. On February 22, 2007 we resolved all outstanding litigation involving our interest in our Atlantic City gaming operations resulting in a release of all claims against us. As a result of the settlement, our ownership of Atlantic Coast increased from 67.6% to 96.9% and $50.0 million of the amount placed into escrow was released to us.

Oil and Gas Operations

On November 21, 2006, our indirect wholly owned subsidiary, AREP O & G Holdings, LLC, consummated the sale of all of the issued and outstanding membership interests of NEG Oil & Gas to SandRidge, for consideration consisting of $1.025 billion in cash, 12,842,000 shares of SandRidge's common stock valued, at the date of closing, at $18 per share, and the repayment by SandRidge of $300.0 million of debt of NEG Oil & Gas. On April 4, 2007, we sold our entire position in SandRidge for cash consideration of approximately $243.2 million.

On November 21, 2006, pursuant to an agreement dated October 25, 2006 among AREH, NEG Oil & Gas and National Energy Group, Inc., or NEGI, NEGI sold its membership interest in NEG Holding LLC to NEG Oil & Gas for consideration of approximately $261.1 million paid in cash. Of that amount, $149.6 million was used to repay the principal of and accrued interest with respect to the NEGI 10.75% senior notes due 2007, all of which were held by us.

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Note 3 — Discontinued Operations and Assets Held for Sale – (continued)

American Casino & Entertainment Properties LLC

On April 22, 2007, AEP, a wholly owned indirect subsidiary of AREP, entered into a Membership Interest Purchase Agreement with W2007/ACEP Holdings, LLC, an affiliate of Whitehall Street Real Estate Funds, a series of real estate investment funds affiliated with Goldman, Sachs & Co., to sell all of the issued and outstanding membership interests of ACEP, which comprises all of our remaining gaming operations, for $1.3 billion, plus or minus certain adjustments such as working capital, more fully described in the agreement. Pursuant to the terms of the agreement, AEP is required to cause ACEP to repay from funds provided by AEP, the principal, interest, prepayment penalty or premium due on ACEP's 7.85% senior secured notes due 2012 and ACEP's senior secured credit facility. With this transaction, we anticipate realizing a gain of approximately $0.57 billion on our investments in ACEP, after income taxes. ACEP's casino assets are comprised of the Stratosphere Casino Hotel & Tower, the Arizona Charlie's Decatur, the Arizona Charlie's Boulder and the Aquarius Casino Resort. The transaction is subject to the approval of the Nevada Gaming Commission and the Nevada State Gaming Control Board, as well as customary conditions. The parties expect to close the transaction by the end of fiscal 2007; however, there can be no assurance that we will be able to consummate the transaction.

Real Estate

Operating properties are reclassified to held for sale when subject to a contract or letter of intent. The operations of such properties are classified as discontinued operations. The properties classified as discontinued operations have changed during fiscal 2007 and, accordingly, certain amounts in the statement of operations and cash flows for the three and six months ended June 30, 2007 and 2006 have been reclassified to conform to the current classification of properties. During the six months ended June 30, 2007, five properties were reclassified to held for sale.

Results of Operations and Assets Held for Sale

The financial position and results of our Oil and Gas and Real Estate operations and of our Gaming operations described above are presented as assets and liabilities of discontinued operations held for sale in the consolidated balance sheets and discontinued operations in the consolidated statements of operations, respectively, for all periods presented in accordance with SFAS No. 144.

A summary of the results of operations for our discontinued operations for the periods indicated are as follows (in $000s) (unaudited):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Revenues				
Oil and Gas	$ —	$ 86,606	$ —	$ 194,898
Gaming	114,138	134,780	227,026	261,498
Real Estate	1,361	1,849	2,807	3,749
Total revenues	$ 115,499	$ 223,235	$ 229,833	$ 460,145
Operating income from discontinued operations:				
Oil and Gas	$ —	$ 46,528	$ —	$ 111,516

Gaming	31,319	15,123	54,546	34,478
Real Estate	1,161	1,280	2,315	2,581
Total operating income	32,480	62,931	56,861	148,575

Note 3 — Discontinued Operations and Assets Held for Sale – (continued)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Interest expense	(5,727)	(10,838)	(11,436)	(21,237)
Interest and other income	273	3,179	19,334	5,067
Income tax expense	(6,037)	(9,143)	(15,232)	(17,852)
Income from discontinued operations	20,989	46,129	49,527	114,553
Minority interests	41	125	(1,753)	179
Gain on sales of discontinued operations, net of income taxes	841	1,308	14,026	1,559
	$ 21,871	$ 47,562	$ 61,800	$ 116,291

Interest and other income for the three and six months ended June 30, 2007 includes approximately $8.3 million relating to a real estate tax refund received by Atlantic Coast and approximately $10.1 million representing the net gain on the settlement of litigation relating to GB Holdings.

The gain on sales of discontinued operations in the six months ended June 30, 2007 includes approximately $4.7 million of gain on sales of real estate and $9.3 million relating to the working capital adjustment to the gain recorded on the sale of our Oil and Gas operations in November 2006. In accordance with SFAS No. 144, we ceased depreciation on the fixed assts of ACEP in the second quarter of fiscal 2007. The amount of the depreciation and amortization not expensed by us approximated $8.7 million.

A summary of assets held for sale and liabilities of discontinued operations held for sale as of June 30, 2007 and December 31, 2006 is as follows (in $000):

	June 30, 2007	December 31, 2006
Cash and cash equivalents	$ 83,995	$ 54,912
Trade, notes and other receivables	5,594	6,752
Other current assets	20,314	70,950
Property, plant and equipment	429,284	422,715
Other assets	88,801	44,627
Assets held for sale	$ 627,988	$ 599,956
Accounts payable and accrued expenses	$ 52,517	$ 54,267
Long-term debt	257,072	257,825
Other noncurrent liabilities	6,299	5,993
Liabilities of discontinued operations held for sale	$ 315,888	$ 318,085

Note 4 — Related Party Transactions

a. Administrative Services

In July 2005, we entered into a license agreement with an affiliate for the non-exclusive use of approximately 1,514 square feet of office space for which we pay monthly base rent of $13,000 plus 16.4% of certain "additional rent." The license agreement expires in May 2012. Under the agreement, base rent is subject to increases in July 2008 and December 2011. Additionally, we are entitled to certain annual rent credits each December beginning December 2005 and continuing through December 2011. For the three months ended June 30, 2007 and 2006, we paid rent of approximately $27,000 and $32,000 respectively. For the six months ended June 30, 2007 and 2006, we paid rent of approximately $67,000 and $85,000, respectively.

Note 4 — Related Party Transactions – (continued)

An affiliate occupies a portion of certain office space leased by us. Monthly payments from the affiliate for the use of the space began on October 12, 2006. For the three and six months ended June 30, 2007, we received $21,000 and $40,000, respectively, for the use of such space.

For the three months ended June 30, 2007 and 2006, we paid $152,000 and $197,000, respectively, to XO Holdings, Inc., formerly known as XO Communications, Inc., an affiliate of our general partner, for telecommunication services. For the six months ended June 30, 2007 and 2006, these charges were $314,000 and $415,000, respectively.

An affiliate provided certain professional services to WPI for which WPI incurred charges of approximately $222,000 and $81,000 for the three months ended June 30, 2007 and 2006, respectively, and $249,000 and $139,000 for the six months ended June 30, 2007 and 2006, respectively.

We provide certain professional services to affiliates for which we charged $174,000 and $147,000 for the three months ended June 30, 2007 and 2006, respectively, and $349,000 and $260,000 for the six months ended June 30, 2007 and 2006, respectively. As of June 30, 2007, current liabilities in the consolidated balance sheets included $116,000 to be applied to our charges to the affiliate for services to be provided to it.

b. Securities Ownership

As of June 30, 2007, affiliates of Mr. Icahn owned 10,304,013 preferred units and 55,655,382 depositary units, which represented approximately 86.5% and 90.0% of the outstanding preferred units and depositary units, respectively.

Note 5 — Investments and Related Matters

a. Current Investments

Current investments consist of the following (in $000s):

	June 30, 2007		December 31, 2006	
	Amortized Cost	Carrying Value	Amortized Cost	Carrying Value
	(Unaudited)			
Current Investments:				
Trading				
Other investments	$ —	$ 5,534	$ —	$ 20,537
Total current trading	—	5,534	—	20,537
Available for Sale				
Marketable equity and debt securities	230,949	250,906	242,080	265,411
Other investments	52,129	53,033	247,674	249,709
Total current available for sale	283,078	303,939	489,754	515,120
Total current investments	$ 283,078	$ 309,473	$ 489,754	$ 535,657

We use the services of an unaffiliated third-party investment manager to manage certain fixed income investments. As of June 30, 2007 and December 31, 2006, $177.0 million and $163.7 million, respectively, had been invested at the discretion of such manager in a diversified portfolio consisting predominantly of short-term investment grade debt securities. Investments managed by the third-party investment manager are classified as available for sale securities in the above table.

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Note 5 — Investments and Related Matters – (continued)

b. Noncurrent Investments

Investment in ImClone Systems Incorporated

As described in Note 1 above, we adopted SFAS 159 as of January 1, 2007 and elected to apply the fair value option to our investment in ImClone at the time of adoption. Previously, we accounted for our investment in ImClone under the equity method in accordance with APB 18, *The Equity Method of Accounting for Investments in Common Stock.* The transition adjustment to beginning partners' equity as of January 1, 2007 related to the adoption of SFAS 159 was a charge of approximately $42.2 million. During the three and six months ended June 30, 2007, we recorded approximately $24.7 million of unrealized losses and $39.2 million of unrealized gains, respectively, resulting from the change in the market value of ImClone's stock.

At June 30, 2007 and December 31, 2006, our carrying value of our equity investment in ImClone was $161.4 million based on the fair value method of accounting and $164.3 million based on the equity method of accounting, respectively. As of June 30,

2007 and December 31, 2006, the market value of our ImClone shares held was $161.4 million and $122.2 million, respectively, which we believe is not material to our total assets. As of June 30, 2007, the total shares of ImClone common stock held by us as a percentage of ImClone's total outstanding shares was 5.3%. ImClone is a registered SEC filer and its consolidated financial statements are readily available at www.sec.gov.

Other Noncurrent Investments

The carrying value of other noncurrent investments was $16.1 million and $15.6 million as of June 30, 2007 and December 31, 2006, respectively. Included in other securities is an investment of 4.4% of the common stock of Philip Services Corporation, an entity controlled by related parties. The investment has a cost basis of $0.7 million, which is net of significant impairment charges taken in prior years.

Note 6 — Inventories, Net

Inventories, net, relate solely to our Home Fashion segment and consist of the following (in $000s):

	June 30, 2007	December 31, 2006
	(Unaudited)	
Raw materials and supplies	$ 26,908	$ 32,059
Goods in process	74,889	83,592
Finished goods	165,533	129,851
	$ 267,330	$ 245,502

Note 7 — Trade, Notes and Other Receivables, Net

Trade notes and other receivables, net, consist of the following (in $000s):

	June 30, 2007	December 31, 2006
	(Unaudited)	
Trade receivables – Home Fashion	$ 125,979	$ 134,111
Other	33,665	43,936
Allowance for doubtful accounts – Home Fashion	(9,501)	(8,303)
	$ 150,143	$ 169,744

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Note 8 — Other Current Assets

Other current assets consist of the following (in $000s):

	June 30, 2007	December 31, 2006
	(Unaudited)	
Restricted cash	$ 18,062	$ 87,159
Other	23,193	27,667
Subtotal	$ 41,255	$ 114,826

As of December 31, 2006, restricted cash included $50.0 million placed into escrow related to our sale of ACE to Pinnacle, which was released in February 2007 in connection with the settlement of the litigation relating to GB Holdings. Additionally, restricted cash consists of balances for escrow deposits and funds held to collateralize letters of credit.

Note 9 — Property, Plant and Equipment

Property, plant and equipment consists of the following (in $000s):

	June 30, 2007	December 31, 2006
	(Unaudited)	
Land	$ 39,451	$ 56,495
Buildings and improvements	117,379	123,364
Machinery, equipment and furniture	156,051	169,550
Assets leased to others	115,059	123,398
Construction in progress	109,458	88,590
	537,398	561,397
Less accumulated depreciation and amortization	(79,235)	(77,041)
Net property, plant and equipment	$ 458,163	$ 484,356

Depreciation and amortization expense related to property, plant and equipment for the three months ended June 30, 2007 and 2006 were $6.0 million and $11.0 million, respectively. Depreciation and amortization expense related to property, plant and

equipment for the six months ended June 30, 2007 and 2006 were $12.4 million and $22.5 million, respectively.

Note 10 — Other Noncurrent Assets

Other noncurrent assets consist of the following (in $000s):

	June 30, 2007	December 31, 2006
	(Unaudited)	
Deferred taxes	$ 11,125	$ 12,764
Deferred finance costs, net of accumulated amortization of $8,046 and $5,256 as of June 30, 2007 and December 31, 2006, respectively	17,396	17,420
Other	2,188	3,865
	$ 30,709	$ 34,049

Note 11 — Minority Interests

Minority interests consist of the following (in $000s):

	June 30, 2007	December 31, 2006
	(Unaudited)	
WPI	$ 145,484	$ 178,843
Atlantic Coast	13,138	70,563
NEGI	24,107	42,815
	$ 182,729	$ 292,221

The minority interest in Atlantic Coast was reduced primarily as a result of the settlement of the litigation relating to GB Holdings, in February 2007. As a result, our ownership in Atlantic Coast increased from 67.6% to 96.9%. In the second quarter of fiscal 2007, we and several other investors exercised warrants to purchase shares of common stock of Atlantic Coast, resulting in an increase of the minority interest in Atlantic Coast, and a decrease in our ownership to 94.2%. Additionally, this resulted in a SAB 51 charge of $6.1 million to partners' equity.

On February 15, 2007, NEGI paid a one-time cash dividend to stockholders of record as of the close of business on February 1, 2007 in the amount of $3.31 per share, or $37.0 million in the aggregate. Of this amount, $18.5 million was paid to minority holders of NEGI stock.

Note 12 — Long-Term Debt

Long-term debt consists of the following (in $000s):

	June 30, 2007	December 31, 2006
	(Unaudited)	
Senior unsecured variable rate convertible notes due 2013 – AREP	$ 600,000	$ —
Senior unsecured 7.125% notes due 2013 – AREP	972,731	480,000
Senior unsecured 8.125% notes due 2012 – AREP	351,408	351,246
Senior secured 7.85% notes due 2012 – ACEP	215,000	215,000
Borrowings under credit facility – ACEP	40,000	40,000
Mortgages payable	106,718	109,289
Other	12,003	13,425
Total long-term debt	2,297,860	1,208,960
Less current portion, including debt related to assets held for sale	(280,183)	(281,299)
	$2,017,677	$ 927,661

Senior Unsecured Variable Rate Convertible Notes Due 2013

In April 2007, we issued an aggregate of $600.0 million of variable rate senior convertible notes due 2013, or the variable rate notes. The variable rate notes were sold in a private placement pursuant to Section 4(2) of the Securities Act of 1933, as amended, or the Securities Act, and issued pursuant to an indenture dated as of April 5, 2007, by and among us, as issuer, American Real Estate Finance Corp., or AREF, as co-issuer, and Wilmington Trust Company, as trustee. AREF, our wholly owned subsidiary, was formed solely for the purpose of serving as a co-issuer of our debt securities in order to facilitate offerings of the debt securities. The variable rate notes bear interest at a rate of three month LIBOR minus 125 basis points, but no less than 4.0% nor higher than 5.5%, and are convertible into depositary units of AREP at a conversion price of $132.595 per share, subject to adjustments in certain circumstances. As of June 30, 2007, the interest rate was 4.1%. In the event that we declare a cash dividend or similar cash distribution in any calendar quarter

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Note 12 — Long-Term Debt – (continued)

with respect to our depositary units in an amount in excess of $0.10 per depositary unit (as adjusted for splits, reverse splits, and/or stock dividends), the indenture requires that we simultaneously make such distribution to holders of the variable rate convertible notes in accordance with a formula set forth in the indenture.

The variable rate convertible notes have not been and will not be registered under the Securities Act and may not be offered or sold in the United States absent registration or an applicable exemption from the registration requirements of the Securities Act. In connection with the sale of the variable rate convertible notes, we and the initial buyers have entered into a registration rights agreement, pursuant to which we have agreed to file a shelf registration statement on Form S-3 with respect to resales of depositary units issuable upon conversion of the variable rate convertible notes. A preliminary registration statement on Form S-3 with respect thereto was filed on June 21, 2007.

Senior Unsecured 7.125% Notes Due 2013

On February 7, 2005, we issued $480.0 million aggregate principal amount of 7.125% senior unsecured notes due 2013, or the 7.125% notes, priced at 100% of principal amount. The 7.125% notes were issued pursuant to an indenture dated February 7, 2005 among us, as issuer, AREF as co-issuer, AREH, as guarantor, and Wilmington Trust Company, as trustee (referred to herein as the 2005 Indenture). Other than AREH, no other subsidiaries guarantee payment on the notes.

On January 16, 2007, we issued an additional $500.0 million aggregate principal amount of 7.125% notes, or the additional 7.125% notes (the 7.125% notes and the additional 7.125% notes being referred to herein as the notes), priced at 98.4% of par, or at a discount of 1.6%, pursuant to the 2005 Indenture. The notes have a fixed annual interest rate of 7.125%, which will be paid every six months on February 15 and August 15 and will mature on February 15, 2013. At the time we issued the additional 7.125% notes, we entered into a new registration rights agreement in which we agreed to permit noteholders to exchange the private notes for new notes which will be registered under the Securities Act. A preliminary registration statement on Form S-4 with respect thereto was filed on June 21, 2007.

As described below, the indenture governing the 7.125% notes restrict the ability of AREP and AREH, subject to certain exceptions, to, among other things: incur additional debt; pay dividends or make distributions; repurchase units; create liens; and enter into transactions with affiliates.

Senior Unsecured 8.125% Notes Due 2012

On May 12, 2004, AREP and AREF co-issued senior unsecured 8.125% notes due 2012, or the 8.125% notes, in the aggregate principal amount of $353.0 million. The 8.125% notes were issued pursuant to an indenture, dated as of May 12, 2004, among AREP, AREF, AREH, as guarantor, and Wilmington Trust Company, as trustee. The 8.125% notes were priced at 99.266% of principal amount and have a fixed annual interest rate of 8.125%, which will be paid every six months on June 1 and December 1, commencing December 1, 2004. The 8.125% notes will mature on June 1, 2012. Other than AREH, no other subsidiaries guarantee payment on the notes.

As described below, the indenture governing the 8.125% notes restrict the ability of AREP and AREH, subject to certain exceptions, to, among other things: incur additional debt; pay dividends or make distributions; repurchase units; create liens; and enter into transactions with affiliates.

Senior Unsecured Notes Restrictions and Covenants — AREP

The indentures governing our senior unsecured 7.125% and 8.125% notes restrict the payment of cash dividends or distributions, the purchase of equity interests or the purchase, redemption, defeasance or acquisition of debt subordinated to the senior unsecured notes. The indentures also restrict the incurrence of debt or the issuance of disqualified stock, as defined, with certain exceptions, provided that we may incur debt or issue disqualified stock if, immediately after such incurrence or issuance, the ratio of the aggregate principal

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amount of all outstanding indebtedness of AREP and its subsidiaries on a consolidated basis to the tangible net worth of AREP and its subsidiaries on a consolidated basis would be less than 1.75 to 1.0. As of June 30, 2007, such ratio was less than 1.75 to 1.0.

The indentures also restrict the creation of liens, mergers, consolidations and sales of substantially all of our assets, and transactions with affiliates.

The indentures governing our senior unsecured notes require that on each quarterly determination date we and the guarantor maintain a minimum ratio of cash flow to fixed charges, each as defined, of 1.5 to 1.0, for the four consecutive fiscal quarters most recently completed prior to such quarterly determination date. For the four fiscal quarters ended June 30, 2007, the ratio of cash flow to fixed charges was greater than 1.5 to 1.0.

The indentures also require, on each quarterly determination date, that the ratio of total unencumbered assets, as defined, to the principal amount of unsecured indebtedness, as defined, be greater than 1.5 to 1.0 as of the last day of the most recently completed fiscal quarter. As of June 30, 2007, such ratio was in excess of 1.5 to 1.0. Based on this ratio, as of June 30, 2007, we and AREH could have incurred up to approximately $1.2 billion of additional indebtedness.

AREP Senior Secured Revolving Credit Facility

On August 21, 2006, we and AREF, as the borrowers, and certain of our subsidiaries, as guarantors, entered into a credit agreement with Bear Stearns Corporate Lending Inc., as administrative agent, and certain other lender parties. Under the credit agreement, we are permitted to borrow up to $150.0 million, including a $50.0 million sublimit that may be used for letters of credit. Borrowings under the agreement, which are based on our credit rating, bear interest at LIBOR plus 1.0% to 2.0%. We pay an unused line fee of 0.25% to 0.5%. As of June 30, 2007, there were no borrowings under the facility.

Obligations under the credit agreement are guaranteed and secured by liens on substantially all of the assets of certain of our indirect wholly owned holding company subsidiaries. The credit agreement has a term of four years and all amounts are due and payable on August 21, 2010. The credit agreement includes covenants that, among other things, restrict the creation of liens and certain dispositions of property by holding company subsidiaries that are guarantors. Obligations under the credit agreement are immediately due and payable upon the occurrence of certain events of default.

Senior Secured 7.85% Notes Due 2012 — ACEP

The indenture governing ACEP's 7.85% senior secured notes due 2012 restrict the payment of cash dividends or distributions by ACEP, the purchase of its equity interests, the purchase, redemption, defeasance or acquisition of debt subordinated to ACEP's notes and investments as "restricted payments." The indenture also prohibits the incurrence of debt or the issuance of disqualified or preferred stock, as defined, by ACEP, with certain exceptions, provided that ACEP may incur debt or issue disqualified stock if, immediately after such incurrence or issuance, the ratio of consolidated cash flow to fixed charges (each as defined) for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional indebtedness is incurred or disqualified stock or preferred stock is issued would be at least 2.0 to 1.0, determined on a pro forma basis giving effect to the debt incurrence or issuance. As of June 30, 2007, such ratio was in excess of 2.0 to 1.0. The indenture also restricts the creation of liens, the sale of assets, mergers, consolidations or sales of substantially all of ACEP's assets, the lease or grant of a license, concession, other agreements to occupy, manage or use ACEP's assets, the issuance of capital stock of restricted subsidiaries and certain related party transactions. The indenture governing the ACEP notes allow ACEP and its restricted subsidiaries, to incur indebtedness, among other things, of up to $50.0 million under credit facilities, non-recourse financing of up to $15.0 million to finance the construction, purchase or lease of personal or real property used in its business, permitted affiliate subordinated indebtedness (as defined), the issuance of additional 7.85% senior secured notes due 2012 in an aggregate principal

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amount not to exceed 2.0 times net cash proceeds received from equity offerings and permitted affiliate subordinated debt, and additional indebtedness of up to $10.0 million.

ACEP Senior Secured Revolving Credit Facility

Effective May 11, 2006, ACEP, and certain of ACEP's subsidiaries, as guarantors, entered into an amended and restated credit agreement with Wells Fargo Bank N.A., as syndication agent, Bear Stearns Corporate Lending Inc., as administrative agent, and certain other lender parties. As of June 30, 2007, the interest rate on the outstanding borrowings under the credit facility was 6.82% per annum. The credit agreement amends and restates, and is on substantially the same terms as, a credit agreement entered

into as of January 29, 2004. Under the amended and restated credit agreement, ACEP will be permitted to borrow up to $60.0 million. Obligations under the credit agreement are secured by liens on substantially all of the assets of ACEP and its subsidiaries. The credit agreement has a term of four years and all amounts are due and payable on May 10, 2010. As of June 30, 2007, there were $40.0 million of borrowings under the credit agreement. The borrowings were incurred to finance a portion of the purchase price of the Aquarius.

The credit agreement includes covenants that, among other things, restrict the incurrence of additional indebtedness by ACEP and its subsidiaries, the issuance of disqualified or preferred stock, as defined, the creation of liens by ACEP or its subsidiaries, the sale of assets, mergers, consolidations or sales of substantially all of ACEP's assets, the lease or grant of a license or concession, other agreements to occupy, manage or use ACEP's assets, the issuance of capital stock of restricted subsidiaries and certain related party transactions. The credit agreement also requires that, as of the last date of each fiscal quarter, ACEP's ratio of consolidated first lien debt to consolidated cash flow be not more than 1.0 to 1.0. As of June 30, 2007, such ratio was less than 1.0 to 1.0. As of June 30, 2007, ACEP was in compliance with each of the covenants.

The restrictions imposed by ACEP's senior secured notes and the credit facility likely will limit our receiving payments from the operations of our hotel and gaming properties.

As described in Note 3, on April 22, 2007, AEP entered into an agreement to sell all of the issued and outstanding membership interests of ACEP. Pursuant to the terms of the agreement, AEP is required to cause ACEP to repay from funds provided by AEP, the principal, interest, prepayment penalty or premiums due on ACEP's 7.85% senior secured rates due 2012 and ACEP's senior secured credit facility. Accordingly, pursuant to SFAS 144, these obligations are now classified as current liabilities in the consolidated balance sheets.

Mortgages Payable

Mortgages payable, all of which are non-recourse to us, bear interest at rates between 4.97% and 7.99% and have maturities between September 1, 2008 and July 1, 2016.

WestPoint Home Secured Revolving Credit Agreement

On June 16, 2006, WestPoint Home, Inc., an indirect wholly owned subsidiary of WPI, entered into a $250.0 million loan and security agreement with Bank of America, N.A., as administrative agent and lender. On September 18, 2006, The CIT Group/Commercial Services, Inc., General Electric Capital Corporation and Wells Fargo Foothill, LLC were added as lenders under this credit agreement. Under the five-year agreement, borrowings are subject to a monthly borrowing base calculation and include a $75.0 million sub-limit that may be used for letters of credit. Borrowings under the agreement bear interest, at the election of WestPoint Home, either at the prime rate adjusted by an applicable margin ranging from minus 0.25% to plus 0.50% or LIBOR adjusted by an applicable margin ranging from plus 1.25% to 2.00%. WestPoint Home pays an unused line fee of 0.25% to 0.275%. Obligations under the agreement are secured by WestPoint Home's receivables, inventory and certain machinery and equipment.

The agreement contains covenants including, among others, restrictions on the incurrence of indebtedness, investments, redemption payments, distributions, acquisition of stock, securities or assets of any other

Note 12 — Long-Term Debt – (continued)

entity and capital expenditures. However, WestPoint Home is not precluded from effecting any of these transactions if excess availability, after giving effect to such transaction, meets a minimum threshold.

As of June 30, 2007, there were no borrowings under the agreement, but there were outstanding letters of credit of approximately $26.8 million, the majority of which relate to trade obligations.

Note 13 — Other Income (Expense)

Unaudited Other Income (Expense), net, is comprised of the following (in $000s):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Net realized gains on sales of marketable securities	$ 31,119	$ 22,855	$ 36,296	$ 56,286
Unrealized (losses) gains on marketable securities	(47,883)	4,272	24,243	19,750
Net realized losses on securities sold short	(289)	(27,044)	(1,799)	(32,175)
Unrealized gains (losses) on securities sold short	(263)	44,276	3,354	18,800
Gain (losses) on sale of assets	(606)	(27)	3,006	(27)
Other	1,217	508	2,977	3,517

	$ (16,705)	$ 44,840	$ 68,077	$ 66,151

We recorded approximately $24.7 million of unrealized losses and $39.2 million of unrealized gains for the three and six months ended June 30, 2007, respectively, resulting from the change in the market price of ImClone's stock.

Note 14 — Unit Options

On June 29, 2005, we granted 700,000 nonqualified unit options to our then chief executive officer to purchase up to 700,000 of our depositary units at an exercise price of $35 per unit which would vest over a period of eight years. On March 14, 2006, our chief executive officer resigned from that position, became a director and Vice Chairman of the Board of API, and was designated as API's principal executive officer. These changes in status caused the options to be cancelled in accordance with their terms.

In accordance with SFAS No.123(R), *Share Based Payment*, the cancellation required that any previously unrecognized compensation cost be recognized at the date of cancellation and accordingly we recorded a compensation charge of $6.2 million in the first quarter of fiscal 2006 related to the previously unrecognized compensation cost.

Note 15 — Preferred Units

Pursuant to the terms of the preferred units, on February 27, 2007 we declared our scheduled annual preferred unit distribution payable in additional preferred units at the rate of 5% of the liquidation preference per preferred unit of $10. The distribution was paid on March 31, 2007 to holders of record as of March 15, 2007. A total of 566,830 additional preferred units were issued. As of June 30, 2007, 11,907,073 preferred units were issued and outstanding. As of June 30, 2007, the number of authorized preferred units was 12,100,000.

Note 16 — Earnings Per Limited Partnership Unit

Basic earnings per LP unit are based on earnings attributable to limited partners. Net earnings available for limited partners are divided by the weighted average number of limited partnership units outstanding.

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Note 16 — Earnings Per Limited Partnership Unit – (continued)

Diluted earnings per LP unit are based on earnings before the preferred unit distribution and interest on the convertible notes as the numerator with the denominator based on the weighted average number of limited partnership units and equivalent limited partnership units outstanding assuming conversion. The preferred units are considered to be equivalent units.

The following table sets forth the computation of basic and diluted earnings per LP unit for the periods indicated (in 000s, except per unit data) (unaudited):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Attributable to limited partners:				
Basic income (loss) from continuing operations	$ (46,447)	$ 31,456	$ 9,076	$ 13,645
Add preferred unit distribution	—	1,389	—	—
Add convertible notes interest	—	—	—	—
Income (loss) before discontinued operations	(46,447)	32,845	9,076	13,645
Income from discontinued operations	21,436	46,617	60,570	113,976
Diluted (loss) earnings	$ (25,011)	$ 79,462	$ 69,646	$ 127,621
Weighted average LP units outstanding	61,857	61,857	61,857	61,857
Dilutive effect of redemption of preferred LP units	—	2,679	—	—
Weighted average LP units and equivalent partnership units outstanding	61,857	64,535	61,857	61,857
Basic (loss) earnings per LP unit:				
Income (loss) from continuing operations	$ (0.75)	$ 0.53	$ 0.15	$ 0.22
Income from discontinued operations	0.35	0.75	0.98	1.84
Basic (loss) earnings:	$ (0.40)	$ 1.28	$ 1.13	$ 2.06
Diluted (loss) earnings per LP unit:				
Income (loss) from continuing operations	$ (0.75)	$ 0.51	$ 0.15	$ 0.22
Income from discontinued operations	0.35	0.72	0.98	1.84
Diluted (loss) earnings:	$ (0.40)	$ 1.23	$ 1.13	$ 2.06

For purposes of calculating earnings per LP unit, the income relating to our share of ImClone's earnings per share is based on the earnings per share reported by ImClone for the three and six months ended June 30, 2006.

As their effect would have been anti-dilutive, 5,561,897 and 0 units for the three months ended June 30, 2007 and 2006,

respectively, have been excluded from the weighted average LP units and equivalent partnership units outstanding.

As their effect would have been anti-dilutive, 3,326,940 and 2,761,572 units for the six months ended June 30, 2007 and 2006, respectively, have been excluded from the weighted average LP units and equivalent partnership units outstanding.

Note 17 — Segment Reporting

Through the second quarter of fiscal 2006, we maintained the following six reportable segments: (1) Oil and Gas; (2) Gaming; (3) Rental Real Estate; (4) Property Development; (5) Resort Activities; and (6) Home Fashion. Our three real estate related operating and reportable segments are all individually immaterial and have been aggregated for purposes of the accompanying consolidated balance sheets and statements of operations.

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Note 17 — Segment Reporting – (continued)

In November 2006, we divested our Oil and Gas and our Atlantic City gaming operating units. Additionally, as described in Note 3, on April 22, 2007, we entered into an agreement to sell all of the issued and outstanding membership interests of ACEP, which comprises the remainder of our gaming operations. As a result, our Oil and Gas and gaming operations are now classified as discontinued operations and thus are not considered reportable segments of our continuing operations. We now maintain the four remaining reportable segments.

We assess and measure segment operating results based on segment earnings from operations as disclosed below. Segment earnings from operations are not necessarily indicative of cash available to fund cash requirements nor synonymous with cash flow from operations. As discussed above, the terms of financings for Home Fashion and Resorts Activities segments impose restrictions on their ability to transfer funds to us, including restrictions on dividends, distributions, loans and other transactions.

The revenues and net segment operating loss and assets for each of the reportable segments of our continuing operations are summarized as follows for the periods indicated (in $000s) (unaudited):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Revenues:				
Real Estate:				
Rental real estate	$ 3,389	$ 3,465	$ 6,862	$ 6,668
Property development	14,735	37,852	32,881	49,236
Resort operations	7,459	6,952	13,518	12,895
Total Real Estate	25,583	48,269	53,261	68,799
Home Fashion	165,789	237,148	376,393	480,638
Total revenues	$ 191,372	$ 285,417	$ 429,654	$ 549,437
Net segment operating income (loss):				
Real Estate:				
Rental real estate	$ 1,945	$ 2,643	$ 3,954	$ 4,880
Property development	(338)	11,876	2,196	13,284
Resort operations	(604)	(227)	(938)	(454)
Total Real Estate	1,003	14,292	5,212	17,710
Home Fashion	(53,003)	(48,339)	(92,017)	(86,297)
Total segment operating loss	(52,000)	(34,047)	(86,805)	(68,587)
Holding Company costs(i)	(3,860)	(3,836)	(11,539)	(14,980)
Total operating loss	(55,860)	(37,883)	(98,344)	(83,567)
Interest expense	(35,499)	(21,056)	(63,040)	(41,529)
Interest income	41,235	11,958	72,273	22,662
Other income (expense), net	(16,705)	44,840	68,077	66,151
Equity in earnings of affiliate	—	7,996	—	8,021
(Loss) Income from continuing operations before income taxes and minority interests	(66,829)	5,855	(21,034)	(28,262)
Income tax (expense) benefit	(1,155)	(13)	(1,891)	40
Minority interests	20,594	25,703	32,185	40,772
(Loss) income from continuing operations	$ (47,390)	$ 31,545	$ 9,260	$ 12,550

(i) Holding Company costs include AREP’s and AREH’s general and administrative expenses and acquisition (legal and professional) costs at the Holding Company level. Selling, general and administrative expenses of the segments are included in their respective operating expenses in the accompanying statements of operations.

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AMERICAN REAL ESTATE PARTNERS, L.P. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)
June 30, 2007

Note 17 — Segment Reporting – (continued)

	June 30, 2007	December 31, 2006
	(Unaudited)	
Assets (in $000s):		
Real Estate	$ 385,097	$ 382,220
Home Fashion	744,894	806,000
Subtotal	1,129,991	1,188,220
Assets of discontinued operations held for sale	627,988	599,956
Reconciling items[ii]	3,462,693	2,456,571
Total assets	$5,220,672	$ 4,244,747

(ii) Reconciling items relate principally to cash and investments of AREP and AREH in the Holding Company.

Note 18 — Income Taxes

Our corporate subsidiaries recorded the following income tax expense (benefit) attributable to continuing operations of our taxable subsidiaries for the periods indicated as follows (in $000s) (unaudited):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Current	$ 422	$ 277	$ 866	$ 490
Deferred	733	(264)	1,025	(530)
	$ 1,155	$ 13	$ 1,891	$ (40)

We recorded income tax provisions of $1.89 million and $(0.04) million on pre-tax loss of $21.0 million and $28.3 million for the six months ended June 30, 2007 and 2006, respectively. Our effective income tax rate was (9.0)% and 0.14% for the respective periods. We recorded income tax provisions of $1.2 million and $0.01 million on pre-tax loss of $66.8 million and pre-tax income of $5.9 million for the three months ended June 30, 2007 and 2006, respectively. Our effective tax rate was (1.7)% and 0.2% for the respective periods. The difference between the effective tax rate and the statutory federal rate of 35% is due principally to income or losses from partnership entities in which taxes are the responsibility of the partners, as well as changes in valuation allowances.

We adopted the provisions of FIN 48, on January 1, 2007. FIN 48 clarifies the accounting for uncertainty in income taxes recognized in accordance with SFAS No. 109, *Accounting for Income Taxes*, and prescribes a recognition threshold and measurement process for financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. The adoption of FIN 48 did not have a material impact on our consolidated financial statements.

As of the date of adoption, our unrecognized tax benefits totaled $5.0 million, all of which, if recognized, would affect the annual effective tax rate. During the six months ended June 30, 2007, there have been no changes to the amount of unrecognized tax benefits. We believe it is reasonably possible that the total amount of unrecognized tax benefits could decrease by as much as $3.1 million prior to June 30, 2008 as a result of settlements due to audits and the expiration of statutes of limitations.

We recognize interest accrued related to uncertain tax positions in interest expense. Penalties are recognized as a component of income tax expense. The amount of accrued interest and penalties on uncertain tax positions was $1.4 million and $1.1 million as June 30, 2007 and January 1, 2007, respectively. The amount of interest and penalties accrued during the six months ended June 30, 2007 was approximately $0.3 million.

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Note 18 — Income Taxes – (continued)

We or certain of our subsidiaries file income tax returns in the U.S. federal jurisdiction, various state jurisdictions and various non-U.S. jurisdictions. We are no longer subject to U.S. federal, state and non-U.S. income tax examinations for fiscal years prior to 2002.

Note 19 — Commitments and Contingencies

We are from time to time parties to various legal proceedings arising out of our businesses. We believe however, that other than the proceedings described in Part I, Item 3 of our Annual Report on Form 10-K for fiscal 2006, filed with the SEC on March 6, 2007, including that relating to WPI discussed below, there are no proceedings pending or threatened against us which, if determined adversely, would have a material adverse effect on our business, financial condition, results of operations or liquidity.

WPI Litigation

Federal Proceedings

In November and December 2005, the U.S. District Court for the Southern District of New York rendered a decision in *Contrarian Funds Inc. v. WestPoint Stevens, Inc. et al*., and issued orders reversing certain provisions of the Bankruptcy Court order, or the Sale Order, pursuant to which we acquired our ownership of a majority of the common stock of WPI. WPI acquired substantially all of the assets of WestPoint Stevens, Inc. On April 13, 2006, the Bankruptcy Court entered a remand order, or the Remand Order, which provides, among other things, that all of the shares of common stock and rights to acquire shares of common stock of WPI issued to us and the other first lien lenders or held in escrow pursuant to the Sale Order constituted "replacement collateral", other than 5,250,000 shares of common stock that we acquired for cash. The 5,250,000 shares represent approximately 27% of the 19,498,389 shares of common stock of WPI now outstanding. According to the Remand Order, we would share pro rata with the other first lien lenders in proceeds realized from the disposition of the replacement collateral and, to the extent there is remaining replacement collateral after satisfying first lien lender claims, we would share pro rata with the other second lien lenders in any further proceeds. We were holders of approximately 39.99% of the outstanding first lien debt and approximately 51.21% of the outstanding second lien debt. On April 13, 2006, the Bankruptcy Court also entered an order staying the Remand Order pending appeal. The parties filed cross-appeals of the Remand Order and Contrarian Funds and certain other first lien lenders, or the Contrarian Group, filed a motion to lift the stay of the Remand Order pending appeal. Oral argument was held in the District Court on October 19, 2006.

On May 9, 2007, the District Court issued an order conditioning the continuation of the Bankruptcy Court's stay on the posting of a bond. No bond was posted. On May 22, 2007, WPI, its subsidiary WestPoint Home, Inc., and we filed a Petition for a Writ of Mandamus in the U.S. Court of Appeals for the Second Circuit requesting, among other relief, the reinstatement of the Sale Order. The Second Circuit held oral argument on June 26, 2007 and denied the Petition on June 28, 2007, instructing the District Court to set a new deadline for posting a bond. On July 3, 2007, the District Court issued an order setting July 11, 2007 as the deadline for posting a bond. No bond was posted. The District Court has not ruled on the parties' cross-appeals of the Remand Order.

Delaware Proceedings

On December 18, 2006, the Contrarian Group filed an action in the Court of Chancery of the State of Delaware, New Castle County, *Contrarian Funds, LLC, et al v. WestPoint International Inc., et al*., seeking, among other things, a temporary order restraining WPI from proceeding with a stockholders' meeting scheduled for December 20, 2006, which was to consider corporate actions relating to a proposed offering of $200 million of preferred stock of WPI and related relief. The application was denied by order dated December 19, 2006. The stockholders' meeting took place on December 20, 2006, the preferred stock offering was approved, and other corporate actions were taken. We purchased all of the $200.0 million of preferred stock.

Note 19 — Commitments and Contingencies – (continued)

On January 19, 2007, Beal Bank and the Contrarian Group filed an Amended Complaint, captioned *Beal Bank, S.S.B., et al. v. WestPoint International, Inc., et al*. Plaintiffs seek, among other relief, an order declaring that WPI is obliged to register the common stock (other than the 5,250,000 shares purchased by us) in Beal Bank's name, an order declaring certain corporate governance changes implemented in 2005 invalid, an order declaring invalid the actions taken at the December 20, 2006 stockholders' meeting and an order to "unwind" the issuance of the preferred stock, or, alternatively, directing that such preferred stock be held in trust. On July 18, 2007, Plaintiffs filed a motion for leave to file a Second Amended Complaint asserting additional causes of action. The parties are in the initial stages of discovery. The Delaware action remains pending and we intend to vigorously defend against such claims.

We currently own approximately 67.7% of the outstanding shares of common stock and 100% of the preferred stock of WPI. As a result of the District Court's November, 2005 order in the Bankruptcy case, the proceedings on remand, and the proceedings

in the Delaware action, our percentage of the outstanding shares of common stock of WPI could be reduced to less than 50% and perhaps substantially less and our ownership of the preferred stock of WPI could also be affected. If we were to lose control of WPI, it could adversely affect the business and prospects of WPI and the value of our investment in it. In addition, we consolidated the balance sheet of WPI as of June 30, 2007 and WPI's results of operations for the period from the date of acquisition through June 30, 2007. If we were to own less than 50% of the outstanding common stock or the challenge to our preferred stock ownership is successful, we would have to evaluate whether we should consolidate WPI and if so our financial statements could be materially different than as presented as of June 30, 2007, March 31, 2007, December 31, 2006 and December 31, 2005 and for the periods then ended.

We intend to vigorously defend against all claims asserted in these actions and believe that we have valid defenses. However, we cannot predict the outcome of these proceedings or the ultimate impact on our investment in WPI or the business prospects of WPI.

Note 20 — Fair Value of Financial Instruments

The following table sets forth our financial instruments owned, at fair value, and financial instruments sold, but not yet purchased, at fair value (in $000s):

	June 30, 2007	December 31, 2006
	(Unaudited)	
Financial Instruments Owned:		
Trading investments	$ 5,534	$ 20,538
Available for sale investments:		
Marketable equity and debt securities	250,906	265,411
Other securities	53,033	253,166
Investment in ImClone Systems Incorporated	161,369	122,122
	$ 470,842	$ 661,237
Securities sold not yet purchased	$ 6,806	$ 25,398

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Note 20 — Fair Value of Financial Instruments – (continued)

The following table sets forth our financial assets and liabilities that were accounted for at fair value as of June 30, 2007 by level within the fair value hierarchy. As required by SFAS 157, financial assets and liabilities are classified in their entirety based on the lowest level of input that is significant to the fair value measurement.

	June 30, 2007 Level 1 (i)
Assets	
Trading investments	$ 5,534
Available for sale investments:	
Marketable equity and debt securities	250,906
Other securities	53,033
Investment in ImClone Systems Incorporated	161,369
	$ 470,842
Liabilities	
Securities sold not yet purchased	$ 6,806

(i) Based on quoted prices in active markets of the securities.

Note 21 — Subsequent Events

Declaration of Distribution on Depositary Units

On August 3, 2007, the Board of Directors approved a payment of a quarterly distribution of $0.15 per unit on our depositary units payable in the third quarter of fiscal 2007. The distribution will be paid on September 7, 2007 to depositary unitholders of record at the close of business on August 27, 2007. Under the terms of the indenture dated April 5, 2007 governing our variable rate senior convertible notes due 2013, we will also be making a $0.05 distribution to holders of these notes in accordance with the formula set forth in the indenture.

Name Changes

Each of AREP, AREH and API is in the process of effecting a name change. When effective, AREP, AREH and API will be known as Icahn Enterprises, L.P., Icahn Enterprises Holdings L.P. and Icahn Enterprises GP Inc., respectively.

Acquisition

On August 8, 2007, we entered into a Contribution and Exchange Agreement (the "Contribution Agreement"), among us, CCI Offshore Corp. ("CCI Offshore"), CCI Onshore Corp. ("CCI Onshore"), Icahn Management LP ("Icahn Management" and, together with CCI Offshore and CCI Onshore, the "Contributors") and Carl C. Icahn, pursuant to which, as more fully described below, we simultaneously acquired the general partnership interests in the general partners of the private investment funds (which are referred to herein as the "Master Funds") controlled by Mr. Icahn and in the management company that provides certain management and administrative services to the Master Funds and certain funds that invest in the Master Funds (the "Feeder Funds"). Mr. Icahn controlled the Contributors.

New Icahn Management and the General Partners (as such terms are defined below) of the Master Funds (collectively, the "Management Entities") provide investment advisory and certain other management services to the Master Funds and the Feeder Funds (collectively, the "Funds"). The Management Entities do not provide investment advisory or other management services to any other entities, individuals or accounts, and

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Note 21 — Subsequent Events – (continued)

interests in the Funds are offered only to certain sophisticated and accredited investors on the basis of exemptions from the registration requirements of the federal securities laws and are not publicly available. The Management Entities generate income from amounts earned pursuant to contractual arrangements with the Funds. Such amounts typically include an annual management fee of 2.5% of assets under management and performance-based, or incentive, allocation of 25% of net realized and unrealized gains earned by the Funds subject to a "high water mark", although such amounts have been (and may in the future be) modified or waived in certain circumstances. The Management Entities and their affiliates may also earn income through their principal investments in the Funds.

As of June 30, 2007, the Management Entities had approximately $7 billion of committed funds (including $1.8 billion from Mr. Icahn and affiliated entities on which no management fees or incentive allocations are applicable). For the 12-months ended June 30, 2007, there was an average of approximately $3.5 billion in third-party fee paying assets under management, which generated approximately $80 million of management fees and approximately $240 million in incentive allocations (a portion of which is accrued but not earned until the end of the year) for a total of approximately $320 million in fees. Today, there is approximately $5 billion of third-party fee paying assets under management. Mr. Icahn formed the Management Entities in November 2004 when certain of the Funds commenced investment operations with approximately $1 billion under management, of which $300 million was provided by Mr. Icahn and his affiliated entities. The investment strategy employed by the Management Entities for the Funds is set and led by Mr. Icahn. The Funds pursue a value-oriented activist investment philosophy. The Funds invest across a variety of industries and types of securities, including long and short equities, long and short bonds, bank debt and other corporate obligations, risk arbitrage and capital structure arbitrage and other special situations. The Funds invest a material portion of their capital in publicly traded equity and debt securities of companies that the Management Entities believe to be undervalued by the marketplace. The Funds sometimes take significant positions in the companies in which they invest.

We presently intend to purchase approximately $700 million of limited partnership interests in the Funds on which no management fees or incentive allocations would be applicable.

As consideration for the contribution to us of the Partnership Interests (as defined below), we delivered to the Contributors 8,632,679 AREP Units at the closing, representing $810 million of AREP Units based on the volume-weighted average price of the AREP Units on the NYSE for the 20-trading-day period ending on August 7, 2008 (the day before the closing). In addition, we have agreed to make certain contingent earn-out payments to the Contributors over a five-year period payable in additional AREP Units based on our after-tax earnings from the Fund management business we acquired, which includes both management fees and performance-based (incentive) allocations paid by the Funds to the Management Entities. The earn-out payments will be calculated as set forth in the Contribution Agreement, with the maximum earn-out payment equaling $120 million in 2007 (if such after tax earnings exceed $289 million, with after tax earnings for 2007 including the 2.5% annual management fee for only the fourth quarter of 2007), $165 million for 2008 (if such after tax earnings exceed $540 million), $223 million for 2009 (if such after tax earnings exceed $746 million), $279 million for 2010 (if such after tax earnings exceed $1.004 billion) and $334 million for 2011 (if such after tax earnings exceed $1.327 billion). There is a catch-up after 2011, based on total after tax earnings in the five-year earn-out period, with a maximum aggregate earn-out (including any catch-up) of $1.121 billion which is subject to achieving total after tax earnings in such period of at least $3.906 billion.

Simultaneously with the closing of the transactions contemplated by the Contribution Agreement, we and Mr. Icahn entered into a non-compete agreement pursuant to which Mr. Icahn agreed, for a period of ten years, not to engage, directly or indirectly, in any other business that generates at least 25% of its revenue or income from investment management activities (a "Competing Business"). Mr. Icahn also agreed, for a period of ten years, not to solicit on behalf of a Competing Business any investor in any of

the Funds or any employee of any general partner or manager of any of the Funds.

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Note 21 — Subsequent Events – (continued)

We have also entered into an employment agreement (the "Icahn Employment Agreement") with Mr. Icahn pursuant to which, over a five-year term, Mr. Icahn will serve as our Chairman and as Chairman and Chief Executive Officer of Icahn Capital Management LP, a Delaware limited partnership ("New Icahn Management"). Mr. Icahn also serves as the Chief Executive Officer of the General Partners. During the employment term, Mr. Icahn has agreed to devote his substantial time and efforts to overseeing our strategic and business affairs and the asset management operations of New Icahn Management, subject in each case to his ability to continue to engage in certain permitted outside activities relating to his ongoing investment and business endeavors. During his period of employment, and for a period of two years following a termination of employment upon his resignation (other than for "Good Reason," as such term is defined in the Icahn Employment Agreement), or a termination upon expiration of the employment term (or subsequent termination of employment if he remains employed following the expiration of the term), Mr. Icahn will be subject to non-competition restrictions that will prohibit him from engaging in business activities that generate in excess of 25% of their revenue or income from investment management activities and additional restrictions that will prohibit him from soliciting investors in funds under our management or soliciting or hiring investment professionals or executives of ours or New Icahn Management. In the event Mr. Icahn is terminated during the term by us without "Cause" or he resigns for "Good Reason" (other than in connection with a change in control) the period of non-competition will be one year following such termination. Mr. Icahn will not be subject to any such post-termination restrictions if his employment is terminated as a result of his death or disability or the termination by him for "Good Reason" or by us without "Cause," in each case in connection with a change in control.

During the employment term, we will pay Mr. Icahn an annual base salary of $900,000 and an annual incentive bonus based on a bonus formula with two components. The first component is based on the annual return on assets under management by the Management Entities as follows: the amount of this bonus component is determined by applying a percentage payout rate (ranging from 0.30% to 1.10%, depending on the aggregate annual percentage returns realized for the year in question) to the annual realized and unrealized net profits (prior to reduction for management fees or incentive allocations) of managed funds on all fee-paying assets under management, provided that in calculating the annual return on all fee-paying assets and the appropriate percentage payout rate, the annual profits in any year shall be reduced to reflect previously incurred losses that have not already been offset against annual returns.

The second component of the annual bonus payable by us is tied to the growth in our annual net income (other than income or losses resulting from the operations of the Management Entities) ("Covered Net Income") as compared to a fixed annual base amount of $400 million (pro-rated for 2007) (the "Base Amount") as follows: no portion of this annual bonus shall be payable unless Covered Net Income for the bonus year under consideration equals or exceeds the Base Amount, in which case the annual bonus shall consist of an increasing percentage of the amount by which Covered Net Income exceeds the Base Amount (ranging generally from 8% to 20%). In determining Covered Net Income, certain adjustments are provided for, including the exclusion of expenses relating to bonus determination under the Icahn Employment Agreement and expenses relating to the acquisition described above. Further, in determining this bonus component, net losses (if any) from the prior calendar years are carried forward and applied to reduce the payout amount through the application of an adjustment factor, determined as follows: Covered Net Income for the bonus year in question will be multiplied by a fraction (no less than zero) where (x) the numerator is equal to current year Covered Net Income minus any carried forward net loss, and (y) the denominator is equal to the current year Covered Net Income.

Fifty percent of all bonus amounts payable by us and New Icahn Management shall be subject to mandatory deferral and treated as though invested in the funds and as though subject to a 2% annual management fee (but no incentive allocation). Such deferred amounts shall be subject to vesting in equal annual installments over a three-year period commencing from the last day of the year giving rise to the bonus. Amounts

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deferred generally are not subject to acceleration and unvested deferred amounts shall be forfeited if Mr. Icahn ceases to be employed under his employment agreement, provided that all deferred amounts shall vest in full and be payable in a lump sum payment thereafter if either the employment of Mr. Icahn is terminated by us without "Cause," Mr. Icahn terminates his employment for "Good Reason" or upon Mr. Icahn's death or disability during the employment term. In addition, upon Mr. Icahn's completion of service through the end of the employment term, Mr. Icahn will also vest in full in any mandatory deferrals. Vested deferred amounts (and all deferred returns, earnings and profits thereon) shall be paid to Mr. Icahn within sixty (60) days following the vesting date. Returns on amounts subject to deferral shall be subject to management fees charged by New Icahn Management, but not any incentive fees.

In the event that Mr. Icahn is terminated by us without "Cause" or he terminates his employment for "Good Reason," he shall be entitled to a lump sum payment equal to one year of base salary, the average aggregate annual bonus paid to him by us during the three most recently completed years (or the average annualized bonus paid to him for any shorter period during which he has been employed) and a pro rata Annual Bonus for the year of termination. If, within twelve (12) months following the occurrence of a change in control of us, Mr. Icahn is terminated by us without "Cause" or he resigns for "Good Reason" (which is limited to defined events relating to a material adverse change in his position and responsibilities, our material breach of the Icahn Employment Agreement or the relocation of his principal place of work), Mr. Icahn shall be entitled to a payment equal to two times his base salary and two times the Average Bonus and a pro-rata Annual Bonus for the year of termination. If Mr. Icahn is terminated as a result of his death or disability, he (or his estate, if applicable) shall receive a lump sum payment equal to the remaining base salary payable through December 31 of the year of termination, any unpaid bonus relating to prior years and one-half of the pro rata Annual Bonus for the year of termination (based on actual results through the date of termination annualized for the year of termination). If Mr. Icahn resigns without "Good Reason," he shall be entitled to certain accrued benefits, one-half of any unpaid bonus relating to prior years and one-half of the pro-rata Annual Bonus (as determined in the case of death or disability). All such payments shall be conditioned on Mr. Icahn (or his estate, if applicable) signing a general release in favor of us and our affiliates.

If at any time between the effective date of the Icahn Employment Agreement and the fifth anniversary of such date Mr. Icahn ceases to serve as Chairman and Chief Executive Officer of New Icahn Management and as the individual primarily responsible for the management of the Funds' investment portfolios for any reason, Mr. Icahn (directly or through his affiliates other than AREP) will be required to maintain investments in one or more of the Funds for a defined commitment period (the later of the fifth (5th) anniversary of the effective date of the Icahn Employment Agreement or the third anniversary of his cessation of management responsibility for the Funds) an aggregate amount equal to not less than $1 billion (along with any amounts earned thereon) (the "Committed Funds"), except that he shall not have any obligation regarding the Committed Funds if his employment has been terminated without "Cause" by the affirmative vote of a majority of the Board including a majority of the independent directors. During such period of time, the Committed Funds will be subject to a management fee of 2% and an incentive allocation of 20%. If at any time during this commitment period the value of the Committed Funds falls below $1 billion, the management fee and incentive allocation assessed against the Committed Funds will be equal to the fees applicable if the value of the Committed Funds were $1 billion.

During the employment term, Mr. Icahn shall also be entitled to participate in our benefit programs and receive the level of perquisites generally made available to our senior executives.

The Contribution Agreement and the transactions contemplated thereby and the Icahn Employment Agreement were approved by the Special Committee of the independent directors of our general partner, and by the full board of directors. The Special Committee was represented by Debevoise & Plimpton LLP as its independent counsel. In addition, Sandler O'Neill & Partners, L.P. was retained by the Special Committee as

its financial adviser. The Special Committee also retained Johnson & Associates, Inc. and BDO Seidman, LLP to advise on the terms of Mr. Icahn's employment agreement.

CCI Offshore is the general partner of Icahn Offshore LP, a Delaware limited partnership ("Offshore GP"), which, in turn, is the general partner of each of Icahn Partners Master Fund LP, a Cayman Islands exempted limited partnership ("Offshore Master Fund I"), Icahn Partners Master Fund II L.P., a Cayman Islands exempted limited partnership ("Master Fund II"), and Icahn Partners Master Fund III L.P., a Cayman Islands exempted limited partnership ("Master Fund III" and, collectively with Offshore Master Fund I and Master Fund II, the "Offshore Master Funds").

CCI Onshore is the general partner of Icahn Onshore LP, a Delaware limited partnership ("Onshore GP" and together with Offshore GP, the "General Partners"), which, in turn, is the general partner of Icahn Partners LP, a Delaware limited partnership ("Onshore Master Fund" and, collectively with the Offshore Master Funds, the "Master Funds").

CCI Offshore contributed to us 100% of CCI Offshore's general partnership interests in Offshore GP (the "Offshore Partnership Interests") and CCI Onshore contributed to us 100% of CCI Onshore's general partnership interests in Onshore GP (the "Onshore Partnership Interests"). The General Partners' capital account with respect to the Offshore Partnership Interests and the Onshore Partnership Interests at the time of our acquisition aggregated $10 million.

Immediately prior to the execution and delivery of the Contribution Agreement, Icahn Management and New Icahn Management entered into an agreement pursuant to which Icahn Management contributed substantially all of its assets and liabilities, other than certain rights in respect of deferred management fees, to New Icahn Management in exchange for 100% of the general partnership interests in New Icahn Management. Such contribution included the assignment of the Management Agreements with the Funds. Pursuant to the Contribution Agreement, Icahn Management contributed to us 100% of Icahn Management's general partnership interests in New Icahn Management (the "New Icahn Management Partnership Interests" and collectively with the Onshore Partnership Interests and the Offshore Partnership Interests, the "Partnership Interests").

We and the Funds also entered into an agreement (the "Covered Affiliate Agreement"), simultaneously with the closing of the transactions contemplated by the Contribution Agreement, pursuant to which we (and certain of our subsidiaries) agreed, in general, to be bound by certain restrictions on our investments in any assets that the Offshore GP and the Onshore GP deem suitable for the Funds, other than government and agency bonds, cash equivalents and investments in non-public companies. We and our subsidiaries will not be restricted from making investments in the securities of certain companies in which Mr. Icahn or companies he controlled had an interest in as of the date the initial Funds launched, and companies in which we currently have an interest. We and our subsidiaries, either alone or acting together with a group, will not be restricted from (i) acquiring all or any portion of the assets of any public company in or in connection with a negotiated transaction or series of related negotiated transactions or (ii) engaging in a negotiated merger transaction with a public company and, pursuant thereto, conducting and completing a tender offer for securities of the company. The terms of the Covered Affiliate Agreement may be amended, modified or waived with the consent of AREP and each of the Funds, provided, however, that a majority of the members of an investor committee maintained for certain of the Funds (which includes the three largest investors of certain of the Funds not affiliated with Mr. Icahn and who wish to serve as members) may (with AREP's consent) amend, modify or waive any provision of the Covered Affiliate Agreement with respect to any particular transaction or series of related transactions.

Potential Acquisitions

On February 9, 2007, we, through a wholly owned subsidiary, entered into an agreement and plan of merger, or the merger agreement, pursuant to which we would acquire Lear Corporation, or Lear, a publicly

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Note 21 — Subsequent Events – (continued)

traded company that provides automotive interior systems worldwide, for an aggregate consideration of approximately $5.2 billion, including the assumption by the surviving entity of certain outstanding indebtedness of Lear and refinancing of Lear's existing term loan and credit facility. The consummation of the transaction was subject to a shareholder vote.

On July 16, 2007, at Lear's 2007 Annual Meeting of Stockholders, the merger did not receive the affirmative vote of the holders of a majority of the outstanding shares of Lear's common stock. As a result, the merger agreement terminated in accordance with its terms. As required by the merger agreement, in connection with the termination, Lear (i) paid to our subsidiary $12.5 million, (ii) issued to the subsidiary 335,570 shares of Lear's common stock and (iii) increased from 24% to 27% the share ownership limitation under the limited waiver of Section 203 of the Delaware General Corporation Law granted by Lear to us along with affiliates of and funds managed by Carl C. Icahn. In addition, if (1) Lear stockholders enter into a definitive agreement with respect to an Acquisition Proposal, as defined in the merger agreement, within 12 months after the termination of the merger agreement and such transaction is completed and (2) such Acquisition Proposal has received approval, if required by applicable Law (as defined in the merger agreement), by the affirmative vote or consent of the holders of a majority of the outstanding shares of Lear common stock within such 12 month period, Lear will be required to pay to our subsidiary an amount in cash equal to the Superior Fee, as defined in the merger agreement, less $12.5 million.

In connection with the termination of the merger agreement, the commitment letter, dated as of February 9, 2007, or the commitment letter, by and among our subsidiary, Bank of America, N.A. and Banc of America Securities LLC, also terminated pursuant to its terms. The commitment letter provided for certain credit facilities intended to refinance and replace Lear's existing credit facilities and to fund the transactions contemplated by the merger agreement.

Mr. Icahn previously proposed that we acquire his interest in American Railcar, Inc., or American Railcar, and Philip Services Corporation, or Philip Services. American Railcar is a publicly traded company that is primarily engaged in the business of manufacturing covered hoppers and tank railcars. Philip Services is an industrial services company that provides industrial outsourcing, environmental services and metal services to major industry sectors throughout North America. A committee of independent directors of the board was formed to consider those proposals. Currently, at Mr. Icahn's request, only the proposal regarding the potential acquisition of the metal services business of Philip Services is being considered by the committee. Any

acquisition would be subject to, among other things, the negotiation, execution and closing of a definitive agreement and the receipt of a fairness opinion. We continuously identify, evaluate and engage in discussions concerning potential investments and acquisitions, including potential investments in and acquisitions of affiliates of Mr. Icahn. There cannot be any assurance that any potential transactions that we consider will be completed.

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Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Management's discussion and analysis of financial condition and results of operations is comprised of the following sections:

1. Overview
2. Results of Operations
   - Overview
   - Consolidated Financial Results
   - Real Estate
   - Home Fashion
   - Holding Company
   - Discontinued Operations
3. Liquidity and Capital Resources
   - Consolidated Financial Results
   - Real Estate
   - Home Fashion
   - Discontinued Operations
4. Certain Trends and Uncertainties

Overview

We are a master limited partnership formed in Delaware on February 17, 1987. We are a diversified holding company owning subsidiaries engaged in the following operating businesses: Real Estate and Home Fashion. As noted, during the fourth quarter of fiscal 2006, we divested our Oil and Gas operating unit and our Atlantic City gaming properties. On April 22, 2007, we entered into an agreement to sell our remaining gaming operations. In addition to our Real Estate and Home Fashion operating units, we discuss the Holding Company. The Holding Company includes the unconsolidated results of AREH and AREP, and investment activity and expenses associated with the activities of a holding company.

We own a 99% limited partnership interest in AREH. AREH and its subsidiaries hold our investments and substantially all of our operations are conducted through AREH and its subsidiaries. API, owns a 1% general partnership interest in both us and AREH, representing an aggregate 1.99% general partnership interest in us and AREH. API is owned and controlled by Mr. Carl C. Icahn. As of June 30, 2007, affiliates of Mr. Icahn beneficially owned approximately 90% of our outstanding depositary units and approximately 86.5% of our outstanding preferred units.

Our business strategy includes the following:

Enhance Value of Existing Businesses. We continually evaluate our operating businesses with a view to maximizing their value to us. In each of our businesses, we place senior management with the expertise to run their businesses and give them operating objectives that they must achieve. We may make additional investments in business segments to improve the performance of their operations.

Invest Capital to Grow Existing Operations or Add New Operating Platforms. Our management team has extensive experience in identifying, acquiring and developing undervalued businesses or assets. We may look to make acquisitions of assets or operations that complement our existing operations. We also may look to add new operating platforms by acquiring businesses or assets directly or establishing an ownership position through the purchase of debt or equity securities of troubled entities and may then negotiate for the ownership or effective control of their assets.

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Enhance Returns on Assets. We continually look for opportunities to enhance returns on both liquid and operating assets. We may seek to unlock value by selling all or a part of a business segment.

Results of Operations

Overview

The key factors affecting our financial results for the three months ended June 30, 2007 compared to the three months ended June 30, 2006 were:

- Reduced revenues from WPI of $71.4 million due to its continuing efforts to reduce revenues from less profitable programs and a weaker retail sales environment, offset in part by reduced WPI operating expenses of $66.7 million;
- Reduced revenues from our Real Estate operating unit of $22.7 million, primarily due to the current slow-down in residential property development;
- Increase in net change in realized and unrealized loss on investments of $61.5 million;
- Sale of our position in SandRidge common stock for total cash consideration of $243.2 million; and
- Issuance of $600 million of variable rate senior convertible notes in April 2007.

The key factors affecting our financial results for the six months ended June 30, 2007 compared to the six months ended June 30, 2006 were:

- Reduced revenues from WPI of $104.2 million due to its continuing efforts to reduce revenues from less profitable programs and a weaker retail sales environment, offset in part by reduced WPI operating expenses of $98.5 million;
- Increased interest income of $49.6 million due to increases in Holding Company cash position resulting from the sales of our Oil and Gas and Atlantic City gaming operations in November 2006, proceeds from additional debt offerings as discussed below, and proceeds from the sale of SandRidge common stock as discussed below;
- Issuance of $500 million of additional 7.125% senior unsecured notes in January 2007;
- Issuance of $600 million of variable rate senior convertible notes in April 2007;
- Sale of our position in SandRidge common stock for total cash consideration of $243.2 million; and
- Settlement of litigation relating to GB Holdings.

Consolidated Financial Results

Three months ended June 30, 2007 compared to three months ended June 30, 2006

Revenues for the second quarter of fiscal 2007 decreased by $94.0 million, or 33.0%, as compared to the second quarter of fiscal 2006. The decrease was due to reduced revenues from WPI of $71.4 million caused by its continuing efforts to reduce revenues from less profitable programs and a weaker retail sales environment coupled with reduced Real Estate operating unit revenues of $22.7 million due to the current residential slow-down of real estate development sales.

Operating loss for the second quarter of fiscal 2007 increased by $18.0 million, or 47.5%, as compared to the second quarter of fiscal 2006. The increase results primarily from the decrease in the operating income of the Real Estate operating unit of $13.3 million, principally in the property development segment.

Interest expense for the second quarter of fiscal 2007 increased by $14.4 million, or 68.6%, as compared to the second quarter of fiscal 2006. The increase includes interest on the $500 million of additional 7.125% senior unsecured notes issued in January 2007 as well as $600 million of variable senior convertible notes issued in April 2007. Interest income for the second quarter of fiscal 2007 increased by $29.3 million, or 243.8%, as compared to the second quarter of fiscal 2006, primarily due to the increase in the Holding Company's cash position resulting from the issuance of $500 million of additional 7.125% senior unsecured notes in January 2007, issuance of $600 million of variable rate senior convertible notes in April 2007, as well as

the proceeds received from the sales of our Oil and Gas and Atlantic City gaming operations in November 2006 and sale of our SandRidge common stock in April 2007. Other income (expense) for the second quarter of fiscal 2007, net decreased by $61.5 million, or 137.3%, as compared to the second quarter of fiscal 2006, resulting primarily from unrealized losses on our investment in ImClone Systems Incorporated as well as decreased gains on securities sold short. Equity in earnings of affiliate for the second quarter of fiscal 2007, which pertains to our investment in ImClone, decreased by 8.0 million, or 100%, compared to the second quarter of fiscal 2006. In fiscal 2006, we accounted for our investment in ImClone under the equity method. As of January 1, 2007 we adopted SFAS 159 and now account for our investment in ImClone at fair value, with subsequent changes in fair value reflected in Other income (expense), net.

Six months ended June 30, 2007 compared to six months ended June 30, 2006

Revenues for the first six months of fiscal 2007 decreased by $119.8 million, or 21.8%, as compared to the first six months of fiscal 2006. The decrease was due to reduced revenues from WPI of $104.2 million caused by its continuing efforts to reduce revenues from less profitable programs and weaker retail sales environment coupled with reduced Real Estate operating unit revenues of $15.5 million due to the current residential slow-down of real estate development sales.

Operating loss for the first six months of fiscal 2007 increased by $14.8 million, or 17.7%, as compared to the first six months

of fiscal 2006. The increase results primarily from the decrease in the operating income of the Real Estate operating unit of $12.5 million, principally in the property development segment, offset in part by lower Holding Company general and administrative expenses.

Interest expense for the first six months of fiscal 2007 increased by $21.5 million, or 51.8%, as compared to the first six months of fiscal 2006. The increase includes interest on the $500 million of additional 7.125% senior unsecured notes issued in January 2007 as well as $600 million of variable senior convertible notes issued in April 2007. Interest income increased by $49.6 million, or 218.9%, as compared to the first six months of fiscal 2006, primarily due to the increase in the Holding Company's cash position resulting from the issuance of $500 million of additional 7.125% senior unsecured notes, issuance of $600 million of variable rate senior convertible notes in April 2007, as well as the proceeds received from the sales of our Oil and Gas and Atlantic City gaming operations in November, 2006 and sale of SandRidge common stock in April 2007. Other income (expense), net remained relatively flat with a slight increase of $1.9 million, or 2.9% as compared to the first six months of fiscal 2006. Equity in earnings of affiliate for the first six months fiscal 2007, which pertains to our investment in ImClone, decreased by 8.0 million, or 100%, compared to the first six months of fiscal 2006. In fiscal 2006, we accounted for our investment in ImClone under the equity method. As of January 1, 2007 we adopted SFAS 159 and now account for our investment in ImClone at fair value, with subsequent changes in fair value reflected in Other income (expense), net.

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Real Estate

Our real estate activities comprise three segments: rental real estate, property development and resort activities associated with property development. The following table summarizes the key unaudited operating data for the three segments for the periods indicated (in $000s):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Revenues:				
Rental real estate:				
Interest income on financing leases	$ 1,527	$ 1,715	$ 3,105	$ 3,451
Rental income	1,862	1,750	3,757	3,217
Property development	14,735	37,852	32,881	49,236
Resort activities	7,459	6,952	13,518	12,895
Total revenues	25,583	48,269	53,261	68,799
Operating expenses:				
Rental real estate	1,444	822	2,908	1,788
Property development	15,073	25,976	30,685	35,952
Resort activities	8,063	7,179	14,456	13,349
Total expenses	24,580	33,977	48,049	51,089
Operating income	$ 1,003	$ 14,292	$ 5,212	$ 17,710

Rental Real Estate

We market portions of our commercial real estate portfolio for sale. Unaudited sale activity for the periods indicated was as follows (in $000s, except unit data):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Properties sold	—	4	1	8
Proceeds received	$ —	$ 7,354	$ 4,359	$ 8,327
Total gain recorded	$ —	$ 1,308	$ 3,862	$ 1,559
Gain recorded in discontinued operations	$ —	$ 1,308	$ 3,862	$ 1,559

Three months ended June 30, 2007 compared to the three months ended June 30, 2006

Revenues decreased to $3.4 million, or by 2.2%, in the second quarter of fiscal 2007 from $3.5 million in the second quarter of fiscal 2006. The decrease was primarily attributable to increased financing lease amortization on leases accounted for as direct financing leases, partially offset by rental of previously vacant space.

Operating expenses increased to $1.4 million, or by 75.7%, in the second quarter of fiscal 2007 from $0.8 million in the second quarter of fiscal 2006. The increase was primarily due to increased rental and administrative expenses.

Six months ended June 30, 2007 compared to the six months ended June 30, 2006

Revenues increased to $6.9 million, or by 2.9%, for the first six months of fiscal 2007 from $6.7 million for the first six months of fiscal 2006. The increase was primarily attributable to rental of previously vacant space, partially offset by increased financing lease amortization on leases accounted for as direct financing leases.

Operating expenses increased to $2.9 million, or by 62.6%, for the first six months of fiscal 2007 from $1.8 million for the first six months of fiscal 2006. This increase was primarily due to increased rental and administrative expenses and increased rental

property write-downs.

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Property Development

Property development sales activity for the periods indicated was as follows (in 000s, except unit data) (unaudited):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Units sold:				
New Seabury, Massachusetts	5	20	11	30
Grand Harbor/Oak Harbor, Florida	6	6	11	8
Falling Waters, Florida	6	9	29	9
Westchester, New York	2	6	4	6
Tampa Bay, Florida	—	—	1	—
	19	41	56	53
Revenues:				
New Seabury, Massachusetts	$ 5,334	$ 21,352	$ 8,917	$ 30,385
Grand Harbor/Oak Harbor, Florida	4,944	4,123	9,293	6,444
Falling Waters, Florida	1,660	2,261	7,127	2,261
Westchester, New York	2,797	10,116	6,040	10,146
Tampa Bay, Florida	—	—	1,504	—
	$ 14,735	$ 37,852	$ 32,881	$ 49,236

Three months ended June 30, 2007 compared to three months ended June 30, 2006

Due to the current residential real estate slow-down revenue decreased to $14.7 million, or by 61.1%, in the second quarter of fiscal 2007 from $37.9 million in the second quarter of fiscal 2006.

Operating expenses decreased to $15.1 million, or by 42.2%, in the second quarter of fiscal 2007 from $26 million in the second quarter of fiscal 2006. In fiscal 2007, expenses include an asset impairment charge of $1.8 million related to certain condominium land in our Oak Harbor, Florida subdivision.

In the second quarter of fiscal 2007, we sold 19 units at an average price of $775,526 with a profit margin of 10.0%. In the second quarter of fiscal 2006, we sold 41 units at an average price of $923,220 with a profit margin of 31.4%. In 2006, our New Seabury, Massachusetts property sales, which have a higher profit margin compared to our other properties, were especially strong due to closings from its grand opening in the fiscal year ended December 31, 2005, or fiscal 2005.

Six months ended June 30, 2007 compared to six months ended June 30, 2006

Due to the current residential real estate slowdown revenue decreased to $32.9 million, or by 33.2%, for the first six months of fiscal 2007 from $49.2 million for the first six months of fiscal 2006.

Operating expenses decreased to $30.7 million, or by 14.7%, for the first six months of fiscal 2007 from $36.0 million for the first six months of fiscal 2006. In fiscal 2007, expenses include an asset impairment charge of $1.8 million related to certain condominium land in our Oak Harbor, Florida subdivision.

For the first six months of fiscal 2007, we sold 56 units at an average price of $587,161 with a profit margin of 12.2%. For the first six months of fiscal 2006, we sold 53 units at an average price of $928,981 with a profit margin of 27.0%. In fiscal 2006, our New Seabury, Massachusetts property sales, which have a higher profit margin compared to our other properties, were especially strong due to closings from its grand opening in fiscal 2005.

Based on current residential sales conditions and the pending completion of our Westchester, New York and Naples, Florida properties, we expect sales to continue in a down-trend for the balance of fiscal 2007 and into the fiscal year ending December 31, 2008, or fiscal 2008.

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Resort Activities

Three months ended June 30, 2007 compared to three months ended June 30, 2006

Revenues increased to $7.5 million, or by 7.3%, in the second quarter of fiscal 2007, from $7.0 million in the second quarter of fiscal 2006, primarily attributable to increased club dues.

Operating expenses increased to $8.1 million, or by 12.3%, in the second quarter of fiscal 2007, from $7.2 million in the second quarter of fiscal 2006, primarily due to increased insurance and beach erosion expenses.

In June 2007, we sold a resort property located in Naples, Florida for $2.1 million. Our cost basis was $0.8 million and related income taxes were $0.5 million, resulting in a gain of $0.8 million, which is included in discontinued operations for the three months ended June 30, 2007.

Six months ended June 30, 2007 compared to six months ended June 30, 2006

Revenues increased to $13.5 million, or by 4.8%, for the first six months of fiscal 2007 from $12.9 million for the first six months of fiscal 2006 primarily attributable to increased club dues.

Operating expenses increased to $14.5 million, or by 8.3%, for the first six months of fiscal 2007, from $13.3 million for the first six months of fiscal 2006, primarily due to increased insurance and beach erosion expenses.

In June 2007, we sold a resort property located in Naples, Florida for $2.1 million. Our cost basis was $0.8 million and related income taxes were $0.5 million, resulting in a gain of $0.8 million, which is included in discontinued operations for the six months ended June 30, 2007.

Home Fashion

WPI, through its indirect wholly owned subsidiary, WestPoint Home, Inc., is engaged in the business of manufacturing, sourcing, marketing and distributing bed and bath home fashion products, including among others, sheets, pillowcases, comforters, blankets, bedspreads, pillows, mattress pads, towels and related products. WPI recognizes revenue primarily through the sale of home fashion products to a variety of retail and institutional customers. WPI also operates 30 retail outlet stores that sell home fashion products consisting principally of products manufactured by WPI. In addition, WPI receives a small portion of its revenues through the licensing of its trademarks.

Ongoing litigation may result in our ownership of WPI being reduced to less than 50% as described in Part I, Item 3 of our Annual Report on Form 10-K for fiscal 2006 filed with the SEC on March 6, 2007 and Part II, Item 1 of this Quarterly Report on Form10-Q.

Overview

For the second quarter of fiscal 2007, gross earnings were affected by efforts to reduce revenue from less profitable business, a weaker home textile retail environment and lower manufacturing plant utilizations at some of our U.S. bedding plants scheduled for closure. Factory underutilization charges at the bedding operations are expected to diminish in the second half of fiscal 2007 in connection with the closure of certain U.S. operations. WPI will continue to realign its manufacturing operations to optimize its cost structure, pursuing offshore sourcing arrangements that employ a combination of owned and operated facilities, joint ventures and third-party supply contracts.

During the second quarter of fiscal 2007, WPI continued to successfully implement its strategic plans to shift manufacturing capacity from the United States to lower-cost countries. WPI's newly acquired bedding operation in Bahrain is now producing product as planned, with significantly lower production costs than its U.S. operations. Additionally, the expansion of WPI's joint venture bath manufacturing operation in Pakistan is proceeding to build its output volume of finished goods. WPI anticipates improvements in gross earnings through cost of sales reductions in the second half of fiscal 2007 and into fiscal 2008.

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Results of Operations

Summarized statements of operations for WPI for the periods indicated are as follows (in $000s) (unaudited):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Net Sales	$ 165,789	$ 237,148	$ 376,393	$ 480,638
Costs of sales	164,114	224,222	370,024	452,582
Gross earnings	1,675	12,926	6,369	28,056
Selling, general and administrative expenses	34,296	40,698	73,693	84,015
Restructuring and impairment charges	20,382	20,567	24,693	30,338
Operating loss	$ (53,003)	$ (48,339)	$ (92,017)	$ (86,297)

Three months ended June 30, 2007 compared to three months ended June 30, 2006

The second quarter of fiscal 2007 remained challenging for WPI. Net sales for the second quarter of fiscal 2007 were $165.8 million, a decline of 30.1% compared to $237.1 million in the second quarter of fiscal 2006. The decline, which affected all lines of business, was primarily attributable to our continuing efforts to reduce revenues from less profitable programs and a continued weaker retail sales environment. Bed products net sales for the second quarter of 2007 were $89.5 million, a decrease of $45.3 million from the second quarter of fiscal 2006. Bath products net sales were $62.9 million, a decrease of $21.5 million from the second quarter of fiscal 2006 and other net sales, consisting primarily of sales from WPI's retail outlet stores, were $13.4 million, a decrease of $4.5 million from the second quarter of fiscal 2006.

Total depreciation expense for the second quarter of fiscal 2007 was $4.6 million, of which $3.5 million was included in cost of sales and $1.1 million was included in selling, general and administrative. Total depreciation expense for the second quarter of 2006 was $9.5 million, of which $7.7 million was included in cost of sales and $1.8 million was included in selling, general and

administrative. Depreciation expenses were reduced primarily as the result of plant closures subsequent to the first quarter of fiscal 2006.

Gross earnings for the second quarter of fiscal 2007 were $1.7 million, or 1% of net sales, compared with $12.9 million, or 5.5% of net sales during the second quarter of 2006. Gross earnings during the second quarter of fiscal 2007 were negatively impacted by lower sales across all product lines as the result of a continued weaker retail environment for home textile products, competitive pricing and higher production costs which include underutilization of plants scheduled to be closed in the fiscal 2007.

Selling, general and administrative expenses for the second quarter of fiscal 2007 were $34.3 million as compared to $40.7 million for the second quarter of fiscal 2006, reflecting WPI's continuing efforts to reduce its selling, warehousing, shipping and general and administrative expenses since it was acquired by AREP in August 2005. WPI reduced its selling, general and administrative staff by 100 people during the second quarter of fiscal 2007 and lowered annual selling, general and administrative costs by an additional $9.1 million on an annualized basis.

Total expenses for the second quarter of fiscal 2007 include $15.4 million related to non-cash fixed asset impairment charges related to certain plants in the United States, which are planned to be closed in fiscal 2007, and $5.0 million of restructuring charges (of which $2.5 million related to severance costs and $2.5 million related to continuing costs of closed plants). Total expenses for the second quarter of 2006 included $18.8 million of non-cash fixed asset impairment charges related to plant closures in the second quarter of 2006 and $1.7 million of restructuring charges (of which $0.1 million related to severance costs and $1.6 million related to continuing costs of closed plants).

We continue our restructuring efforts and, accordingly, expect that restructuring charges and operating losses will continue to be incurred throughout fiscal 2007. If our restructuring efforts are unsuccessful, we may be required to record additional impairment charges related to the carrying value of long-lived assets.

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Six months ended June 30, 2007 compared to six months ended June 30, 2006

The six months ended June 30, 2007 represented a challenging combination of efforts to reduce revenue from less profitable business, a weaker home textile retail environment, repositioning WPI's manufacturing operations and realigning selling, general and administrative expenditures. Net sales were $376.4 million, a decrease of 21.7% compared to $480.6 million for the first six months in fiscal 2006. The decrease, which affected all lines of business, was primarily attributable to our continuing efforts to reduce revenues from less profitable programs coupled with a continued weaker retail sales environment. Bed products net sales for the first six months of fiscal 2007 were $214.0 million, a decrease of $56.8 million from $270.8 million. Bath products net sales were $134.2 million, a decrease of $40.7 million compared to $174.9 million, and other net sales were $28.2 million (consisting primarily of sales from WPI's retail outlet stores), a decrease of $6.7 million compared to $34.9 million for the first six months of fiscal 2006.

Total depreciation expense for the six months ended June 30, 2007 was $9.4 million, of which $7.2 million was included in cost of sales and $2.2 million was included in selling, general and administrative. Total depreciation expense for the six months ended June 30, 2006 was $19.9 million, of which $16.3 million was included in cost of sales and $3.6 million was included in selling, general and administrative. The reduction in depreciation expenses were primarily due to plant closures made subsequent to the first quarter of fiscal 2006.

Gross earnings for the six months ended June 30, 2007 were $6.4 million, or 1.7% of net sales, compared with $28.1 million, or 5.8% of net sales, during the six months ended June 30, 2006. Gross earnings were affected by competitive pricing and a continued weaker retail environment, especially in the April to June period, and lower manufacturing plant utilizations at some of our United States plants. WPI will continue to realign its manufacturing operations to optimize its cost structure, pursuing offshore sourcing arrangements that employ a combination of owned and operated facilities, joint ventures and third-party supply contracts.

Selling, general and administrative expenses for the six months ended June 30, 2007 were $73.7 million as compared to $84.0 million for the six months ended June 30, 2006, reflecting WPI's continuing efforts to reduce its selling, warehousing, shipping and general and administrative expenses since it was acquired by AREP in August 2005. WPI is continuing to lower its selling, general and administrative expense by consolidating its locations, reducing headcount and applying more stringent oversight of expense areas where potential savings may be realized, including headcount reductions taken during the second quarter of fiscal 2007.

Total expenses for the six months ended June 30, 2007 include $15.4 million of non-cash fixed asset impairment charges related to certain plants in the United States, which are anticipated to be closed in fiscal 2007, and $9.3 million of restructuring charges (of which $3.8 million related to severance costs and $5.5 million related to continuing costs of closed plants). Total expenses for the six months ended June 30, 2006 included $26.5 million of non-cash fixed asset impairment charges related to plant closures in the second quarter of fiscal 2006 and $3.8 million of restructuring charges (of which $1.3 million related to severance costs and $2.5 million related to continuing costs of closed plants).

We continue our restructuring efforts and, accordingly, expect that restructuring charges and operating losses will continue to be incurred throughout fiscal 2007. If our restructuring efforts are unsuccessful, we may be required to record additional impairment charges related to the carrying value of long-lived assets.

Holding Company

Activities

The Holding Company engages in various activities including investing its available liquidity, investing to earn returns from increases or decreases in the market price of securities, investing in our subsidiaries' growth, raising capital, and acquiring and divesting businesses.

Holding Company Costs

Holding Company general and administrative expenses are principally related to payroll, legal and other professional fees and general expenses of the Holding Company.

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Three months ended June 30, 2007 compared to three months ended June 30, 2006

Holding Company costs of $3.9 million remained flat in the second quarter of 2007, as compared to the second quarter of 2006.

Six months ended June 30, 2007 compared to six months ended June 30, 2006

Holding Company costs decreased $3.4 million, or 23.0%, to $11.5 million for the first six months of 2007, as compared to $15.0 million for the first six months of 2006 due largely to the impact of a compensation charge related to the cancellation of unit options of $6.2 million in fiscal 2006, offset in part by higher legal and professional fees in fiscal 2007 relating to increased merger and acquisition activities and financing transactions.

Interest Income and Expense

Three months ended June 30, 2007 compared to the three months ended June 30, 2006

Interest expense increased 68.6%, to $35.5 million, during the second quarter of fiscal 2007 as compared to $21.1 million in the second quarter of fiscal 2006. This increase is a result of interest incurred on the $500.0 million additional 7.125% senior notes issued in January 2007 and the $600.0 million of variable rate convertible notes issued in April 2007.

Interest income increased 243.3%, to $41.2 million, during the second quarter of fiscal 2007 as compared to $12.0 million in the second quarter of fiscal 2006. This was primarily due to the substantial increase in the Holding Company's cash position from the sales of our Oil and Gas operations and Atlantic City gaming operations in the fourth quarter of fiscal 2006 and the proceeds from the issuance of additional 7.125% senior notes in January 2007 and variable rate convertible notes in April 2007.

Six months ended June 30, 2007 compared to the six months ended June 30, 2006

Interest expense increased 51.8%, to $63.0 million, during the first six months of fiscal 2007 as compared to $41.5 million in the first six months of fiscal 2006. This increase is a result of interest incurred on the $500.0 million additional 7.125% senior notes issued in January 2007 and the $600.0 million of variable rate convertible notes issued in April 2007.

Interest income increased 218.5% to $72.3 million during the first six months of fiscal 2007 as compared to $22.7 million in the first six months of fiscal 2006. This increase was primarily due to the increase in the Holding Company's cash position from the sale of our Oil and Gas operations and Atlantic City gaming operations in the fourth quarter of fiscal 2006 and the proceeds from the issuance of additional 7.125% senior notes in January 2007 and variable rate convertible notes in April 2007.

Other Income (Expense), Net

Other Income (Expense), net, is comprised of the following for the periods indicated (in 000s) (unaudited):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Net realized gains on sales of marketable securities	$ 31,119	$ 22,855	$ 36,296	$ 56,286
Unrealized (losses) gains on marketable securities	(47,883)	4,272	24,243	19,750
Net realized losses on securities sold short	(289)	(27,044)	(1,799)	(32,175)
Unrealized gains (losses) on securities sold short	(263)	44,276	3,354	18,800
Gain (losses) on sale of assets	(606)	(27)	3,006	(27)
Other	1,217	508	2,977	3,517
	$ (16,705)	$ 44,840	$ 68,077	$ 66,151

We recorded approximately $24.7 million of unrealized losses and $39.2 million of unrealized gains for the three and six months ended June 30, 2007, respectively, resulting from the change in the market price of ImClone's stock.

Minority Interests

Minority interests totaled $20.6 million and $25.7 million for the three months ended June 30, 2007 and 2006, respectively, primarily as a result of the impact of the minority interests' share of the losses incurred by WPI.

Minority interests totaled $32.2 million and $40.8 million for the six months ended June 30, 2007 and 2006, respectively, primarily as a result of the impact of the minority interests' share of the losses incurred by WPI.

Discontinued Operations

The Sands and Related Assets

On November 17, 2006, our indirect majority-owned subsidiary, ACE, a New Jersey limited liability company and a wholly owned subsidiary of Atlantic Coast, which formerly owned The Sands Hotel and Casino in Atlantic City, AREH, and certain other entities owned by or affiliated with AREH, completed the sale to Pinnacle, of the outstanding membership interests in ACE and 100% of the equity interests in certain subsidiaries of AREH that owned parcels of real estate adjacent to The Sands, including 7.7 acres of land known as the Traymore site. We owned, through subsidiaries, approximately 67.6% of Atlantic Coast, which owns 100% of ACE. The aggregate price was approximately $274.8 million, of which approximately $200.6 million was paid to Atlantic Coast and approximately $74.2 million was paid to affiliates of AREH for subsidiaries that owned the Traymore site and the adjacent properties. Under the terms of the purchase agreement, $51.8 million of the purchase price paid to Atlantic Coast was deposited into escrow to fund indemnification obligations with regard to the claims of creditors and stockholders of GB Holdings. On February 22, 2007, we resolved all outstanding litigation involving our interest in the Atlantic City gaming operations, resulting in a release of all claims against us. After the settlement, our ownership of Atlantic Coast increased from 67.6% to 96.9% and $50.0 million of the amount placed into escrow was released to us.

Oil and Gas Operations

On November 21, 2006, our indirect wholly owned subsidiary, AREP O & G Holdings LLC, consummated the sale of all of the issued and outstanding membership interests of NEG Oil & Gas to SandRidge for consideration consisting of $1.025 billion in cash, 12,842,000 shares of SandRidge's common stock, valued at $18 per share on the date of closing, and the repayment by SandRidge of $300.0 million of debt of NEG Oil & Gas.

Pursuant to an agreement dated October 25, 2006 among AREH, NEG Oil & Gas and NEGI, NEGI sold its membership interest in NEG Holding LLC to NEG Oil & Gas for consideration of approximately $261.1 million paid in cash. Of that amount, $149.6 million was used to repay the principal and accrued interest with respect to the NEGI 10.75% senior notes due 2007, all of which was held by us. On April 4, 2007, we sold our entire position in SandRidge for cash consideration of approximately $243.2 million.

American Casino & Entertainment Properties LLC

On April 22, 2007, AEP, a wholly owned indirect subsidiary of AREP, entered into a Membership Interest Purchase Agreement with W2007/ACEP Holdings, LLC, an affiliate of Whitehall Street Real Estate Funds, a series of real estate investment funds affiliated with Goldman, Sachs & Co., to sell all of the issued and outstanding membership interests of ACEP, which comprises our gaming operations, for $1.3 billion, plus or minus certain adjustments such as working capital, more fully described in the agreement. Pursuant to the terms of the agreement, AEP is required to cause ACEP to repay from funds provided by AEP, the principal, interest, prepayment penalty or premium due under the terms of ACEP's 7.85% senior secured notes due 2012 and ACEP's senior secured credit facility. With this transaction, we anticipate realizing a gain of approximately $0.57 billion on our investments in ACEP, after income taxes. ACEP's casino assets are comprised of the Stratosphere Casino Hotel & Tower, the Arizona Charlie's Decatur, the Arizona Charlie's Boulder and the Aquarius Casino Resort. The transaction is subject to the approval of the Nevada Gaming Commission and

the Nevada State Gaming Control Board, as well as customary conditions. The parties expect to close the transaction by the end of fiscal 2007; however, there can be no assurance that we will be able to consummate the transaction.

Real Estate

Operating properties of our real estate segment are reclassified to held for sale when subject to a contract or letter of intent. The operations of such properties are classified as discontinued operations. The properties classified as discontinued operations have changed during fiscal 2007 and, accordingly, certain amounts in the statement of operations and cash flows for the three and six months ended June 30, 2007 and 2006 have been reclassified to conform to the current classification of properties. During the six months ended June 30, 2007, five properties were reclassified to held for sale.

Results of Discontinued Operations

The financial position and results of these operations are presented as assets and liabilities of discontinued operations held for

sale in the consolidated balance sheets and discontinued operations in the consolidated statements of operations, respectively, for all periods presented in accordance with SFAS No. 144.

Summarized financial information for discontinued operations for the periods indicated is set forth below (in $000s):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Revenues				
Oil and Gas	$ —	$ 86,606	$ —	$ 194,898
Gaming	114,138	134,780	227,026	261,498
Real Estate	1,361	1,849	2,807	3,749
Total revenues	$ 115,499	$ 223,235	$ 229,833	$ 460,145
Operating income from discontinued operations:				
Oil and Gas	$ —	$ 46,528	$ —	$ 111,516
Gaming	31,319	15,123	54,546	34,478
Real Estate	1,161	1,280	2,315	2,581
Total operating income	32,480	62,931	56,861	148,575
Interest expense	(5,727)	(10,838)	(11,436)	(21,237)
Interest and other income	273	3,179	19,334	5,067
Income tax (expense)	(6,037)	(9,143)	(15,232)	(17,852)
Income from discontinued operations	20,989	46,129	49,527	114,553
Minority interests	41	125	(1,753)	179
Gain on sales of discontinued operations, net of income taxes	841	1,308	14,026	1,559
	$ 21,871	$ 47,562	$ 61,800	$ 116,291

Effective Income Tax Rate

We recorded income tax provisions of $1.89 million and $(0.04) million on pre-tax loss of $21.0 million and $28.3 million for the six months ended June 30, 2007 and 2006, respectively. Our effective income tax rate was (9.0)% and 0.14% for the respective periods. We recorded income tax provisions of $1.2 million and $0.01 million on pre-tax loss of $66.8 million and pre-tax income of $5.9 million for the three months ended June 30, 2007 and 2006, respectively. Our effective tax rate was (1.7)% and 0.2% for the respective periods. The difference between the effective tax rate and the statutory federal rate of 35% is due principally to income or losses from partnership entities in which taxes are the responsibility of the partners, as well as changes in valuation allowances.

Seasonality

Sales activity for our real estate developments in Cape Cod and New York typically peak in late winter and early spring while in Florida our peak selling season is during the winter months. The Home Fashion segment experiences its peak sales season in the fall.

Liquidity and Capital Resources

Consolidated Financial Results

As of June 30, 2007, the Holding Company had a cash and cash equivalents balance of $2.9 billion, short-term investments of $309.5 million (of which $177.0 million was invested in short-term fixed-income securities) and total debt of $1.9 billion.

In addition, we also have the ability to draw down on our credit facility. In August 2006, we entered into a credit agreement with a consortium of banks pursuant to which we will be permitted to borrow up to $150.0 million. As of June 30, 2007, there were no borrowings under the facility. See “Borrowings” below for additional information concerning credit facilities for our subsidiaries.

We are a holding company. In addition to cash and cash equivalents, U.S. government and agency obligations, marketable equity and debt securities and other short-term investments, our assets consist primarily of investments in our subsidiaries. The sale of our Oil and Gas operating unit and Atlantic City gaming properties in November 2006 resulted in significant increases in our liquid assets. However, we may make investments in our operating businesses or make investments in new businesses, which may reduce our liquid assets.

As a holding company, our cash flow and our ability to meet our debt service obligations and make distributions with respect to depositary units and preferred units will predominantly depend on the cash flow resulting from divestitures, equity and debt financings, interest income, and the payment of funds to us by our subsidiaries in the form of loans, dividends and distributions. We may pursue various means to raise cash from our subsidiaries. To date, such means include payment of dividends from subsidiaries, obtaining loans or other financings based on the asset values of subsidiaries or selling debt or equity securities of subsidiaries through capital market transactions. To the degree any distributions and transfers are impaired or prohibited, our ability to make payments on our debt could be limited. The operating results of our subsidiaries may not be sufficient for them 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 our subsidiaries may be subject or enter into in the future.

Cash Resources

During fiscal 2007 we consummated the following transactions that provided an aggregate of $1.3 billion:

- On January 16, 2007, we issued $500.0 million aggregate principal amount of additional 7.125% senior notes due 2013. The additional 7.125% senior notes were issued pursuant to an indenture dated February 7, 2005, between us, as issuer, and AREF, as co-issuer, AREH, as guarantor, and Wilmington Trust Company, as trustee. The additional 7.125% senior notes have a fixed annual interest rate of 7.125%, which will be paid every six months on February 15 and August 15 and will mature on February 15, 2013.
- In April 2007, we issued $600.0 million aggregate principal amount of variable senior convertible notes due 2013. The notes bear interest of LIBOR minus 125 basis points, but no less than 4% nor higher than 5.5%, and are convertible into depositary units of AREP at a conversion price of $132.595 per share, subject to adjustments in certain circumstances.
- On April 4, 2007, our subsidiaries signed agreements to sell their entire position in the common stock of SandRidge (formerly Riata Energy, Inc.) to a consortium of investors in a series of private transactions. The per share selling price was $18, and total cash consideration received at closing was approximately $243.2 million.

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On April 22, 2007, AEP, a wholly owned indirect subsidiary of AREP, entered into an agreement to sell all of the issued and outstanding membership interests of ACEP, which comprises the remainder of AREP's gaming operations, for $1.3 billion, plus or minus certain adjustments such as working capital, more fully described in the agreement. Pursuant to the terms of the agreement, AEP is required to cause ACEP to repay, from funds provided by AEP, the principal, interest, prepayment penalty or premium due under the terms of ACEP's 7.85% senior secured notes due 2012 and ACEP's senior secured credit facility. With this transaction, AREP anticipates realizing a gain of approximately $0.57 billion on its investments in ACEP, after income taxes. ACEP's casino assets are comprised of the Stratosphere Casino Hotel & Tower, the Arizona Charlie's Decatur, the Arizona Charlie's Boulder and the Aquarius Casino Resort. The transaction is subject to the approval of the Nevada Gaming Commission and the Nevada State Gaming Control Board, as well as customary conditions. The parties expect to close the transaction by the end of fiscal year 2007; however, there can be no assurance that we will be able to consummate the transaction.

Cash Flows

Net cash used in continuing operating activities was $47.1 million for the first six months of fiscal 2007 as compared to net cash used in continuing operating activities of $47.4 million in the first six months of fiscal 2006. The net cash used in continuing operating activities for the six months ended June 30, 2007 and 2006 primarily relates to (a) operating losses incurred by WPI which are offset in part by noncash credits to income of $32.2 million and $40.8 million in the fiscal 2007 and fiscal 2006 periods, respectively, attributable to the minority interests' share in WPI's losses; (b) unrealized gains on investments included in income in the fiscal 2007 and fiscal 2006 periods of $27.8 million and $38.9 million, respectively; and (c) changes in various working capital categories. Our cash and cash equivalents increased by $1.31 billion at June 30, 2007, from December 31, 2006, primarily due to the net proceeds from long-term debt of $492.1 million issued in January 2007 and $600.0 million issued in April 2007.

We are continuing to pursue the purchase of assets, including assets that may not generate positive cash flow, may be difficult to finance or may require additional capital, such as properties for development, non-performing loans, securities of companies that are undergoing or that may undergo restructuring, and other companies that are in need of capital. All of these activities require us to maintain a strong capital base and liquidity.

Borrowings

Long-term debt consists of the following (in $000s):

	June 30, 2007	December 31, 2006
	(Unaudited)	
Senior unsecured variable rate convertible notes due 2013 – AREP	$ 600,000	$ —
Senior unsecured 7.125% notes due 2013 – AREP	972,731	480,000
Senior unsecured 8.125% notes due 2012 – AREP	351,408	351,246
Senior secured 7.85% notes due 2012 – ACEP	215,000	215,000
Borrowings under credit facility – ACEP	40,000	40,000
Mortgages payable	106,718	109,289
Other	12,003	13,425
Total long-term debt	2,297,860	1,208,960
Less current portion, including debt related to assets held for sale	(280,183)	(281,299)
	$2,017,677	$ 927,661

Senior Unsecured Variable Rate Convertible Notes Due 2013

In April 2007, we issued an aggregate of $600.0 million of variable rate senior convertible notes due 2013, or the variable rate notes. The variable rate notes were sold in a private placement pursuant to Section 4(2) of the Securities Act of 1933, as amended, or the Securities Act, and issued pursuant to an indenture dated as of April 5, 2007, by and among us, as issuer, AREF, as co-issuer, and Wilmington Trust Company, as trustee. AREF, our wholly owned subsidiary, was formed solely for the purpose of serving as a

co-issuer of

our debt securities in order to facilitate offerings of the debt securities. The variable rate notes bear interest at a rate of three month LIBOR minus 125 basis points, but no less than 4.0% nor higher than 5.5%, and are convertible into depositary units of AREP at a conversion price of $132.595 per share, subject to adjustments in certain circumstances. As of June 30, 2007, the interest rate was 4.1%. In the event that we declare a cash dividend or similar cash distribution in any calendar quarter with respect to our depositary units in an amount in excess of $0.10 per depositary unit (as adjusted for splits, reverse splits, and/or stock dividends), the indenture requires that we simultaneously make such distribution to holders of the variable rate convertible notes in accordance with a formula set forth in the indenture.

The variable rate convertible notes have not been and will not be registered under the Securities Act and may not be offered or sold in the United States absent registration or an applicable exemption from the registration requirements of the Securities Act. In connection with the sale of the variable rate convertible notes, we and the initial buyers have entered into a registration rights agreement, pursuant to which we have agreed to file a shelf registration statement on Form S-3 with respect to resales of depositary units issuable upon conversion of the variable rate convertible notes. A preliminary registration statement on Form S-3 with respect thereto was filed on June 21, 2007.

Senior Unsecured 7.125% Notes Due 2013

On February 7, 2005, we issued $480.0 million aggregate principal amount of 7.125% senior unsecured notes due 2013, or the 7.125% notes, priced at 100% of principal amount. The 7.125% notes were issued pursuant to an indenture dated February 7, 2005 among us, as issuer, AREF as co-issuer, AREH, as guarantor, and Wilmington Trust Company, as trustee (referred to herein as the 2005 Indenture). Other than AREH, no other subsidiaries guarantee payment on the notes.

On January 16, 2007, we issued an additional $500.0 million aggregate principal amount of 7.125% notes, or the additional 7.125% notes (the 7.125% notes and the additional 7.125% notes being referred to herein as the notes), priced at 98.4% of par, or at a discount of 1.6%, pursuant to the 2005 Indenture. The notes have a fixed annual interest rate of 7.125%, which will be paid every six months on February 15 and August 15 and will mature on February 15, 2013. At the time we issued the additional 7.125% notes, we entered into a new registration rights agreement in which we agreed to permit noteholders to exchange the private notes for new notes which will be registered under the Securities Act. A preliminary registration statement on Form S-4 with respect thereto was filed on June 21, 2007.

As described below, the indenture governing the 7.125% notes restrict the ability of AREP and AREH, subject to certain exceptions, to, among other things: incur additional debt; pay dividends or make distributions; repurchase units; create liens; and enter into transactions with affiliates.

Senior Unsecured 8.125% Notes Due 2012

On May 12, 2004, AREP and AREF co-issued senior unsecured 8.125% notes due 2012, or the 8.125% notes, in the aggregate principal amount of $353.0 million. The 8.125% notes were issued pursuant to an indenture, dated as of May 12, 2004, among AREP, AREF, AREH, as guarantor, and Wilmington Trust Company, as trustee. The 8.125% notes were priced at 99.266% of principal amount and have a fixed annual interest rate of 8.125%, which will be paid every six months on June 1 and December 1, commencing December 1, 2004. The 8.125% notes will mature on June 1, 2012. Other than AREH, no other subsidiaries guarantee payment on the notes.

As described below, the indenture governing the 8.125% notes restrict the ability of AREP and AREH, subject to certain exceptions, to, among other things: incur additional debt; pay dividends or make distributions; repurchase units; create liens; and enter into transactions with affiliates.

Senior Unsecured Notes Restrictions and Covenants — AREP

The indentures governing our senior unsecured notes restrict the payment of cash dividends or distributions, the purchase of equity interests or the purchase, redemption, defeasance or acquisition of debt subordinated to the senior unsecured notes. The indentures also restrict the incurrence of debt or the issuance of disqualified stock, as defined, with certain exceptions, provided that we may incur debt or issue disqualified stock if, immediately after such incurrence or issuance, the ratio of the aggregate principal amount of all

outstanding indebtedness of AREP and its subsidiaries on a consolidated basis to the tangible net worth of AREP and its subsidiaries on a consolidated basis would be less than 1.75 to 1.0. As of June 30, 2007, such ratio was less than 1.75 to 1.0.

The indentures also restrict the creation of liens, mergers, consolidations and sales of substantially all of our assets, and transactions with affiliates.

The indentures governing our senior unsecured notes require that on each quarterly determination date we and the guarantor maintain a minimum ratio of cash flow to fixed charges, each as defined, of 1.5 to 1.0, for the four consecutive fiscal quarters most recently completed prior to such quarterly determination date. For the first fiscal quarter ended June 30, 2007, the ratio of cash flow to fixed charges was greater than 1.5 to 1.0.

The indentures also require, on each quarterly determination date, that the ratio of total unencumbered assets, as defined, to the principal amount of unsecured indebtedness, as defined, be greater than 1.5 to 1.0 as of the last day of the most recently completed fiscal quarter. As of June 30, 2007, such ratio was in excess of 1.5 to 1.0. Based on this ratio, as of June 30, 2007, we and AREH could have incurred up to approximately $1.2 billion of additional indebtedness.

AREP Senior Secured Revolving Credit Facility

On August 21, 2006, we and AREF, as the borrowers, and certain of our subsidiaries, as guarantors, entered into a credit agreement with Bear Stearns Corporate Lending Inc., as administrative agent, and certain other lender parties. Under the credit agreement, we are permitted to borrow up to $150.0 million, including a $50.0 million sublimit that may be used for letters of credit. Borrowings under the agreement, which are based on our credit rating, bear interest at LIBOR plus 1.0% to 2.0%. We pay an unused line fee of 0.25% to 0.5%. As of June 30, 2007, there were no borrowings under the facility.

Obligations under the credit agreement are guaranteed and secured by liens on substantially all of the assets of certain of our indirect wholly owned holding company subsidiaries. The credit agreement has a term of four years and all amounts are due and payable on August 21, 2010. The credit agreement includes covenants that, among other things, restrict the creation of liens and certain dispositions of property by holding company subsidiaries that are guarantors. Obligations under the credit agreement are immediately due and payable upon the occurrence of certain events of default.

Senior Secured 7.85% Notes Due 2012 — ACEP

The indenture governing ACEP's 7.85% senior secured notes due 2012 restrict the payment of cash dividends or distributions by ACEP, the purchase of its equity interests, the purchase, redemption, defeasance or acquisition of debt subordinated to ACEP's notes and investments as "restricted payments." The indenture also prohibits the incurrence of debt or the issuance of disqualified or preferred stock, as defined, by ACEP, with certain exceptions, provided that ACEP may incur debt or issue disqualified stock if, immediately after such incurrence or issuance, the ratio of consolidated cash flow to fixed charges (each as defined) for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional indebtedness is incurred or disqualified stock or preferred stock is issued would be at least 2.0 to 1.0, determined on a pro forma basis giving effect to the debt incurrence or issuance. As of June 30, 2007, such ratio was in excess of 2.0 to 1.0. The indenture also restricts the creation of liens, the sale of assets, mergers, consolidations or sales of substantially all of ACEP's assets, the lease or grant of a license, concession, other agreements to occupy, manage or use ACEP's assets, the issuance of capital stock of restricted subsidiaries and certain related party transactions. The indenture governing the ACEP notes allow ACEP and its restricted subsidiaries, to incur indebtedness, among other things, of up to $50.0 million under credit facilities, non-recourse financing of up to $15.0 million to finance the construction, purchase or lease of personal or real property used in its business, permitted affiliate subordinated indebtedness (as defined), the issuance of additional 7.85% senior secured notes due 2012 in an aggregate principal amount not to exceed 2.0 times net cash proceeds received from equity offerings and permitted affiliate subordinated debt, and additional indebtedness of up to $10.0 million.

ACEP Senior Secured Revolving Credit Facility

Effective May 11, 2006, ACEP, and certain of ACEP's subsidiaries, as guarantors, entered into an amended and restated credit agreement with Wells Fargo Bank N.A., as syndication agent, Bear Stearns Corporate Lending Inc., as administrative agent, and certain other lender parties. As of June 30, 2007, the interest rate on the outstanding borrowings under the credit facility was 6.82% per annum. The credit agreement amends and restates, and is on substantially the same terms as, a credit agreement entered into as of January 29, 2004. Under the amended and restated credit agreement, ACEP will be permitted to borrow up to $60.0 million. Obligations under the credit agreement are secured by liens on substantially all of the assets of ACEP and its subsidiaries. The credit agreement has a term of four years and all amounts are due and payable on May 10, 2010. As of June 30, 2007, there were $40.0 million of borrowings under the credit agreement. The borrowings were incurred to finance a portion of the purchase price of the Aquarius.

The credit agreement includes covenants that, among other things, restrict the incurrence of additional indebtedness by ACEP and its subsidiaries, the issuance of disqualified or preferred stock, as defined, the creation of liens by ACEP or its subsidiaries, the sale of assets, mergers, consolidations or sales of substantially all of ACEP's assets, the lease or grant of a license or concession, other agreements to occupy, manage or use ACEP's assets, the issuance of capital stock of restricted subsidiaries and certain related party transactions. The credit agreement also requires that, as of the last date of each fiscal quarter, ACEP's ratio of consolidated first lien debt to consolidated cash flow be not more than 1.0 to 1.0. As of June 30, 2007, such ratio was less than 1.0 to 1.0. As of June 30, 2007, ACEP was in compliance with each of the covenants.

The restrictions imposed by ACEP's senior secured notes and the credit facility likely will limit our receiving payments from the operations of our hotel and gaming properties.

As described in Note 3, on April 22, 2007, AEP entered into an agreement to sell all of the issued and outstanding membership interests of ACEP. Pursuant to the terms of the agreement, AEP is required to cause ACEP to repay from funds provided by AEP,

the principal, interest, prepayment penalty or premiums due on ACEP's 7.85% senior secured rates due 2012 and ACEP's senior secured credit facility. Accordingly, these obligations are now classified as current liabilities in the consolidated balance sheets.

Mortgages Payable

Mortgages payable, all of which are non-recourse to us, bear interest at rates between 4.97% and 7.99% and have maturities between September 1, 2008 and July 1, 2016.

WestPoint Home Secured Revolving Credit Agreement

On June 16, 2006, WestPoint Home, Inc., an indirect wholly owned subsidiary of WPI, entered into a $250.0 million loan and security agreement with Bank of America, N.A., as administrative agent and lender. On September 18, 2006, The CIT Group/Commercial Services, Inc., General Electric Capital Corporation and Wells Fargo Foothill, LLC were added as lenders under this credit agreement. Under the five-year agreement, borrowings are subject to a monthly borrowing base calculation and include a $75.0 million sub-limit that may be used for letters of credit. Borrowings under the agreement bear interest, at the election of WestPoint Home, either at the prime rate adjusted by an applicable margin ranging from minus 0.25% to plus 0.50% or LIBOR adjusted by an applicable margin ranging from plus 1.25% to 2.00%. WestPoint Home pays an unused line fee of 0.25% to 0.275%. Obligations under the agreement are secured by WestPoint Home's receivables, inventory and certain machinery and equipment.

The agreement contains covenants including, among others, restrictions on the incurrence of indebtedness, investments, redemption payments, distributions, acquisition of stock, securities or assets of any other entity and capital expenditures. However, WestPoint Home is not precluded from effecting any of these transactions if excess availability, after giving effect to such transaction, meets a minimum threshold.

As of June 30, 2007, there were no borrowings under the agreement, but there were outstanding letters of credit of approximately $26.8 million, the majority of which relate to trade obligations.

Quarterly Distributions

On August 3, 2007, the Board of Directors approved a payment of a quarterly cash distribution of $0.15 per unit on our depositary units payable in the third quarter of fiscal 2007. The distribution will be paid on

September 7, 2007 to depositary unitholders of record at the close of business on August 27, 2007. Under the terms of the indenture dated April 5, 2007 governing our senior convertible notes due 2013, we will also be making a $0.05 distribution to holders of these notes in accordance with the formula set forth in the indenture.

On May 4, 2007, the Board of Directors approved a $0.05 increase in our quarterly distribution policy and payment of a quarterly cash distribution of $0.15 per unit on our depositary units in the second quarter of fiscal 2007. The distribution was paid on June 1, 2007 to depositary unitholders of record at the close of business on May 22, 2007. Under the terms of the indenture dated April 5, 2007 governing our senior convertible notes due 2013, we paid a $0.05 distribution to holders of these notes in accordance with the formula set forth in the indenture.

The payment of future distributions will be determined by the Board of Directors quarterly. There can be no assurance as to whether or in what amounts any future distributions might be paid.

Contractual Commitments

As of June 30, 2007 other than the issuance of an additional $500.0 million aggregate principal amount of the additional 7.125% senior notes due 2013 and $600.0 million of variable rate senior convertible notes due 2013, there were no other material changes in our contractual obligations or any other long-term liabilities reflected on our consolidated balance sheet as compared to those reported in our Annual Report on Form 10-K for fiscal 2006, filed with the Securities and Exchange Commission on March 6, 2006.

Off Balance Sheet Arrangements

We do not maintain any off-balance sheet transactions, arrangements, obligations or other relationships with unconsolidated entities or others.

Segment Liquidity and Capital Resources

Real Estate

Our real estate operating units generate cash though rentals, leases and asset sales (principally sales of rental and residential properties) and the operation of resorts. All of these operations generate cash flows from operations.

Real estate development activities require a significant amount of funds. In fiscal 2007, our development operations are expected to require cash expenditures of approximately $40 million. We expect that such amounts will be funded from unit sales and, to the extent such proceeds are insufficient, by AREP from available cash.

During the six months ended June 30, 2007, we sold one rental real estate property for $4.4 million, which was unencumbered by mortgage debt. In addition, we sold a resort property for $2.1 million.

During the six months ended June 30, 2006, we sold eight rental real estate properties for $8.3 million, which were unencumbered by mortgage debt.

Home Fashion

For the first half of fiscal 2007, our Home Fashion segment had a negative cash flow from operations of $56.1 million. The negative cash flow from operations was principally due to net operating losses and ongoing restructuring efforts offset in part by a reduction in working capital. As discussed above, WPI continues its restructuring efforts and, accordingly, expects that restructuring charges and operating losses will continue to be incurred through the end of fiscal 2007.

At June 30, 2007, WPI had $115.4 million of unrestricted cash and cash equivalents. There were no borrowings under the WestPoint Home senior secured revolving credit agreement, but there were outstanding letters of credit of $26.8 million. Based upon the eligibility and reserve calculations within the agreement, WestPoint Home had unused borrowing availability of approximately $117.8 million at June 30, 2007.

The senior secured revolving credit agreement contains various covenants including, among others, restrictions on indebtedness, investments, redemption payments, distributions, acquisition of stock, securities

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or assets of any other entity and capital expenditures. However, WestPoint Home is not precluded from effecting any of these, if excess availability, as defined, after giving effect to any such debt issuance, investment, redemption, distribution or other transition or payment restricted by covenant meets a minimum threshold. At June 30, 2007, the excess availability was greater than the minimum threshold.

Capital expenditures by WPI were $21.6 million for the six months ended June 30, 2007 (including $9.8 million for further upgrades to the WPI's manufacturing plant in Bahrain and $7.2 million of non-recurring expenditures related to termination of long-term equipment leases for closed facilities), compared to $3.0 million for the comparable period last year. Capital expenditures for the remainder of 2007 are expected to total approximately $6.5 million, which is primarily dependant upon the requirements of WPI's facility in Bahrain. During the six months ended June 30, 2007, WPI received $13.5 million of net proceeds from sale of assets as compared to $11.7 million in the comparable period last year.

Through a combination of its existing cash on hand and its borrowing availability under the WestPoint Home senior secured revolving credit facility, WPI believes that it has adequate capital resources and liquidity to meet its anticipated requirements to continue its operational restructuring initiatives and for working capital, capital spending and scheduled payments on the notes payable at least through the next twelve months. However, depending upon the levels of additional acquisitions and joint venture investment activity, if any, additional financing, if needed, may not be available to WPI, or if available, the financing may not be on terms favorable to WPI. WPI's estimates of its reasonably anticipated liquidity needs may not be accurate and new business opportunities or other unforeseen events could occur, resulting in the need to raise additional funds from outside sources.

Discontinued Operations

Gaming

ACEP's primary source of cash is from the operation of its properties. At June 30, 2007, ACEP had cash and cash equivalents of $84.0 million. For the six months ended June 30, 2007, net cash provided by operating activities (including the operations of the Aquarius) totaled approximately $43.2 million compared to approximately $36.6 million for the six months ended June 30, 2006. The change in cash provided by operating activities was attributable to the increase in net income from $16.0 million for the six months ended June 30, 2006 to $23.3 millions for the six months ended June 30, 2007, reflecting factors discussed above. In addition to cash from operations, cash is available to ACEP, if necessary, under ACEP's senior secured revolving credit facility entered into by ACEP, as borrower, and certain of its subsidiaries, as guarantors. The revolving credit facility allows for borrowings of up to $60.0 million, including the issuance of letters of credit of up to $10.0 million. Loans made under the revolving credit facility will mature and commitments under them will terminate in May 2010.

ACEP's primary use of cash during the six months ended June 30, 2007 was for operating expenses, to pay interest on its 7.85% senior secured notes due 2012 and interest under its senior secured revolving credit facility. ACEP's capital spending was approximately $15.2 million and $16.6 million for the six months ended June 30, 2007 and 2006, respectively. For fiscal 2007, capital spending to date includes $2.7 million for improvements to the Aquarius. ACEP has estimated its fiscal 2007 capital spending for its existing facilities at approximately $31.1 million, which it anticipates to include approximately $14.9 million to purchase new and convert existing slot machines and approximately $7.0 million for remaining Aquarius hotel renovations. The remainder of ACEP's capital spending estimate for fiscal 2007 will be for upgrades or maintenance to our existing assets.

ACEP believes operating cash flows will be adequate to meet its anticipated requirements for working capital, capital spending and scheduled interest payments on the notes and under the senior secured revolving credit facility, lease payments and other indebtedness at least through the next twelve months. However, additional financing, if needed, may not be available to ACEP, or if available, the financing may not be on terms favorable to it. ACEP's estimates of its reasonably anticipated liquidity needs may not be accurate and new business opportunities or other unforeseen events could occur, resulting in the need to raise additional funds from outside sources.

The indenture governing ACEP's 7.85% senior secured notes due 2012 contains certain covenants that restrict payment of cash dividends, the purchase of equity interests, and the purchase, redemption, defeasance

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or acquisition of debt subordinated to the investments as "restricted payments." The indenture also prohibits the incurrence of debt and issuance of disqualified or preferred stock unless certain ratios as described in the indenture are maintained. The revolving credit facility contains similar restrictive covenants.

On April 22, 2007, AEP, our wholly owned subsidiary, entered into an agreement to sell all of the issued and outstanding membership interests of ACEP, which comprises our remaining gaming operations

Forward-Looking Statements

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

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

Certain Trends and Uncertainties

Our future results could differ materially from our forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to those discussed in this document. These statements are subject to risks and uncertainties that could cause actual results to differ materially from those predicted. Also, please see Risk Factors in Part I, Item 1A in our Annual Report on Form 10-K for fiscal 2006 and in Part II, Item 1A of this Quarterly Report on Form 10-Q.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Market risk is the risk of loss arising from adverse changes in market rates and prices, such as interest rates, foreign currency exchange rates and commodity prices. Our significant market risks are primarily associated with interest rates and equity prices. Reference is made to Part II, Item 7A of our Annual Report on Form 10-K for fiscal 2006 that we filed with the SEC on March 6, 2007 for disclosures relating to interest rates and our equity prices. As of June 30, 2007 there have been no material changes in the market risks in these two categories.

Item 4. Controls and Procedures

As of June 30, 2007, our management, including our Principal Executive Officer and Chief Financial Officer, evaluated the effectiveness of the design and operation of the Company's and our subsidiaries' disclosure controls and procedures pursuant to the Rule 13a-15(e) and 15d-15(e) promulgated under the '34 act. Based upon that evaluation, our Principal Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures are currently effective to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms, and include controls and procedures designed to ensure that information required to be disclosed by us in such reports is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

Changes in Internal Control Over Financial Reporting

There have not been any changes in our internal control over financial reporting during the six months ended June 30, 2007 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

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PART II. OTHER INFORMATION

Item 1. Legal Proceedings

We are from time to time parties to various legal proceedings arising out of our businesses. We believe however, that other than the proceedings described in Part I, Item 3 of our Annual Report on Form 10-K for fiscal 2006, filed with the SEC on March 6, 2007, including that relating to WPI and Lear discussed below, there are no proceedings pending or threatened against us which, if determined adversely, would have a material adverse effect on our business, financial condition, results of operations or liquidity.

WPI Litigation

Federal Proceedings

In November and December 2005, the U.S. District Court for the Southern District of New York rendered a decision in *Contrarian Funds Inc. v. WestPoint Stevens, Inc. et al*., and issued orders reversing certain provisions of the Bankruptcy Court order, or the Sale Order, pursuant to which we acquired our ownership of a majority of the common stock of WPI. WPI acquired substantially all of the assets of WestPoint Stevens, Inc. On April 13, 2006, the Bankruptcy Court entered a remand order, or the Remand Order, which provides, among other things, that all of the shares of common stock and rights to acquire shares of common stock of WPI issued to us and the other first lien lenders or held in escrow pursuant to the Sale Order constituted "replacement collateral", other than 5,250,000 shares of common stock that we acquired for cash. The 5,250,000 shares represent approximately 27% of the 19,498,389 shares of common stock of WPI now outstanding. According to the Remand Order, we would share pro rata with the other first lien lenders in proceeds realized from the disposition of the replacement collateral and, to the extent there is remaining replacement collateral after satisfying first lien lender claims, we would share pro rata with the other second lien lenders in any further proceeds. We were holders of approximately 39.99% of the outstanding first lien debt and approximately 51.21% of the outstanding second lien debt. On April 13, 2006, the Bankruptcy Court also entered an order staying the Remand Order pending appeal. The parties filed cross-appeals of the Remand Order and Contrarian Funds and certain other first lien lenders, or the Contrarian Group, filed a motion to lift the stay of the Remand Order pending appeal. Oral argument was held in the District Court on October 19, 2006.

On May 9, 2007, the District Court issued an order conditioning the continuation of the Bankruptcy Court's stay on the posting of a bond. No bond was posted. On May 22, 2007, WPI, its subsidiary WestPoint Home, Inc., and we filed a Petition for a Writ of Mandamus in the U.S. Court of Appeals for the Second Circuit requesting, among other relief, the reinstatement of the Sale Order. The Second Circuit held oral argument on June 26, 2007 and denied the Petition on June 28, 2007, instructing the District Court to set a new deadline for posting a bond. On July 3, 2007, the District Court issued an order setting July 11, 2007 as the deadline for posting a bond. No bond was posted and The District Court has not ruled on the parties' cross-appeals of the Remand Order.

Delaware Proceedings

On December 18, 2006, the Contrarian Group filed an action in the Court of Chancery of the State of Delaware, New Castle County, *Contrarian Funds, LLC, et al v. WestPoint International Inc., et al*., seeking, among other things, a temporary order restraining WPI from proceeding with a stockholders' meeting scheduled for December 20, 2006, which was to consider corporate actions relating to a proposed offering of $200 million of preferred stock of WPI and related relief. The application was denied by order dated December 19, 2006. The stockholders' meeting took place on December 20, 2006, the preferred stock offering was approved, and other corporate actions were taken. We purchased all of the $200.0 million of preferred stock.

On January 19, 2007, Beal Bank and the Contrarian Group filed an Amended Complaint, captioned *Beal Bank, S.S.B., et al. v. WestPoint International, Inc., et al*. Plaintiffs seek, among other relief, an order declaring that WPI is obliged to register the common stock (other than the 5,250,000 shares purchased by us) in Beal Bank's name, an order declaring certain corporate governance changes implemented in 2005 invalid, an order declaring invalid the actions taken at the December 20, 2006 stockholders' meeting and an order to "unwind" the issuance of the preferred stock, or, alternatively, directing that such preferred stock be held in trust. On

July 18, 2007, Plaintiffs filed a motion for leave to file a Second Amended Complaint asserting additional causes of action. The parties are in the initial stages of discovery. The Delaware action remains pending and we intend to vigorously defend against such claims.

We currently own approximately 67.7% of the outstanding shares of common stock and 100% of the preferred stock of WPI. As a result of the District Court's November, 2005 order in the Bankruptcy case, the proceedings on remand, and the proceedings in the Delaware action, our percentage of the outstanding shares of common stock of WPI could be reduced to less than 50% and perhaps substantially less and our ownership of the preferred stock of WPI could also be affected. If we were to lose control of WPI, it could adversely affect the business and prospects of WPI and the value of our investment in it. In addition, we consolidated the balance sheet of WPI as of June 30, 2007 and WPI's results of operations for the period from the date of acquisition through June 30, 2007. If we were to own less than 50% of the outstanding common stock or the challenge to our preferred stock ownership is successful, we would have to evaluate whether we should consolidate WPI and if so our financial statements could be materially different than as presented as of June 30, 2007, March 31, 2007, December 31, 2006 and December 31, 2005 and for the periods then ended.

We intend to vigorously defend against all claims asserted in these actions and believe that we have valid defenses. However, we cannot predict the outcome of these proceedings or the ultimate impact on our investment in WPI or the business prospects of WPI.

Lear Corporation

On February 9, 2007, we, through a wholly owned subsidiary, entered into an agreement and plan of merger, or the merger agreement, pursuant to which we would acquire Lear Corporation, or Lear, a publicly traded company that provides automotive interior systems worldwide, for an aggregate consideration of approximately $5.2 billion, including the assumption by the surviving entity of certain outstanding indebtedness of Lear and refinancing of Lear's existing term loan and credit facility. The consummation of the transaction was subject to a shareholder vote.

On July 16, 2007, at Lear's 2007 Annual Meeting of Stockholders the merger did not receive the affirmative vote of the holders of a majority of the outstanding shares of Lear's common stock. As a result, the merger agreement terminated in accordance with its terms. As required by the merger agreement, in connection with the termination, Lear (i) paid to our subsidiary $12.5 million, (ii) issued to the subsidiary 335,570 shares of Lear's common stock and (iii) increased from 24% to 27% the share ownership limitation under the limited waiver of Section 203 of the Delaware General Corporation Law granted by Lear to us and affiliates of and funds managed by Carl C. Icahn. In addition, if (1) Lear stockholders enter into a definitive agreement with respect to an Acquisition Proposal, as defined in the merger agreement, within 12 months after the termination of the merger agreement and such transaction is completed and (2) such Acquisition Proposal has received approval, if required by applicable Law, by the affirmative vote or consent of the holders of a majority of the outstanding shares of Lear common stock within such 12 month period, Lear will be required to pay to our subsidiary an amount in cash equal to the Superior Fee, as defined in the merger agreement, less $12.5 million.

In connection with the termination of the Merger Agreement, the commitment letter, dated as of February 9, 2007, or the Commitment Letter, by and among our subsidiary, Bank of America, N.A. and Banc of America Securities LLC, also terminated pursuant to its terms. The Commitment Letter provided for certain credit facilities intended to refinance and replace Lear's existing credit facilities and to fund the transactions contemplated by the merger agreement.

We were named as a defendant in various actions filed in connection with the merger agreement. Since the merger did not receive approval from Lear's shareholders and the merger agreement has terminated, the consolidated action filed in Michigan and the complaint filed in the United States District Court for the Eastern District of Michigan, have each been dismissed. Our motion to dismiss the consolidated action filed in the Court of Chancery of the State of Delaware is pending. We intend to vigorously defend the Delaware action but we cannot predict the outcome of the motion.

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Item 1A. Risk Factors

The risk factors included in our Annual Report on Form 10-K for fiscal 2006, filed with the SEC on March 6, 2007, have not materially changed, except as disclosed below.

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 preferred units and approximately 90% of our depositary units, and, as a result, has the ability to influence many aspects of our operations and affairs, including the timing and amount of any distribution to unitholders. API also is the general partner of AREH.

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 unitholder 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.

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 certain of our notes which would require us to offer to repurchase all such outstanding notes at 101% of their principal amount plus accrued and unpaid interest and liquidated damages, if any, to the date of repurchase. In the case of the variable rate senior convertible notes due 2013, or the variable rate senior convertible notes, we also would be obligated to make a "make whole" payment in the form of additional depositary units to any holder of convertible notes who converts such notes following a change of control. However, it is possible that we will not have sufficient funds at the time of such change of control to make the required repurchase of such notes.

We have engaged, and in the future may engage, in transactions with our affiliates.

We have invested and may in the future invest in entities in which Mr. Icahn also invests. We also have purchased and may in the future purchase entities or 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 industries in which we compete and there is no requirement that any additional business opportunities be presented to us.

Mr. Icahn previously proposed that we acquire his interest in American Railcar, Inc., or American Railcar, and Philip Services Corporation, or Philip Services. American Railcar is a publicly traded company that is primarily engaged in the business of manufacturing covered hoppers and tank railcars. Philip Services is an industrial services company that provides industrial outsourcing, environmental services and metal services to major industry sectors throughout North America. A committee of independent directors of the board was formed to consider those proposals. Currently, at Mr. Icahn's request, only the proposal regarding the potential acquisition of the metal services business of Philip Services is being considered by the committee. Any acquisition would be subject to, among other things, the negotiation, execution and closing of a definitive agreement and the receipt of a fairness opinion.

We continuously identify, evaluate and engage in discussions concerning potential investments and acquisitions, including potential investments in and acquisitions of affiliates of Mr. Icahn. There cannot be any assurance that any potential transactions that we consider will be completed.

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 8.125% senior notes due 2012, our 7.125% senior notes due 2013 and our variable rate senior convertible notes do not prohibit us or our subsidiaries from doing so. We and AREH may incur additional indebtedness if we comply with certain financial tests contained in the indentures that govern these notes. As of June 30, 2007, based on these tests, we and AREH could have incurred up to approximately $1.2 billion of additional indebtedness. However, our subsidiaries, other than AREH, are not subject to any of the covenants contained in the indentures with respect to our senior notes, including the covenant 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.

We have only recently made cash distributions to our unitholders and to holders of our variable rate convertible notes, and future distributions, if any, can be affected by numerous factors.

While we made cash distributions with respect to each of the four quarters of 2006 in the amount of $0.10 per depositary unit and the first quarter of 2007 in the amount of $0.15 per depositary unit and a $0.05 distribution to holders of our variable rate convertible notes starting in the second quarter of fiscal 2007 as set forth in the indenture agreement, the payment of future distributions will be determined by the board of directors of our general partner quarterly, based on a review of a number of factors, including those described below and other factors that it deems relevant at the time that declaration of a distribution is considered. Our ability to pay distributions will depend on numerous factors, including the availability of adequate cash flow from operations; the proceeds, if any, from divestitures; our capital requirements and other obligations; restrictions contained in our financing arrangements; 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 our control, including prevailing economic and industry conditions and financial, business and similar factors. No assurance can be given that we 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.

We may become taxable as a corporation.

We believe that we have been and are properly treated as a partnership for federal income tax purposes. This allows us to pass through our income and deductions to our partners. 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, oil and gas revenues, 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 a federal rate of up to 35% plus possible state taxes. 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, it is likely that we would be treated as a corporation for U.S. federal income tax purposes. The cost of paying federal and possibly state income tax, either for past years or going forward, could be a significant liability and would reduce our funds available to make distributions to holders of units, and to make interest and principal payments on our debt securities. To meet the qualifying income test, we may structure transactions in a manner that is less advantageous than if this were not a consideration, or we may avoid otherwise economically desirable transactions. Recently proposed legislation may affect the status of publicly traded partnerships such as AREP. Although as proposed the legislation would not impact AREP's status as a partnership for tax purposes, it is unclear whether such legislation would be enacted or, if enacted, what its final form and effect would be.

Our sale of ACEP may not be successfully completed.

On April 22, 2007, AEP entered into a Membership Interest Purchase Agreement with Whitehall Street Real Estate Funds to sell all of the issued and outstanding membership interests of ACEP, which comprises our gaming operations. The transaction is subject to the approval of the Nevada Gaming Commission and the Nevada State Gaming Control Board, as well as customary conditions. The parties expect to close the transaction in approximately December 2007; however, we cannot assure you that we will be able to consummate the transaction.

We cannot guarantee that we will be able to recover our investment made in connection with the acquisition of the Aquarius.

On May 19, 2006, our wholly owned subsidiary, AREP Laughlin Corporation, acquired the Aquarius Casino Resort, or the

Aquarius, from affiliates of Harrah's Operating Company, Inc., or Harrah's, for approximately $113.6 million, including working capital. Acquisitions generally involve significant risks, including difficulties in the assimilation of the operations, services and corporate culture of the acquired company.

Pursuant to the Membership Interest Purchase Agreement that AEP has entered into with Whitehall Street Real Estate Funds to sell the issued and outstanding membership interests of ACEP, we have agreed to make capital expenditures, including $10.5 million through 2007 to refurbish rooms, upgrade amenities and acquire new gaming equipment for the Aquarius.

There can be no assurance that this acquisition will be profitable or that we will be able to recover our investments either upon the sale of ACEP or, if the sale is not consummated, in our future gaming operations.

Pending legal proceedings may result in our ownership of WPI's common stock being reduced to less than 50%. A legal action in Delaware challenges the issuance to us of the preferred stock of WPI. Uncertainties arising from these proceedings may adversely affect WPI's operations and prospects and the value of our investment in it.

We currently own approximately 67.7% of the outstanding shares of common stock and 100% of the preferred stock of WPI. As a result of the decision of the U.S. District Court for the Southern District of New York, or the District Court, reversing certain provisions of the Bankruptcy Court order pursuant to which we acquired our ownership of a majority of the common stock of WPI, the proceedings in the Bankruptcy Court on remand and the proceedings in the Delaware action, our percentage of the outstanding shares of common stock of WPI could be reduced to less than 50% and perhaps substantially less and our ownership of the preferred stock of WPI could also be affected.

Recent decisions resulted in the lifting of the stay of the remand order issued by the Bankruptcy Court. In addition, discovery has begun in the Delaware proceedings and the plaintiffs have filed a motion in Delaware for leave to file a Second Amended Complaint asserting additional causes of action.

If we were to lose control of WPI, it could adversely affect the business and prospects of WPI and the value of our investment in it. In addition, we consolidated the balance sheet of WPI as of June 30, 2007 and WPI's results of operations for the period from the date of acquisition through June 30, 2007. If we were to own less than 50% of the outstanding common stock or the challenge to our preferred stock ownership is successful, we would have to evaluate whether we should consolidate WPI and if so our financial statements could be materially different than as presented as of June 30, 2007, March 31, 2007, December 31, 2006 and December 31, 2005 and for the periods then ended. See Part II, Item 1. Legal Proceedings.

Item 5. Other Information

On August 8, 2007, we entered into a Contribution and Exchange Agreement (the "Contribution Agreement"), among us, CCI Offshore Corp. ("CCI Offshore"), CCI Onshore Corp. ("CCI Onshore"), Icahn Management LP ("Icahn Management" and, together with CCI Offshore and CCI Onshore, the "Contributors") and Carl C. Icahn, pursuant to which, as more fully described below, we simultaneously acquired the general partnership interests in the general partners of the private investment funds (which are referred to herein as the "Master Funds") controlled by Mr. Icahn and in the management company that provides certain management and administrative services to the Master Funds and certain funds that invest in the Master Funds (the "Feeder Funds"). Mr. Icahn controlled the Contributors.

New Icahn Management and the General Partners (as such terms are defined below) of the Master Funds (collectively, the "Management Entities") provide investment advisory and certain other management services to the Master Funds and the Feeder Funds (collectively, the "Funds"). The Management Entities do not provide investment advisory or other management services to any other entities, individuals or accounts, and interests in the Funds are offered only to certain sophisticated and accredited investors on the basis of exemptions from the registration requirements of the federal securities laws and are not publicly available. The Management Entities generate income from amounts earned pursuant to contractual arrangements with the Funds. Such amounts typically include an annual management fee of 2.5% of assets under management and

performance-based, or incentive, allocation of 25% of net realized and unrealized gains earned by the Funds subject to a "high water mark", although such amounts have been (and may in the future be) modified or waived in certain circumstances. The Management Entities and their affiliates may also earn income through their principal investments in the Funds.

As of June 30, 2007, the Management Entities had approximately $7 billion of committed funds (including $1.8 billion from Mr. Icahn and affiliated entities on which no management fees or incentive allocations are applicable). For the 12-months ended June 30, 2007, there was an average of approximately $3.5 billion in third-party fee paying assets under management, which generated approximately $80 million of management fees and approximately $240 million in incentive allocations (a portion of which is accrued but not earned until the end of the year) for a total of approximately $320 million in fees. Today, there is approximately $5 billion of third-party fee paying assets under management. Mr. Icahn formed the Management Entities in November 2004 when certain of the Funds commenced investment operations with approximately $1 billion under management, of which $300 million was provided by Mr. Icahn and his affiliated entities. The investment strategy employed by the Management Entities for the Funds is set and led by Mr. Icahn. The Funds pursue a value-oriented activist investment philosophy. The Funds invest across a variety of industries and types of securities, including long and short equities, long and short bonds, bank debt and other corporate obligations, risk arbitrage and capital structure arbitrage and other special situations. The Funds invest a material portion of their capital in publicly traded equity and debt securities of companies that the Management Entities believe to be undervalued by the marketplace. The Funds sometimes take significant positions in the companies in which they

invest.

We presently intend to purchase approximately $700 million of limited partnership interests in the Funds on which no management fees or incentive allocations would be applicable.

As consideration for the contribution to us of the Partnership Interests (as defined below), we delivered to the Contributors 8,632,679 AREP Units at the closing, representing $810 million of AREP Units based on the volume-weighted average price of the AREP Units on the NYSE for the 20-trading-day period ending on August 7, 2008 (the day before the closing). In addition, we have agreed to make certain contingent earn-out payments to the Contributors over a five-year period payable in additional AREP Units based on our after-tax earnings from the Fund management business we acquired, which includes both management fees and performance-based (incentive) allocations paid by the Funds to the Management Entities. The earn-out payments will be calculated as set forth in the Contribution Agreement, with the maximum earn-out payment equaling $120 million in 2007 (if such after tax earnings exceed $289 million, with after tax earnings for 2007 including the 2.5% annual management fee for only the fourth quarter of 2007), $165 million for 2008 (if such after tax earnings exceed $540 million), $223 million for 2009 (if such after tax earnings exceed $746 million), $279 million for 2010 (if such after tax earnings exceed $1.004 billion) and $334 million for 2011 (if such after tax earnings exceed $1.327 billion). There is a catch-up after 2011, based on total after tax earnings in the five-year earn-out period, with a maximum aggregate earn-out (including any catch-up) of $1.121 billion which is subject to achieving total after tax earnings in such period of at least $3.906 billion.

Simultaneously with the closing of the transactions contemplated by the Contribution Agreement, we and Mr. Icahn entered into a non-compete agreement pursuant to which Mr. Icahn agreed, for a period of ten years, not to engage, directly or indirectly, in any other business that generates at least 25% of its revenue or income from investment management activities (a “Competing Business”). Mr. Icahn also agreed, for a period of ten years, not to solicit on behalf of a Competing Business any investor in any of the Funds or any employee of any general partner or manager of any of the Funds.

We have also entered into an employment agreement (the “Icahn Employment Agreement”) with Mr. Icahn pursuant to which, over a five-year term, Mr. Icahn will serve as our Chairman and as Chairman and Chief Executive Officer of Icahn Capital Management LP, a Delaware limited partnership (“New Icahn Management”). Mr. Icahn also serves as the Chief Executive Officer of the General Partners. During the employment term, Mr. Icahn has agreed to devote his substantial time and efforts to overseeing our strategic and business affairs and the asset management operations of New Icahn Management, subject in each case to his ability to continue to engage in certain permitted outside activities relating to his ongoing investment and business endeavors. During his period of employment, and for a period of two years following a termination

of employment upon his resignation (other than for “Good Reason,” as such term is defined in the Icahn Employment Agreement), or a termination upon expiration of the employment term (or subsequent termination of employment if he remains employed following the expiration of the term), Mr. Icahn will be subject to non-competition restrictions that will prohibit him from engaging in business activities that generate in excess of 25% of their revenue or income from investment management activities and additional restrictions that will prohibit him from soliciting investors in funds under our management or soliciting or hiring investment professionals or executives of ours or New Icahn Management. In the event Mr. Icahn is terminated during the term by us without “Cause” or he resigns for “Good Reason” (other than in connection with a change in control) the period of non-competition will be one year following such termination. Mr. Icahn will not be subject to any such post-termination restrictions if his employment is terminated as a result of his death or disability or the termination by him for “Good Reason” or by us without “Cause,” in each case in connection with a change in control.

During the employment term, we will pay Mr. Icahn an annual base salary of $900,000 and an annual incentive bonus based on a bonus formula with two components. The first component is based on the annual return on assets under management by the Management Entities as follows: the amount of this bonus component is determined by applying a percentage payout rate (ranging from 0.30% to 1.10%, depending on the aggregate annual percentage returns realized for the year in question) to the annual realized and unrealized net profits (prior to reduction for management fees or incentive allocations) of managed funds on all fee-paying assets under management, provided that in calculating the annual return on all fee-paying assets and the appropriate percentage payout rate, the annual profits in any year shall be reduced to reflect previously incurred losses that have not already been offset against annual returns.

The second component of the annual bonus payable by us is tied to the growth in our annual net income (other than income or losses resulting from the operations of the Management Entities) (“Covered Net Income”) as compared to a fixed annual base amount of $400 million (pro-rated for 2007) (the “Base Amount”) as follows: no portion of this annual bonus shall be payable unless Covered Net Income for the bonus year under consideration equals or exceeds the Base Amount, in which case the annual bonus shall consist of an increasing percentage of the amount by which Covered Net Income exceeds the Base Amount (ranging generally from 8% to 20%). In determining Covered Net Income, certain adjustments are provided for, including the exclusion of expenses relating to bonus determination under the Icahn Employment Agreement and expenses relating to the acquisition described above. Further, in determining this bonus component, net losses (if any) from the prior calendar years are carried forward and applied to reduce the payout amount through the application of an adjustment factor, determined as follows: Covered Net Income for the bonus year in question will be multiplied by a fraction (no less than zero) where (x) the numerator is equal to current year Covered Net Income minus any carried forward net loss, and (y) the denominator is equal to the current year Covered Net Income.

Fifty percent of all bonus amounts payable by us and New Icahn Management shall be subject to mandatory deferral and

treated as though invested in the funds and as though subject to a 2% annual management fee (but no incentive allocation). Such deferred amounts shall be subject to vesting in equal annual installments over a three-year period commencing from the last day of the year giving rise to the bonus. Amounts deferred generally are not subject to acceleration and unvested deferred amounts shall be forfeited if Mr. Icahn ceases to be employed under his employment agreement, provided that all deferred amounts shall vest in full and be payable in a lump sum payment thereafter if either the employment of Mr. Icahn is terminated by us without “Cause,” Mr. Icahn terminates his employment for “Good Reason” or upon Mr. Icahn’s death or disability during the employment term. In addition, upon Mr. Icahn’s completion of service through the end of the employment term, Mr. Icahn will also vest in full in any mandatory deferrals. Vested deferred amounts (and all deferred returns, earnings and profits thereon) shall be paid to Mr. Icahn within sixty (60) days following the vesting date. Returns on amounts subject to deferral shall be subject to management fees charged by New Icahn Management, but not any incentive fees.

In the event that Mr. Icahn is terminated by us without “Cause” or he terminates his employment for “Good Reason,” he shall be entitled to a lump sum payment equal to one year of base salary, the average aggregate annual bonus paid to him by us during the three most recently completed years (or the average annualized bonus paid to him for any shorter period during which he has been employed) and a pro rata

Annual Bonus for the year of termination. If, within twelve (12) months following the occurrence of a change in control of us, Mr. Icahn is terminated by us without “Cause” or he resigns for “Good Reason” (which is limited to defined events relating to a material adverse change in his position and responsibilities, our material breach of the Icahn Employment Agreement or the relocation of his principal place of work), Mr. Icahn shall be entitled to a payment equal to two times his base salary and two times the Average Bonus and a pro-rata Annual Bonus for the year of termination. If Mr. Icahn is terminated as a result of his death or disability, he (or his estate, if applicable) shall receive a lump sum payment equal to the remaining base salary payable through December 31 of the year of termination, any unpaid bonus relating to prior years and one-half of the pro rata Annual Bonus for the year of termination (based on actual results through the date of termination annualized for the year of termination). If Mr. Icahn resigns without “Good Reason,” he shall be entitled to certain accrued benefits, one-half of any unpaid bonus relating to prior years and one-half of the pro-rata Annual Bonus (as determined in the case of death or disability). All such payments shall be conditioned on Mr. Icahn (or his estate, if applicable) signing a general release in favor of us and our affiliates.

If at any time between the effective date of the Icahn Employment Agreement and the fifth anniversary of such date Mr. Icahn ceases to serve as Chairman and Chief Executive Officer of New Icahn Management and as the individual primarily responsible for the management of the Funds’ investment portfolios for any reason, Mr. Icahn (directly or through his affiliates other than AREP) will be required to maintain investments in one or more of the Funds for a defined commitment period (the later of the fifth (5th) anniversary of the effective date of the Icahn Employment Agreement or the third anniversary of his cessation of management responsibility for the Funds) an aggregate amount equal to not less than $1 billion (along with any amounts earned thereon) (the “Committed Funds”), except that he shall not have any obligation regarding the Committed Funds if his employment has been terminated without “Cause” by the affirmative vote of a majority of the Board including a majority of the independent directors. During such period of time, the Committed Funds will be subject to a management fee of 2% and an incentive allocation of 20%. If at any time during this commitment period the value of the Committed Funds falls below $1 billion, the management fee and incentive allocation assessed against the Committed Funds will be equal to the fees applicable if the value of the Committed Funds were $1 billion.

During the employment term, Mr. Icahn shall also be entitled to participate in our benefit programs and receive the level of perquisites generally made available to our senior executives.

The Contribution Agreement and the transactions contemplated thereby and the Icahn Employment Agreement were approved by the Special Committee of the independent directors of our general partner, and by the full board of directors. The Special Committee was represented by Debevoise & Plimpton LLP as its independent counsel. In addition, Sandler O’Neill & Partners, L.P. was retained by the Special Committee as its financial adviser. The Special Committee also retained Johnson & Associates, Inc. and BDO Seidman, LLP to advise on the terms of Mr. Icahn’s employment agreement.

CCI Offshore is the general partner of Icahn Offshore LP, a Delaware limited partnership (“Offshore GP”), which, in turn, is the general partner of each of Icahn Partners Master Fund LP, a Cayman Islands exempted limited partnership (“Offshore Master Fund I”), Icahn Partners Master Fund II L.P., a Cayman Islands exempted limited partnership (“Master Fund II”), and Icahn Partners Master Fund III L.P., a Cayman Islands exempted limited partnership (“Master Fund III” and, collectively with Offshore Master Fund I and Master Fund II, the “Offshore Master Funds”).

CCI Onshore is the general partner of Icahn Onshore LP, a Delaware limited partnership (“Onshore GP” and together with Offshore GP, the “General Partners”), which, in turn, is the general partner of Icahn Partners LP, a Delaware limited partnership (“Onshore Master Fund” and, collectively with the Offshore Master Funds, the “Master Funds”).

CCI Offshore contributed to us 100% of CCI Offshore’s general partnership interests in Offshore GP (the “Offshore Partnership Interests”) and CCI Onshore contributed to us 100% of CCI Onshore’s general partnership interests in Onshore GP (the “Onshore Partnership Interests”). The General Partners’ capital account with respect to the Offshore Partnership Interests and the Onshore Partnership Interests at the time of our acquisition aggregated $10 million.

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Immediately prior to the execution and delivery of the Contribution Agreement, Icahn Management and New Icahn Management entered into an agreement pursuant to which Icahn Management contributed substantially all of its assets and liabilities, other than certain rights in respect of deferred management fees, to New Icahn Management in exchange for 100% of the general partnership interests in New Icahn Management. Such contribution included the assignment of the Management Agreements with the Funds. Pursuant to the Contribution Agreement, Icahn Management contributed to us 100% of Icahn Management's general partnership interests in New Icahn Management (the "New Icahn Management Partnership Interests" and collectively with the Onshore Partnership Interests and the Offshore Partnership Interests, the "Partnership Interests").

We and the Funds also entered into an agreement (the "Covered Affiliate Agreement"), simultaneously with the closing of the transactions contemplated by the Contribution Agreement, pursuant to which we (and certain of our subsidiaries) agreed, in general, to be bound by certain restrictions on our investments in any assets that the Offshore GP and the Onshore GP deem suitable for the Funds, other than government and agency bonds, cash equivalents and investments in non-public companies. We and our subsidiaries will not be restricted from making investments in the securities of certain companies in which Mr. Icahn or companies he controlled had an interest in as of the date the initial Funds launched, and companies in which we currently have an interest. We and our subsidiaries, either alone or acting together with a group, will not be restricted from (i) acquiring all or any portion of the assets of any public company in or in connection with a negotiated transaction or series of related negotiated transactions or (ii) engaging in a negotiated merger transaction with a public company and, pursuant thereto, conducting and completing a tender offer for securities of the company. The terms of the Covered Affiliate Agreement may be amended, modified or waived with the consent of AREP and each of the Funds, provided, however, that a majority of the members of an investor committee maintained for certain of the Funds (which includes the three largest investors of certain of the Funds not affiliated with Mr. Icahn and who wish to serve as members) may (with AREP's consent) amend, modify or waive any provision of the Covered Affiliate Agreement with respect to any particular transaction or series of related transactions.

Item 6. Exhibits

The list of exhibits required by Item 601 of Regulation S-K and filed as part of this report is set forth in the Exhibit Index.

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SIGNATURES

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

AMERICAN REAL ESTATE PARTNERS, L.P.

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

By: /s/ KEITH MEISTER
Keith Meister
Principal Executive Officer

Date: August 9, 2007

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EXHIBITS INDEX

Exhibit No.	Description
Exhibit 10.1	Contribution and Exchange Agreement by and among American Real Estate Partners, L.P., CCI Offshore Corp., CCI Onshore Corp., Icahn Management LP and Carl C. Icahn
Exhibit 10.2	Employment Agreement by and among American Real Estate Partners, L.P., Icahn Capital Management LP and Carl C. Icahn
Exhibit 10.3	Non-Competition Agreement by and between American Real Estate Partners, L.P. and Carl C. Icahn

Exhibit 10.4	Covered Affiliate and Shared Expenses Agreement by and among American Real Estate Partners, L.P., Icahn Partners LP, Icahn Fund Ltd., Icahn Fund II Ltd., Icahn Fund III Ltd., Icahn Partners Master Fund L.P., Icahn Partners Master Fund II L.P., Icahn Partners Master Fund III L.P., Icahn Cayman Partners, L.P. and Icahn Partners Master Fund II Feeder LP
Exhibit 10.5	Amendment No. 1 to the Registration Rights Agreement, dated as of June 30, 2005, by and among American Real Estate Partners, L.P. and the Holders (as defined therein)
Exhibit 31.1	Certification of Principal Executive Officer pursuant to Section 302(a) of the Sarbanes-Oxley Act of 2002.
Exhibit 31.2	Certification of Principal Financial Officer pursuant to Section 302(a) of the Sarbanes-Oxley Act of 2002.
Exhibit 32.1	Certification of Principal Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
Exhibit 32.2	Certification of Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

CONTRIBUTION AND EXCHANGE AGREEMENT

dated as of August 8, 2007

by and among

American Real Estate Partners, L.P.,
CCI Offshore Corp.,
CCI Onshore Corp.,
Icahn Management LP
and
Carl C. Icahn

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Schedule 7.2 - Employees - Certain Arrangements

CONTRIBUTION AND EXCHANGE AGREEMENT

This CONTRIBUTION AND EXCHANGE AGREEMENT ("Agreement") is made as of this 8th day of August, 2007 by and among CCI Offshore Corp., a Delaware corporation ("CCI Offshore"), CCI Onshore Corp., a Delaware corporation ("CCI Onshore"), Icahn Management LP, a Delaware limited partnership ("Icahn Management" and together with CCI Onshore and CCI Offshore, the "Contributors"), Carl C. Icahn, an individual ("Icahn"), and American Real Estate Partners, L.P., a Delaware limited partnership (the "Issuer"). Capitalized terms used and not otherwise defined herein shall have the meanings set forth in Article IX.

WHEREAS, CCI Offshore is the general partner of Icahn Offshore LP, a Delaware limited partnership ("Offshore GP"), which is the general partner of each of Icahn Partners Master Fund LP, a Cayman Islands limited partnership ("Offshore Master Fund I"), Icahn Partners Master Fund II L.P., a Cayman Islands limited partnership ("Master Fund II"), and Icahn Partners Master Fund III L.P., a Cayman Islands limited partnership ("Master Fund III" and, collectively with Offshore Master Fund I and Master Fund II, the "Offshore Master Funds");

WHEREAS, CCI Onshore is the general partner of Icahn Onshore LP, a Delaware limited partnership ("Onshore GP"), which is the general partner of Icahn Partners LP, a Delaware limited partnership ("Onshore Master Fund I" and, collectively with the Offshore Master Funds, the "Master Funds");

WHEREAS, CCI Offshore desires to contribute to Icahn Partners Holding LP, a Delaware limited partnership ("Icahn Partners Holding"), the sole limited partnership interest in which is owned by the Issuer and the general partnership interest in which is owned by IPH GP LLC, and the Issuer, IPH GP LLC and Icahn Partners Holding desire Icahn Partners Holding to receive, 100% of CCI Offshore's general partnership interests in Offshore GP (the "Offshore Partnership Interests") on the terms and subject to the conditions of this Agreement;

WHEREAS, CCI Onshore desires to contribute to Icahn Partners Holding, and the Issuer, IPH GP LLC and Icahn Partners Holding desire Icahn Partners Holding to receive, 100% of CCI Onshore's general partnership interests in Onshore GP (the "Onshore Partnership Interests") on the terms and subject to the conditions of this Agreement;

WHEREAS, immediately prior to the execution and delivery of this Agreement by the parties hereto, CCI Offshore contributed 100% of its general partnership interests in Icahn Partners Master Fund II Feeder, LP, a Delaware limited partnership, to Offshore GP and 100% of its shares of capital stock of CCI Administrative GP, a Cayman Islands exempted corporation ("CCI Administrative"), to Offshore GP;

WHEREAS, immediately prior to the execution and delivery of this Agreement by the parties hereto, Icahn Management and Icahn Capital Management LP, a Delaware limited partnership ("Icahn Capital Management"), entered into that certain Management Contribution, Assignment and Assumption Agreement, dated as of the date hereof (the "Management Contribution Agreement"), pursuant to which Icahn Management contributed substantially all of its assets and liabilities, other than certain rights in respect of deferred fees, to Icahn Capital Management in exchange for 100% of the general partnership interests in Icahn Capital Management;

WHEREAS, Icahn Management has provided, and from and after the consummation of the transactions contemplated by this Agreement, Icahn Capital Management will provide, certain management and administrative services to certain of the Funds, in exchange for a management fee;

WHEREAS, Icahn Management desires to contribute to Icahn Partners Holding, and the Issuer, IPH GP LLC and Icahn Partners Holding desire Icahn Partners Holding to receive, 100% of Icahn Management's general partnership interests in Icahn Capital Management (the "Icahn Capital Management Partnership Interests" and collectively with the Onshore Partnership Interests and the Offshore Partnership Interests, the "Partnership Interests") on the terms and subject to the conditions of this Agreement;

WHEREAS, American Property Investors, Inc., a Delaware corporation ("API"), currently holds a 1% general partnership interest in each of the Issuer and American Real Estate Holdings Limited Partnership, a Delaware limited partnership ("AREH"); and

WHEREAS, in connection with the transactions contemplated hereby, API shall make a capital contribution to each of the Issuer and AREH in order to maintain such 1% general partnership interest;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

EXCHANGE AND CONTRIBUTION OF PARTNERSHIP INTERESTS

1.1 Exchange and Contribution of Partnership Interests. On the terms and subject to the conditions of this Agreement, at the Closing, the Contributors shall contribute, assign, transfer, convey and deliver to Icahn Partners Holding the Partnership Interests, in each case, free and clear of all Encumbrances.

1.2 Consideration. The aggregate consideration (the "Aggregate Consideration") to be contributed, assigned, transferred, conveyed and delivered to the Contributors in exchange for the contribution of the Partnership Interests shall equal (a) 8,632,679 AREP Units (the "Closing Date Consideration") to be delivered to the Contributors at the Closing, plus (b) the amount of AREP Units, if any, that may become deliverable after the Closing, to be determined pursuant to and upon the terms and subject to the conditions of Section 1.3 below (the "Earn-out Consideration"). The Aggregate Consideration shall be allocated among the Contributors as set forth in Schedule 1.2.

1.3 Earn-out.

(a) After-Tax Earnings Statement.

(i) No later than 15 days after completion of the audited financial statements of the Issuer for each Fiscal Year during the Earn-out Period, the Issuer shall, or shall cause its accountants to, prepare and deliver to the Contributors a statement setting forth the After-Tax Earnings for such Fiscal Year (the "After-Tax Earnings Statement"), together with supporting documentation containing reasonable detail of the calculation thereof.

(ii) The Contributors shall have 20 days from the date of the Contributors' receipt of the After-Tax Earnings Statement to notify the Issuer of any good faith dispute with respect to any item contained in the After-Tax Earnings Statement, which notice shall set forth in reasonable detail the basis for such dispute. In the event that the Contributors shall so notify the Issuer of any such dispute on or before the last day of such 20 day period, the Contributors and the Issuer and their respective accountants shall cooperate in good faith to resolve such dispute as promptly as possible. If the Contributors fail to notify the Issuer of any such good faith dispute on or before the last day of such 20 day period, the After-Tax Earnings Statement for that Fiscal Year shall be deemed to be final and shall be binding on the parties (the "Final After-Tax Earnings Statement"). If the Contributors and the Issuer fail to reach an agreement with respect to any matters relating to the After-Tax Earnings Statement with respect to which the Contributors have duly notified the Issuer of a dispute within 45 days from the date on which the Contributors provide written notice of such dispute, then all disagreements shall be resolved by the Independent Auditor. The costs of the Independent Auditor shall be borne by the party whose aggregate estimate of the disputed amount or amounts, as the case may be, differs most greatly from the final determination of the Independent Auditor.

(iii) The Independent Auditor shall, acting as an expert and not as an arbitrator, determine on the basis of GAAP (and the exceptions to GAAP set forth in the definition of "After-Tax Earnings" below, including, without limitation, the exclusion from expenses allocable to Hedge Fund Earnings of base salary and other compensation payable to Icahn) and only with respect to the differences so submitted by the Issuer and the Contributors, whether and to what extent the After-Tax Earnings Statement requires adjustment. The Issuer and the Contributors shall use commercially reasonable efforts to cause the Independent Auditor to make a final determination of the adjustments to the After-Tax Earnings Statement within 60 days from the date of its receipt of the information relating to the disagreements between the parties.

(iv) The After-Tax Earnings Statement, as modified by resolution of any disputes by the Issuer and the Contributors or by the determination of the Independent Auditor, shall be the Final After-Tax Earnings Statement, absent manifest error.

(b) Earn-out Calculation. The Earn-out Amounts shall be calculated as follows:

(i) The Earn-out Amount payable in respect of the 2007 After-Tax Earnings (the "2007 Earn-out Amount") shall be determined as follows: if 2007 After-Tax Earnings are (A) less than $170 Million, then the 2007 Earn-out Amount shall be zero; (B) equal to or greater than $170 Million, but less than $200 Million, then the 2007 Earn-out Amount shall be $24 Million; (C) equal to or greater than $200 Million, but less than $229 Million, then the 2007 Earn-out Amount shall be $92 Million; (D) equal to or greater than $229 Million, but less than $259 Million, then the 2007 Earn-out Amount shall be $110 Million; (E) equal to or greater than $259 Million, but less than $289 Million, then the 2007 Earn-out Amount shall be $115 Million and (F) $289 Million or greater, then the 2007 Earn-out Amount shall be $120 Million. For the avoidance of doubt, in no event shall the 2007 Earn-out Amount exceed $120 Million.

(ii) The Earn-out Amount payable in respect of the 2008 After-Tax Earnings (the "2008 Earn-out Amount") shall be determined as follows: if 2008 After-Tax Earnings are (A) less than $206 Million, then the 2008 Earn-out Amount shall be zero; (B) equal to or greater than $206 Million, but less than $281 Million, then the 2008 Earn-out Amount shall be $30 Million; (C) equal to or greater than $281 Million, but less than $362 Million, then the 2008 Earn-out Amount shall be $131 Million; (D) equal to or greater than $362 Million, but less than $448 Million, then the 2008 Earn-out Amount shall be $155 Million; (E) equal to or greater than $448 Million, but less than $540 Million, then the 2008 Earn-out Amount shall be $160 Million and (F) $540 Million or greater, then the 2008 Earn-out Amount shall be $165 Million. For the avoidance of doubt, in no event shall the 2008 Earn-out Amount exceed $165 Million.

(iii) The Earn-out Amount payable in respect of the 2009 After-Tax Earnings (the "2009 Earn-out Amount") shall be determined as follows: if 2009 After-Tax Earnings are (A) less than $250 Million, then the 2009 Earn-out Amount shall be zero; (B) equal to or greater than $250 Million, but less than $353 Million, then the 2009 Earn-out Amount shall be $44 Million; (C) equal to or greater than $353 Million, but less than $469 Million, then the 2009 Earn-out Amount shall be $178 Million; (D) equal to or greater than $469 Million, but less than $599 Million, then the 2009 Earn-out Amount shall be $209 Million; (E) equal to or greater than $599 Million, but less than $746 Million, then the 2009 Earn-out Amount shall be $216 Million and (F) $746 Million or greater, then the 2009 Earn-out Amount shall be $223 Million. For the avoidance of doubt, in no event shall the 2009 Earn-out Amount exceed $223 Million.

(iv) The Earn-out Amount payable in respect of the 2010 After-Tax Earnings (the "2010 Earn-out Amount") shall be determined as follows: if 2010 After-Tax Earnings are (A) less than $297 Million, then the 2010 Earn-out Amount shall be zero; (B) equal to or greater than $297 Million, but less than $433 Million, then the 2010 Earn-out Amount shall be $57 Million; (C) equal to or greater than $433 Million, but less than $593 Million, then the 2010 Earn-out Amount shall be $224 Million; (D) equal to or greater than $593 Million, but less than $782 Million, then the 2010 Earn-out Amount shall be $263 Million; (E) equal to or greater than $782 Million, but less than $1.004 Billion, then the 2010 Earn-out Amount shall be $272 Million and (F) $1.004 Billion or greater, then the 2010 Earn-out Amount shall be $279 Million. For the avoidance of doubt, in no event shall the 2010 Earn-out Amount exceed $279 Million.

(v) The Earn-out Amount payable in respect of the 2011 After-Tax Earnings (the "2011 Earn-out Amount") shall be determined as follows: if 2011 After-Tax Earnings are (A) less than $348 Million, then the 2011 Earn-out Amount shall be zero; (B) equal to or greater than $348 Million, but less than $522 Million, then the 2011 Earn-out Amount shall be $70 Million; (C) equal to or greater than $522 Million, but less than $737 Million, then the 2011 Earn-out Amount shall be $270 Million; (D) equal to or greater than $737 Million, but less than $1.002 Billion, then the 2011 Earn-out Amount shall be $316 Million; (E) equal to or greater than $1.002 Billion, but less than $1.327 Billion, then the 2011 Earn-out Amount shall be $326 Million and (F) $1.327 Billion or greater, then the 2011 Earn-out Amount shall be $334 Million. For the avoidance of doubt, in no event shall the 2010 Earn-out Amount exceed $334 Million.

(vi) If, following the determination of the Final After-Tax Earnings Statement for Fiscal Year 2011, the Aggregate Earn-out Amount is less than $1.121 Billion, then the Contributors shall receive an additional Earn-out Amount pursuant to this Section 1.3(b)(vi) (such amount, the "Catch-up Earn-out Amount"), determined as follows: if the Aggregate After-Tax Earnings are (A) less than $1.271 Billion, then the Catch-up Earn-out Amount shall be zero; (B) equal to or greater than $1.271 Billion, but less than $1.789 Billion, then the Catch-up Earn-out Amount shall be the amount, if any, by which $225 Million exceeds the Aggregate Earn-out Amount; (C) equal to or greater than $1.789 Billion, but less than $2.390 Billion, then the Catch-up Earn-out Amount shall be the amount, if any, by which $895 Million exceeds the Aggregate Earn-out Amount; (D) equal to or greater than $2.390 Billion, but less than $3.090 Billion, then the Catch-up Earn-out Amount shall be the amount, if any, by which $1.053 Billion exceeds the Aggregate Earn-out Amount; (E) equal to or greater than $3.090 Billion, but less than $3.906 Billion, then the Catch-up Earn-out Amount shall be the amount, if any, by which $1.088 Billion exceeds the Aggregate Earn-out Amount and (F) $3.906 Billion or greater, then the Catch-up Earn-out Amount shall be the amount, if any, by which $1.121 Billion exceeds the Aggregate Earn-out Amount. For the avoidance of doubt, in no event shall the sum of the Aggregate Earn-out Amount and Catch-up Earn-out Amount exceed $1.121 Billion.

(c) Issuance of AREP Units. Subject to the offset right of the Issuer set forth in Section 1.3(d), upon completion of the Final After-Tax Earnings Statement for the relevant Fiscal Year (whether by expiration of the Contributors' 20 day dispute notice period, final agreement between the Contributors and the Issuer or final determination of all outstanding matters by the Independent Auditor, if it is determined that the Contributors are entitled to receive an Earn-out Amount with respect to such Fiscal Year or the Catch-up Earn-out Amount, as applicable, the Issuer shall deliver to the Contributors, within 5 Business Days after completion of the Final After-Tax Earnings Statement for such Fiscal Year, certificates issued in the names of the Contributors evidencing a number of AREP Units equal to such Earn-out Amount divided by the 20-Day Volume-Weighted Average Price. The AREP Units shall be allocated among the Contributors in accordance with the allocation percentages set forth in Schedule 1.2.

(d) Offset Right. The Issuer shall have the right to offset against any amounts payable under this Section 1.3 to the Contributors any and all amounts payable by the Contributors in respect of the Contributors' obligations to the Issuer pursuant to Article VIII hereof.

(e) Acknowledgement re: Icahn. The parties hereto acknowledge and agree that, subject to Section 1.3(d), the Earn-out Amounts, if any, shall be payable to the Contributors whether or not Icahn is then employed by the Issuer or any of its Subsidiaries.

(f) Transfer Restriction. The Contributors agree that they shall not transfer, sell, assign, pledge, encumber, hypothecate or otherwise dispose of their respective rights to receive any amounts payable under this Section 1.3.

1.4 Tax Treatment. The Contributors and the Issuer agree and acknowledge that, except as to the part of any Earn-out Consideration that is treated as interest, the contribution of Partnership Interests to the Issuer in exchange for the Aggregate Consideration is intended to qualify as a nonrecognition transaction within the meaning of Code Section 721(a) and, except to the extent that any Earn-out Consideration is treated as interest, no party, on a Tax Return or otherwise, shall take any position inconsistent with such treatment.

ARTICLE II

CLOSING

2.1 Closing. The closing of the contribution and exchange of the Partnership Interests and the Closing Date Consideration (the "Closing") shall occur simultaneously with the execution and delivery of this Agreement at the offices of Proskauer Rose LLP located at 1585 Broadway, New York, New York. The date on which the Closing occurs is herein referred to as the "Closing Date." The Closing will be effective as of 11:59 p.m. (Eastern Time) on the Closing Date.

2.2 The Contributors' Closing Deliveries. At the Closing, the Contributors and Icahn, as the case may be, shall deliver to the Issuer the items listed below:

(a) the Management Contribution Agreement, dated as of the Closing Date and duly executed by the parties thereto, together with evidence of the consummation of the transactions contemplated thereby, in form and substance reasonably satisfactory to the Issuer;

(b) an amendment to the Limited Partnership Agreement of Onshore GP in the form attached hereto as Exhibit A, dated as of the Closing Date and duly executed by the partners of Onshore GP;

(c) an amendment to the Limited Partnership Agreement of Offshore GP in the form attached hereto as Exhibit B, dated as of the Closing Date and duly executed by the partners of Offshore GP;

(d) for each of the Funds, (i) revisions, amendments, supplements or restatements if and to the extent necessary to reflect and account for the transactions contemplated by this Agreement, to each of the following documents: (A) the limited partnership agreement of such Fund; (B) the confidential offering memorandum or supplementary disclosure, as applicable, of such Fund; (C) any subscription agreement of such Fund and (D) the applicable Management Agreement by and between such Fund and Icahn Management, as amended to reflect the assignment of such Management Agreement to Icahn Capital Management and (ii) evidence of the requisite Consent of the general partner, limited partners, board of directors, board of managers and any similar governing body of such Fund to the matters contemplated by clause (i) above or evidence reasonably satisfactory to the Issuer that such Consent is not required;

(e) the Agreement in the form attached hereto as Exhibit C (the "Covered Affiliate Agreement"), dated as of the Closing Date and duly executed by Onshore GP, Offshore Master Fund I, Offshore Master Fund II and Offshore Master Fund III;

(f) an Employment Agreement, dated as of the Closing Date, by and among the Issuer, Icahn Capital Management and Icahn, duly executed by Icahn and Icahn Capital Management and in form reasonably satisfactory to the Issuer (the "Icahn Employment Agreement");

(g) amendments, dated as of the Closing Date, to the Employment Agreements with the following persons: Alexander J. Denner, Vincent Intrieri, Keith Meister and David Schechter, R. Andrew Muns, Mayu Sris and David Yim, each such amendment duly executed by such individual and Icahn Capital Management and in form reasonably satisfactory to the Issuer (collectively, the "Employment Agreement Amendments");

(h) an Employment Agreement, dated as of the Closing Date, between Icahn Capital Management and Rupal Doshi, such agreement duly executed by such individual and Icahn Capital Management, in form reasonably satisfactory to the Issuer (collectively with the Icahn Employment Agreement and the Employment Agreement Amendments, the "Employment Agreements");

(i) agreement re: consent to assignment of certain employment agreements to AREH in the form attached hereto as Exhibit D (the "Consent to Assignment"), dated as of the Closing Date and duly executed by Keith Schaitkin, Jesse Lynn, Mark DiPaolo, Andrew Langham, Yevgeny Fundler and Nancy Axilrod;

(j) a Non-Competition, in the form attached hereto as Exhibit E (the "Non-Competition Agreement"), dated as of the Closing Date and duly executed by Icahn;

(k) Amendment No. 1 to the Registration Rights Agreement, dated as of June 30, 2005, by and among the Issuer and the Holders (as defined therein) in the form attached hereto as Exhibit F (the "Registration Rights Agreement Amendment"), dated as of the Closing Date and duly executed by the Contributors and the Holders;

(l) a Shared Services Agreement among Icahn & Co. LLC, AREH and the Issuer, in form and substance reasonably satisfactory to the Issuer (the "Shared Services Agreement"), dated as of the Closing Date and duly executed by Icahn & Co. LLC;

(m) An Amended and Restated License Agreement between Icahn Associates LLC and AREH, in form and substance reasonably satisfactory to the Issuer (the "License Agreement"), dated as of the Closing Date and duly executed by Icahn Associates LLC;

(n) a Contribution Agreement, in the form attached hereto as Exhibit G (the "Contribution Agreement"), dated as of the Closing Date and duly executed by the Contributors and Offshore GP;

(o) all Consents required for the Contributors and Icahn to consummate the transactions contemplated by this Agreement, each in form and substance reasonably satisfactory to the Issuer;

(p) an opinion in the form attached hereto as Exhibit H from Bingham McCutchen LLP, counsel to the Contributors, dated as of the Closing Date;

(q) an opinion in the form attached hereto as Exhibit I from Walkers SPV Limited, Cayman counsel to the Contributors, dated as of the Closing Date;

(r) a certificate of non-foreign status as provided for in Treasury Regulations Section 1.1445-2(b)(2), duly executed by the Contributors; and

(s) such other documents as the Issuer may reasonably request.

2.3 The Issuer's Closing Deliveries. At the Closing, the Issuer shall deliver, or cause to be delivered, the items listed below to the Contributors and Icahn, as the case may be:

(a) certificates evidencing the Closing Date Consideration issued in the names of the Contributors as set forth in Schedule 1.2, free and clear of all Encumbrances;

(b) the Icahn Employment Agreement, duly executed by the Issuer;

(c) the Consent to Assignment, duly executed by AREH;

(d) the Covered Affiliate Agreement, duly executed by the Issuer;

(e) the Non-Competition Agreement, duly executed by the Issuer;

(f) the Registration Rights Agreement Amendment, duly executed by the Issuer;

(g) the Shared Services Agreement, duly executed by AREH and the Issuer;

(h) the License Agreement, duly executed by AREH;

(i) the Contribution Agreement, duly executed by the Issuer and its Subsidiaries party thereto;

(j) evidence that the NYSE has approved the AREP Units comprising the Aggregate Consideration for listing, subject only to official notice of issuance, in form and substance reasonably acceptable to the Contributors;

(k) all Consents required for the Issuer to consummate the transactions contemplated by this Agreement, each in form and substance reasonably satisfactory to the Contributors;

(l) copies of all documents set forth in Schedule 2.3(l);

(m) an opinion in the form attached hereto as Exhibit J from Proskauer Rose LLP, counsel to the Issuer, dated as of the Closing Date; and

(n) such other documents as the Contributors may reasonably request.

2.4 Tax Opinion. At the Closing, the Issuer shall receive a tax opinion in the form attached hereto as Exhibit K from Proskauer Rose LLP, counsel to the Issuer, dated as of the Closing Date.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE CONTRIBUTORS AND ICAHN

As an inducement to the Issuer to enter into this Agreement, the Contributors and Icahn jointly and severally make the following representations and warranties, except as set forth in the Contributors' Disclosure Schedules (it being agreed that any exceptions to such representations and warranties shall clearly identify the sections of this Agreement to which they apply, provided that any item disclosed on one schedule shall be deemed to be disclosed on every other schedule to which the relevance of such disclosure is readily apparent).

3.1 Organization and Qualification of the Contributors and the Partnerships; Status.

(a) Each Contributor and each Partnership is duly organized, validly existing and in good standing under the Laws of the state or jurisdiction in which it is incorporated or organized, as the case may be, with all requisite power and authority to own, lease and operate its properties and to carry on its business as they are now being, or are presently contemplated to be, owned, leased, operated and conducted. Each Contributor and each Partnership is licensed or qualified to do business and in good standing (where the concept of "good standing" is applicable) as a foreign corporation or other organization in each jurisdiction where the nature of the properties owned, leased or operated by it and the business now being conducted or presently contemplated to be conducted by it require such licensing or qualification (except where the failure to be so licensed or qualified or be in good standing will not individually or in the aggregate adversely affect the validity or enforceability of this Agreement or have a Material Adverse Effect on such Contributor or such Partnership, as applicable).

(b) The Contributors have delivered to the Issuer true, correct and complete copies of the Organizational Documents of the Contributors and the Partnerships, which Organizational Documents are in full force and effect.

3.2 Authority.

(a) The Contributors.

(i) Each Contributor has the right, authority and power under its Organizational Documents and applicable Laws to enter into this Agreement and each Ancillary Document to which it is a party and to carry out the transactions contemplated hereby and thereby.

(ii) The execution, delivery and performance by each Contributor of this Agreement and each Ancillary Document to which it is a party have been duly authorized by all necessary action of such Contributor and, to the extent required by each Contributor's respective Organizational Documents or applicable Laws, the shareholders or partners thereof, and no other action on the part of such Contributor is required in connection therewith.

(iii) This Agreement and each Ancillary Document executed and delivered by each Contributor, constitutes a legal, valid and binding obligation of such Contributor that is a party thereto, enforceable against such Contributor in accordance with its terms, except as enforceability may be restricted, limited or delayed by applicable bankruptcy or similar Laws affecting creditors' rights generally.

(b) Icahn.

(i) Icahn has the legal capacity and the right, authority and power under applicable Laws to enter into this Agreement and each Ancillary Document to which he is a party and to carry out the transactions contemplated hereby and thereby.

(ii) This Agreement and each Ancillary Document executed and delivered by Icahn, constitutes a legal, valid and binding obligation of Icahn, enforceable against him in accordance with its terms, except as enforceability may be restricted, limited or delayed by applicable bankruptcy or similar Laws affecting creditors' rights generally.

3.3 No Conflicts.

(a) The execution, delivery and performance by each Contributor of this Agreement and the Ancillary Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby:

(i) do not and will not violate any provision of its Organizational Documents or the Organizational Documents of the Partnerships or the Funds;

(ii) do not and will not violate any Law applicable to such Contributor or its assets or employees, the Partnerships or their respective assets or employees or the Funds or their respective assets or employees, or require any Contributor, any Partnership or any Fund to obtain any Consent that has not been obtained (all such required Consents that have been obtained are set forth in Schedule 3.3(a) of the Contributors' Disclosure Schedules); and

(iii) do not and will not result in a breach of, constitute a default under, result in an adverse change under, accelerate any obligation under or give rise to a right of termination of, any Contract, Encumbrance, License, Order or arbitration award to which any Contributor or any Partnership is a party or by which any of their assets are bound or affected, or result in the creation or imposition of any material Encumbrance on any of their assets or of any Person's interests in any Contributor or any Partnership.

(b) The execution, delivery and performance by Icahn of this Agreement and the Ancillary Documents to which he is a party and the consummation of the transactions contemplated hereby and thereby:

(i) do not and will not violate any Law applicable to Icahn or by which his assets are bound or require him to obtain any Consent that has not been obtained by him (all such required Consents that have been obtained are set forth in Schedule 3.3(b) of the Contributors' Disclosure Schedules); and

(ii) do not and will not result in a breach of, constitute a default under, result in an adverse change under, accelerate any obligation under or give rise to a right of termination of, any Contract, Encumbrance, License, Order, determination or arbitration award to which Icahn is a party or by which his assets are bound or affected, or result in the creation or imposition of any material Encumbrance on his assets or his direct or indirect ownership interests in the Contributors.

3.4 Ownership Interests.

(a) CCI Onshore is the sole general partner of Onshore GP. Each of the partners of Onshore GP is set forth in the limited partnership agreement of Onshore GP as amended through the date hereof. CCI Onshore is the sole record and beneficial owner of the Onshore Partnership Interests, free and clear of all Encumbrances, and will transfer and deliver to the Issuer at the Closing valid title to all such Onshore Partnership Interests, free and clear of any Encumbrance.

(b) CCI Offshore is the sole general partner of Offshore GP. Each of the partners of Offshore GP is set forth in the limited partnership agreement of Offshore GP as amended through the date hereof. CCI Offshore is the sole record and beneficial owner of the Offshore Partnership Interests, free and clear of all Encumbrances, and will transfer and deliver to the Issuer at the Closing valid title to all such Offshore Partnership Interests, free and clear of any Encumbrance.

(c) Icahn Management is the sole general partner of Icahn Capital Management. Each of the partners of Icahn Capital Management is set forth in the limited partnership agreement of Icahn Capital Management. Icahn Management is the sole record and beneficial owner of the Icahn Capital Management Partnership Interests, free and clear of all Encumbrances, and will transfer and deliver to the Issuer at the Closing valid title to such Icahn Capital Management Partnership Interests, free and clear of any Encumbrance.

(d) The Partnership Interests are duly authorized and validly issued under the respective Organizational Documents and applicable Laws.

(e) Except for the rights under the Employment Agreements, no Person holds any option, warrant, convertible security or other right to acquire any interest in any Contributor, Offshore GP, Onshore GP, Icahn Management or Icahn Capital Management or any general partnership interest in any Master Fund. Except as set forth in Schedule 3.4(e) of the Contributors' Disclosure Schedules, the Partnership Interests conveyed hereby will not result in the holder(s) thereof, Onshore GP, Offshore GP or Icahn Capital Management having any obligation, contingent or otherwise, to repurchase, redeem or otherwise acquire any ownership interest in Onshore GP, Offshore GP, Icahn Capital Management or to make any material investment (in the form of a loan, capital contribution or otherwise) in any Partnership or any other Person. There are no voting trusts, proxies or other agreements or understandings with respect to the voting of any securities of Onshore GP, Offshore GP or Icahn Capital Management or giving any person any rights with respect to any future issuance of securities by Offshore GP, Onshore GP or Icahn Capital Management.

3.5 Assets Under Management.

(a) The aggregate dollar amount of assets under management by Onshore GP and Offshore GP as of July 31, 2007 is set forth in Schedule 3.5(a) of the Contributors' Disclosure Schedules. Set forth in Schedule 3.5(a) of the Contributors' Disclosure Schedules is a list as of July 31, 2007 of all Management Agreements, setting forth with respect to each such Management Agreement:

(i) the name of the Client under such Management Agreement;

(ii) the amount of assets under management for each Client pursuant to such Management Agreement as of July 31, 2007;

(iii) a list of all Contracts under which any fees or other payments payable by any of the Partnerships to any sub-advisers, solicitors, placement agents or other third parties or to any employees of the Icahn Group in connection with such Management Agreement and/or the Icahn Group's relationship with such Client;

(iv) an accurate statement as to whether or not Consent is required under the terms of such Management Agreement in connection with the termination of Icahn Management or the assignment of such Management Agreement to Icahn Capital Management.

(b) Except as set forth in Schedule 3.5(b) of the Contributors' Disclosure Schedules, there are no Contracts pursuant to which any member of the Icahn Group or any of their respective Affiliates has undertaken or agreed to cap, waive, offset, reimburse or otherwise reduce any or all fees or charges payable by or with respect to any of the Clients or investors in such Clients set forth in Schedule 3.5(a) of the Contributors' Disclosure Schedules or pursuant to any of the Contracts set forth in Schedule 3.5(a) of the Contributors' Disclosure Schedules.

(c) None of the assets of any of the Clients are "plan assets" within the meaning of Section 3(42) of ERISA.

(d) Except as set forth in Schedule 3.5(d) of the Contributors' Disclosure Schedules, no exemptive Orders, "no-action" letters or similar exemptions or regulatory relief have been obtained, nor are any requests pending therefor, by any member of the Icahn Group.

(e) Since January 1, 2004, each Partnership that has distributed or marketed its services or interests, as appropriate, by or through any intermediary, or which has delegated or appointed any solicitor, placement agent or other third party, or which has delegated or outsourced the conduct of any part of its services to any third party, has undertaken reasonable efforts to perform due diligence and ongoing monitoring in relation to the delegation to or appointment and activities of the intermediary, placement agents or third party, as applicable, to determine that those activities are conducted in all material respects in accordance with applicable Laws affecting the Icahn Group.

(f) To the Knowledge of the Contributors, no intermediary, placement agent, delegate or appointee has unlawfully marketed any of the services of any Partnership or unlawfully marketed or sold any interest in any Fund in any manner that would result in a material violation of applicable Laws and as of the date hereof there are no material outstanding claims against any member of the Icahn Group with respect to such marketing or sale.

(g) Since January 1, 2004, to the Knowledge of the Contributors, there has existed no material unremedied accounting or pricing error or similar condition with respect to any Fund or Client account.

(h) To the Knowledge of the Contributors, no Fund or account managed or advised by any member of the Icahn Group has violated any material investment policy or restriction set forth in any Management Agreement, offering memorandum, prospectus or other governing document.

3.6 Funds.

(a) Each Fund has been duly organized and is validly existing and in good standing under the Laws of the jurisdiction of its organization and has all requisite corporate, partnership, limited liability company or similar power and authority. Each Fund has duly complied in all material respects with all applicable Laws. Each Fund possesses all material Licenses necessary to entitle it to use its name, to own, lease or otherwise hold its properties and assets and to carry on its business as it is currently conducted and proposed to be conducted. Each Fund is duly qualified, licensed or registered to do business in each jurisdiction where it is required to do so under applicable Laws other than where any failure to be so qualified, individually or in the aggregate, has not had or resulted in and could not reasonably be expected to have or result in a Material Adverse Effect on such Fund. All outstanding shares, units or other interests of each Fund have been issued and sold in material compliance with applicable Laws, including all applicable federal and state securities Laws. No Fund is, or at any time since its inception was, required to register as an investment company under the Investment Company Act.

(b) As to each Fund, there has been in full force and effect a Management Agreement at all times that any member of the Icahn Group was performing Management Services for such Fund, and each such Management Agreement pursuant to which any member of the Icahn Group has received compensation respecting its activities in connection with any of the Funds was duly approved in accordance with applicable Laws.

(c) There are no material consent judgments of a Governmental Entity or Orders on or with regard to any of the Funds. All material notifications to Governmental Entities and other bodies required by applicable Laws have been made to permit such activities as are carried out by the Funds and all Consents required by applicable Laws have been obtained in relation to the Funds.

(d) The Contributors have delivered to the Issuer true, correct and complete copies of the current confidential offering memoranda of Icahn Partners LP, Icahn Fund Ltd., Icahn Cayman Partners L.P., Icahn Fund II Ltd., and Icahn Fund III Ltd. Each such confidential offering memorandum has at all times since the original offering of shares or other ownership interests in such Fund (as applicable) complied in all material respects with all applicable Laws, and has not contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading, in each such case, at all such times as any such confidential offering memorandum was delivered to investors or potential investors in such Fund. All of the outstanding shares or other ownership interests of each Fund are duly authorized and validly issued.

(e) The Contributors have made available to the Issuer true, correct and complete copies of the audited financial statements, prepared in accordance with GAAP, of Icahn Partners LP, Icahn Fund Ltd. and Icahn Partners Master Fund LP for the last three fiscal years (or such shorter period as such Fund has been in existence) (each hereinafter referred to as a "Fund Financial Statement"). Each of the Fund Financial Statements presents fairly in all material respects the financial position of the relevant Fund at the respective date of such Fund Financial Statement and the results of operations and cash flows for the respective periods then ended in accordance with GAAP applied on a consistent basis (except as otherwise noted therein).

3.7 Investment Company Act; Investment Advisers Act. No Contributor, Partnership or Fund is registered, is required to register or at any time since its inception did register or was required to register as an investment company under the Investment Company Act or as an investment adviser under the Investment Advisers Act.

3.8 Financial Statements.

(a) True, correct and complete copies of the following financial statements for each of the Partnerships other than Icahn Capital Management (collectively, the "Financial Statements") have been delivered or made available to the Issuer: (i) an audited statement of financial condition for each of December 31, 2006 (except those noted in Schedule 3.8(b) of the Contributors' Disclosure Schedules) and December 31, 2005 (including any notes thereto) and audited statements of changes in partners' capital, income and cash flows for each of the two years then ended (except those noted in Schedule 3.8(b)), together with a copy of the auditor's report thereon and (ii) unaudited statements of financial condition for March 31, 2007 and unaudited statements of changes in partner's capital, income and cash flows for the three month period then ended.

(b) The Financial Statements as of and for the years ended December 31, 2006 and December 31, 2005 (except those noted in Schedule 3.8(b)) have been prepared from, and are in accordance with, the books and records of the respective Partnerships and fairly present, in all material respects, the financial position and results of operations of the respective Partnerships as at and for the periods indicated therein, in each case, in accordance with GAAP and in accordance with accounting practices commonly adopted by companies carrying on businesses similar to those carried on by the Partnerships. The Financial Statements: (i) are complete and accurate in all material respects and in particular include full provision for bad and doubtful debts relating to any period ending on or before the date to which they are made up; (ii) fairly present in all material respects the financial position and the results of operations and cash flows of each respective Partnership at each accounting reference date to which the Financial Statements relate; and (iii) except as the Financial Statements expressly disclose, are not affected by any unusual or non-recurring items. The Financial Statements (except those noted in Schedule 3.8(b) of the Contributors' Disclosure Schedules) have been audited by Grant Thornton LLP. The accounting records of the respective Partnerships have been kept on a proper and consistent basis and no change in the methods or bases of valuation or accountancy treatment having been made for at least three years prior to the accounts date or since, are up-to-date and in all material respects contain complete and accurate details of the business activities of the respective Partnerships.

(c) Each Partnership maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with the general or specific authorization of the management of such Partnership; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (iii) access to assets is permitted only in accordance with the general or specific authorization of the management of such Partnership and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

3.9 No Adverse Effects; Absence of Certain Changes. Except as set forth in Schedule 3.9 of the Contributors' Disclosure Schedules and other than any Material Adverse Effect arising from or relating to investments, investment decisions or investment performance (provided that such investments and investment decisions have been made in all material respects in accordance with applicable legal and contractual obligations), since December 31, 2006 through the date hereof, (i) no Contributor, Partnership or Fund has suffered (and there has not otherwise existed) at any time any condition, circumstance, event or occurrence which, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect on such Contributor, such Partnership or such Fund, (ii) the Contributors, the Partnerships and the Funds have conducted their respective businesses in all material respects only in the ordinary course of business consistent with past practice and (iii) except as contemplated by this Agreement and exclusive of any payments specifically required under the terms of the applicable partnership agreement or other Organizational Document, there has not been any of the items specified below with respect to any of the Contributors, any of the Partnerships or any of the Funds:

(a) any dividend, distribution or payment declared or made in respect of its shares, partnership interests or membership interests, as applicable, by way of dividend, distribution, purchase or redemption of shares, interests or other securities or otherwise;

(b) any repurchase, redemption or other acquisition, directly or indirectly by any Contributor or any Partnership, of any shares, partnership interests or membership interests, as applicable, or any securities convertible into or exchangeable for any thereof, of such Contributor or such Partnership;

(c) any increase in the compensation payable or to become payable to any director, officer, employee, independent consultant or agent, except for automatic increases under employment agreements, increases for non-officer employees made in the ordinary course of business, nor any other change in any employment or consulting arrangement except in the ordinary course of business;

(d) any transfer, disposal, mortgage, pledge or other Encumbrance on any of its material assets that are necessary for the conduct of its business, except for Permitted Encumbrances and Encumbrances incurred in the ordinary course of business;

(e) other than in the ordinary course of business and other than any Management Agreements and Contracts relating to investments or brokerage arrangements or Contracts, any change or amendment to any material Contract by which any Contributor or any Partnership or their respective assets is bound or to which any Contributor or any Partnership or such assets are subject;

(f) any change in accounting principles, practices or methods of any Contributor or any Partnership, except for any change required by reason of a change in GAAP;

(g) other than in the ordinary course of business or with respect to investments, any waiver or release of any claim or right or cancellation of any debt held;

(h) any initiation, receipt or settlement of any material Proceeding or action affecting the business of any Contributor or any Partnership;

(i) settlement or compromise of any material Tax Liability or agreement to any adjustment of any material Tax attribute or election with respect to Taxes;

(j) any payments to any Affiliate of any Contributor or any Partnership other than as required under the terms of a Contract set forth in Schedule 3.9(j) of the Contributors' Disclosure Schedules;

(k) with respect to the Funds, any change in the investment policies of the Funds, other than as required by fiduciary duties or applicable Laws; or

(l) any agreement, whether written or oral, fixed or contingent, by any Contributor or any Partnership to do any of the foregoing.

3.10 Title to Properties. Each Contributor and each Partnership has good title to, or in the case of leased property and assets has valid leasehold interests in, all property and assets of such Contributor or such Partnership (whether real, personal, tangible or intangible) reflected on its respective balance sheet included in the Financial Statements or acquired after June 30, 2007, except for properties and assets sold since June 30, 2007 in the ordinary course of business or where the failure to have such good title or valid leasehold interests could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. None of the owned property or assets of any Contributor or any Partnership is subject to any Encumbrance, other than Permitted Encumbrances.

3.11 Litigation. Except as set forth in Schedule 3.11 of the Contributors' Disclosure Schedules, there is no litigation or other Proceeding, at law or in equity, by or before any arbitrator or any Governmental Entity, in which any member of the Icahn Group is a party (or which is pending against) or with which any of them has been threatened in writing, in connection with the business, affairs, properties or assets of any Partnership (including any of the foregoing to which any Fund is a party to and relating to services provided by any Partnership to or in respect of such Person), or which questions the validity or enforceability of performance of this Agreement or any Ancillary Document or the transactions contemplated hereby or thereby. None of the members of the Icahn Group or any Person who is "associated with" the Icahn Group (provided that the representation given in this sentence with respect to John Banks and David Litton shall be limited to the Knowledge of the Contributors) for purposes of the Investment Advisers Act has, during the ten years prior to the date of this Agreement, been convicted of any crime (other than a misdemeanor traffic violation or similar misdemeanor) or is, or has been during such period subject to, any disqualification that, in either case, would be a basis for denial, suspension or revocation of registration of an investment adviser under Section 203(e) of the Investment Advisers Act or Rule 206(4)-4(b) thereunder.

3.12 Claims Against Officers and Directors. There is no pending or, to the Contributors' Knowledge, written threatened claim against any member of the Icahn Group or against any other Person, which could give rise to any claim for indemnification against any Partnership or cause any Partnership to incur any material Liability or otherwise suffer or incur any material Damages.

3.13 Insurance.

(a) The Contributors have made available to the Issuer copies of all material insurance policies and fidelity bonds relating to the assets, business, operations, employees, officers or directors of the Contributors, the Partnerships and the Funds effective as of the Closing.

(b) All insurance policies of the Contributors, the Partnerships and the Funds are in full force and effect. There are no material claims by any Contributor, any Partnership or any Fund pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds or in respect of which such underwriters have reserved their rights. The Contributors, the Partnerships and the Funds have paid all premiums due under all such policies.

3.14 Compliance with Laws.

(a) Except as set forth in Schedule 3.14(a) of the Contributors' Disclosure Schedules, each member of the Icahn Group in respect of the Partnerships (i) has operated its respective business in material compliance with all applicable Laws, including all applicable federal and state securities Laws, and (ii) is in material compliance and, at all times has been in material compliance, in all respects with all applicable Laws, including all applicable federal and state securities Laws, relating to such member of the Icahn Group or their respective assets, properties or businesses. Except as set forth in Schedule 3.14(a) of the Contributors' Disclosure Schedules, no investigation or review by any Governmental Entity is pending or threatened, nor has any such Governmental Entity indicated orally or in writing to any member of the Icahn Group an intention to conduct an investigation or review of, or with respect to, any member of the Icahn Group.

(b) No member of the Icahn Group (i) is in default with respect to any Order issued by any Governmental Entity relating to the business of any such member or (ii) has been or is charged with or has been threatened in writing with or under investigation with respect to, any violation of any applicable Laws relating to the business of such member or the transactions contemplated hereby or by any Ancillary Document.

(c) Each member of the Icahn Group is in compliance in all material respects with applicable Laws relating to (i) the use of corporate funds for contributions, payments, gifts or entertainment and (ii) the making of expenditures relating to political activity to government officials or others, and no member of the Icahn Group has established or maintained any unlawful or unrecorded funds in a manner contrary to applicable Law in any material respect.

(d) The Icahn Group has adopted and implemented compliance policies and procedures reasonably designed to prevent violation by it and its employees of the federal securities laws, a complete and correct copy of which has been delivered to the Issuer. The Icahn Group has identified no material violations of such policies by the Icahn Group or by any of its officers, directors or employees.

3.15 Undisclosed Liabilities. Except as set forth in Schedule 3.15 of the Contributors' Disclosure Schedules or as have arisen or may exist, arise from or relate to investments, investment decisions or investment performance (provided that such investments or investment decisions have been made in all material respects in accordance with applicable legal and contractual obligations), no Partnership has any Liability other than Liabilities (a) included or reflected in its respective Financial Statements and adequately reserved against therein or (b) arising subsequent to June 30, 2007, in the ordinary course of business consistent with past practice (including as to amount and nature), and, in any case, not as a result of a breach or default of any Contract or any applicable Law by any member of the Icahn Group.

3.16 Transactions with Interested Persons. Except as contemplated by this Agreement, as approved by the Investor Committee (as defined in the Funds' confidential offering memoranda), as set forth in Schedule 3.16 of the Contributors' Disclosure Schedules, or as described in the Funds' confidential offering memoranda, since January 1, 2004, no Contributor, Partnership or Fund has been a party to any material transaction or material Contract with any employee of any Contributor, any Partnership or any Fund, any of the respective immediate family members of any of the foregoing Persons or any Affiliate of any of the foregoing Persons.

3.17 Intellectual Property.

(a) None of the Contributors or Partnerships has received any written notice from any Person that it does not own, or possess adequate rights to use, all material patents, trade names, trademarks, copyrights, inventions, processes, designs, formulae, trade secrets, know-how and other intellectual property rights necessary for, used or held for use in the conduct of its respective business. Set forth in Schedule 3.17(a) of the Contributors' Disclosure Schedules is a list of all material registrations and applications for registration for trademarks owned by the Contributors and the Partnerships, and all such registrations, filings or issuances remain in full force and effect.

(b) All licenses or other Contracts under which any Contributor, any Partnership or any Fund has been granted, or been restricted with respect to, rights in any intellectual property that are material to the business or operations of such Contributor, such Partnership or such Fund are set forth in Schedule 3.17(b) of the Contributors' Disclosure Schedules. All said licenses or other Contracts are in full force and effect and, to the Knowledge of the Contributors, there is no default by any party thereto. To the Knowledge of the Contributors, the licensors under said licenses and other Contracts have and had all requisite power and authority to grant the rights purported to be conferred thereby.

(c) No Contributor or Partnership has granted rights to any Person other than another Contributor or Partnership in any material intellectual property rights owned by any Contributor or any Partnership.

3.18 Anti-Money Laundering. Each Contributor, each Partnership and each Fund has established anti-money laundering policies and procedures to the extent required under applicable Laws, and has at all times operated its business and provided its services in all material respects in accordance with the requirements of such policies and procedures.

3.19 Employees, Labor Matters, etc. Except as set forth in Schedule 3.19 of the Contributors' Disclosure Schedules, (a) no Contributor or Partnership is a party to or bound by any collective bargaining agreement, and there are no labor unions, works councils or other organizations representing, purporting to represent or, to the Knowledge of the Contributors, attempting to represent any employee of any Contributor or any Partnership; (b) no strike, slowdown, picketing, work stoppage, concerted refusal to work overtime or other similar labor activity has occurred, been threatened in writing or, to the Knowledge of the Contributors, is anticipated with respect to any employee of any Contributor or any Partnership; (c) there are no labor disputes currently subject to any grievance procedure, arbitration or litigation and there is no representation petition pending, threatened in writing or, to the Knowledge of the Contributors, anticipated with respect to any employee of any Contributor or any Partnership and there is no action pending or, to the Knowledge of the Contributors, threatened by any labor unions, work councils or other organizations representing, purporting to represent or attempting to represent any employee of any entity in which any of the Contributors or any of the Partnerships have invested or are contemplating investing that could have a Material Adverse Effect on the business, operations or prospects of the Contributors, the Partnerships, the Funds or the Issuer; (d) to the Knowledge of the Contributors, no Contributor or Partnership is, and no Contributor or Partnership has been, engaged in any unfair labor practice within the meaning of the National Labor Relations Act; (e) the Contributors and the Partnerships are in compliance in all material respects with all applicable Laws relating to employment and employment practices, workers' compensation, terms and conditions of employment, worker safety, wages and hours, civil rights, discrimination, immigration, collective bargaining and the Worker Adjustment and Retraining Notification Act; (f) there have been no claims of harassment, discrimination, retaliatory act or similar actions against any employee, officer or director of any Contributor or any Partnership at any time during the past four years and, to the Knowledge of the Contributors, no facts exist that could reasonably be expected to give rise to such claims or actions and (g) no Contributor or Partnership and, to the Knowledge of the Contributors, no employee, agent or representative of any such entity (i) is in possession of or has or is using information, data or other property in violation of the ownership rights or property interests of any other Person, including any prior employer of any such employee, agent or representative or (ii) has taken any action in violation of any obligations or restrictions with respect to which any such employee, agent or representative may be subject.

3.20 Employee Benefit Plans.

(a) Set forth in Schedule 3.20(a) of the Contributors' Disclosure Schedules is a true and complete list of all "employee benefit plans" within the meaning of Section 3(3) of ERISA, all medical, dental, life insurance, equity, bonus or other incentive compensation, disability, salary continuation, severance, retention, retirement, pension, deferred compensation, vacation, sick pay or paid time off plans or policies and any other plans, agreements (including, but not limited to, employment and consulting agreements), programs, policies, trust funds or arrangements (whether written or unwritten, insured or self-insured) (i) established, maintained, sponsored or contributed to (or with respect to which any obligation to contribute has been undertaken) by the Contributors, the Partnerships or any ERISA Affiliate on behalf of any employee, officer, director or other service provider of the Contributors or the Partnerships (whether current, former or retired) or their beneficiaries ("Covered Employees") or (ii) with respect to which the Contributors or the Partnerships have any Liability on behalf of any Covered Employee (each a "Plan" and, collectively, the "Plans"). There are no Plans established, maintained, sponsored or contributed to by any of the Funds and there have not been any Plans established, maintained, sponsored or contributed to by any of the Funds during the past six years, and the Funds currently have no employees and there have not been any such employees of the Funds during the past six years.

(b) With respect to each Plan established, maintained or sponsored by any of the Contributors or the Partnerships, the Contributors have delivered to the Issuer: (i) copies of all material documents setting forth the terms of the Plan, including all amendments thereto; (ii) the most recent annual reports (Form Series 5500), if any, required under ERISA or the Code in connection with the Plan; (iii) the most recent actuarial reports (if applicable) for the Plan; (iv) the most recent summary plan description, if any, required under ERISA with respect to the Plan; (v) all material written Contracts relating to the Plan, including administrative service agreements, group insurance Contracts and trust agreements and (vi) the most recent IRS determination or opinion letter issued with respect to any Plan intended to be qualified under Section 401(a) of the Code.

(c) None of the Contributors or the Partnerships contributes to, is required to contribute to, or otherwise participates in or in any way, directly or indirectly, has any Liability with respect to, any Plan subject to Section 412 of the Code, Section 302 of ERISA or Title IV of ERISA, including, without limitation, any "multiemployer plan" (within the meaning of Sections 3(37) or 4001(a)(3) of ERISA or Section 414(f) of the Code) or any "single-employer plan" (within the meaning of Section 4001(a)(15) of ERISA) which is subject to Sections 4063, 4064 or 4069 of ERISA.

(d) With respect to each of the Plans established, maintained or sponsored by any of the Contributors or the Partnerships: (i) each Plan intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS as to its qualified status and, to the Knowledge of the Contributors, nothing has occurred, whether by action or by failure to act, that caused or could reasonably be expected to cause the loss of such qualified status or the imposition of any material penalty or Tax; (ii) all payments required by each Plan, any collective bargaining agreement or other agreement, or by applicable Law (including, without limitation, all contributions, insurance premiums or intercompany charges) with respect to all prior periods have been made or provided for by the Contributors or the Partnerships in accordance with the provisions of each of the Plans, applicable Law and generally accepted accounting principals; (iii) no Proceeding has been instituted or threatened or asserted in writing or, to the Knowledge of the Contributors, is anticipated with respect to any of the Plans (other than non-material routine claims for benefits and appeals of such claims) or any trustee or fiduciaries thereof; (iv) each Plan is in substantial compliance in form and has been maintained and operated in all material respects in accordance with its terms and applicable Law, including, without limitation, ERISA and the Code; (v) no non-exempt "prohibited transaction," within the meaning of Section 4975 of the Code and Section 406 of ERISA, has occurred or is reasonably expected to occur with respect to the Plans which could reasonably be expected to result in any material Liability to any of the Contributors or the Partnerships; (vi) no Plan is under, and the Contributors and the Partnerships have not received any notice of, an audit or investigation by the IRS, Department of Labor or any other Governmental Entity and no such completed audit, if any, has resulted in the imposition of any Tax or penalty which has not been paid and (vii) no Plan provides post-retirement health and welfare benefits to any current or former employee of the Contributors or the Partnerships, except as required under Section 4980B of the Code, Part 6 of Title I of ERISA or any other applicable Law.

(e) The consummation of the transactions contemplated by this Agreement alone, or in combination with a termination of any Covered Employee, will not give rise to any Liability under any Plan, including, without limitation, Liability for severance pay, unemployment compensation, termination pay or withdrawal Liability, or accelerate the time of payment or vesting or increase the amount of compensation or benefits due to any Covered Employee. No amount that could be received (whether in cash or property or the vesting of property), as a result of the consummation of the transactions contemplated by this Agreement, by any employee, officer, director, stockholder or other service provider of the Contributors or the Partnerships under any Plan or otherwise would not be deductible by reason of Section 280G of the Code or subject to an excise Tax under Section 4999 of the Code. The Contributors and the Partnerships have no indemnity obligations on or after the Closing Date for any Taxes imposed under Section 4999 or 409A of the Code.

(f) None of the Contributors, the Partnerships, any ERISA Affiliate nor any employee, officer, director, stockholder or other service provider of the Contributors or the Partnerships has made any Contract to create any additional plan, agreement or arrangement with respect to any Covered Employee, or to modify or change in any material way any existing Plan.

(g) Neither the Contributors nor the Partnerships have unfunded Liabilities pursuant to any Plan that is not intended to be qualified under Section 401(a) of the Code and is an "employee pension benefit plan" within the meaning of Section 3(2) of ERISA, a nonqualified deferred compensation plan or an excess benefit plan. Each Plan that is a "nonqualified deferred compensation plan" (as defined under Section 409A(d)(1) of the Code) has been operated and administered in good faith compliance with Section 409A of the Code from the period beginning January 1, 2005 through the date hereof.

(h) Any individual who performs services for the Contributors or the Partnerships and who is not treated as an employee for federal income Tax purposes by the Contributors or the Partnerships is not an employee under applicable Law or for any purpose including, without limitation, for Tax withholding purposes or Plan purposes. Neither the Contributors nor the Partnerships have any Liability by reason of an individual who performs or performed services for the Contributors or the Partnerships in any capacity being illegally excluded from participating in a Plan. Each employee of the Contributors and the Partnerships has been properly classified as "exempt" or "non-exempt" under applicable Law.

3.21 Real Property. No Contributor or Partnership owns (and no Contributor or Partnership has at any time owned) any real property. Set forth in Schedule 3.21 of the Contributors' Disclosure Schedules are (a) a list of the real property currently leased by any Contributor or any Partnership and (b) a list of the leases for such real property (the "Leases"). The Contributors have made available to the Issuer true, correct and complete copies of the Leases. Each Lease has been duly authorized and executed by the parties thereto and is in full force and effect. No Contributor or Partnership is in default under any Lease, nor has any event occurred which, with giving of notice or the passage of time, or both, would give rise to such a default. After giving effect to the Closing, each Lease set forth in Schedule 3.21 of the Contributors' Disclosure Schedules will be valid and effective in accordance with its terms.

3.22 Contracts.

(a) Except as set forth in Schedule 3.5(a), Schedule 3.21 or Schedule 3.22(a), of the Contributors' Disclosure Schedules and except for Contracts relating to investments, commissions on investments or prime brokerage agreements, no Contributor or Partnership is a party to, nor are any of its assets bound or affected by, any:

(i) Management Agreement with a Fund that accounts for revenue to Icahn Management of $500,000 or more on an annualized basis;

(ii) Management Agreement with a Client other than a Fund that accounts for revenue to Icahn Management of $250,000 or more on an annualized basis;

(iii) Contract under which any Contributor or any Partnership is obligated, directly or indirectly, to make any capital contribution, coinvestment, provision of seed capital or other investment in any Person or investment in any investment product in an amount of $500,000 or more;

(iv) Contract with any placement agent, investment or research consultant, investment platform, solicitor or sales agent or otherwise with respect to the referral of business to the Icahn Group (including, without limitation, any agreement with respect to solicitation of prospective investors in any Fund) providing for aggregate payments by any Partnership of $100,000 or more;

(v) license agreement (as licensor or licensee) providing for aggregate payments of $500,000 or more;

(vi) Contract that provides for earn-outs or other similar contingent obligations that, as of the date hereof, could reasonably be expected to exceed $500,000;

(vii) Contract which contains a (A) "clawback" or similar undertaking by any Partnership requiring the reimbursement or refund of any fees or (B) a "most favored nation" or similar provision, in each case where the obligations of any Partnership under such undertaking or provision is material to any member of the Icahn Group;

(viii) Lease providing for annual rentals of $500,000 or more;

(ix) Contract for the purchase of materials, supplies, goods, services, equipment or other assets providing for aggregate payments of $500,000 or more;

(x) sales or distribution agreement (or series of agreements with a party or related parties) that provides for annual guaranteed payments of $100,000 or more;

(xi) joint venture, strategic alliance, partnership or other similar Contract involving a sharing of profits or expenses or payments based on revenues or assets under management of any member of the Icahn Group that accounts for revenue of $1,000,000 or more on an annualized basis;

(xii) Contract relating to the acquisition or disposition of any business for a purchase price in excess of $500,000 (whether by merger, sale of stock, sale of assets or otherwise) with any outstanding obligations as of the date hereof that are material to any Contributor or any Partnership;

(xiii) Contract relating to Indebtedness (whether incurred, assumed, guaranteed or secured by any asset), except any such Contract with an aggregate outstanding principal amount not exceeding $500,000 and except for margin debt or other Indebtedness incurred in connection with the purchase, sale or carrying of investments; or

(xiv) Contract that limits in any material respect the freedom of any Partnership to compete in any line of business or with any Person or in any area or that requires any member of the Partnership to deal exclusively with any Person, in each case that is material to any member of any Partnership.

(b) Prior to the date hereof, true, correct and complete copies of each Contract required to be set forth in Schedule 3.5(a), Schedule 3.21 and Schedule 3.22(a) of the Contributors' Disclosure Schedules have been delivered to, or made available for inspection by, the Issuer. Each such Contract is in full force and effect and constitutes a legal, valid and binding agreement, enforceable in accordance with its terms, against each member of the Icahn Group and, to the Knowledge of the Contributors, the other party thereto. No Contributor, Partnership or, to the Knowledge of the Contributors, any other party to such Contract, is in violation or breach of or default in any material respect under any such Contract (or with notice or lapse of time or both, would be in violation or breach of or default in any material respect under any such Contract).

3.23 Taxes. Except as set forth in Schedule 3.23 of the Contributors' Disclosure Schedules:

(a) Offshore GP, Onshore GP and Icahn Capital Management have duly and timely filed with the appropriate taxing authorities all federal, New York state and all other material state and local income Tax Returns of Offshore GP, Onshore GP and Icahn Capital Management and all other material Tax Returns of Offshore GP, Onshore GP and Icahn Capital Management required to be filed through the date of this Agreement. All such Tax Returns are true, correct and complete in all material respects under applicable U.S. federal, state, local or foreign Tax laws, rules or regulations. Other than the Tax Returns of Offshore GP and Onshore GP for the Tax period ended December 31, 2006, neither Offshore GP nor Onshore GP has pending any request for an extension of time within which to file any U.S. federal, state, local or foreign income Tax Return.

(b) Offshore GP, Onshore GP and Icahn Capital Management have made available to the Issuer (i) true, correct and complete copies of all Tax Returns as filed, and any amendments thereto, filed by or on behalf of Offshore GP, Onshore GP, Icahn Capital Management and the Onshore Master Fund I and any material correspondence with any taxing authority relating thereto and (ii) accurate and complete copies of all material notices of deficiencies, notices of proposed adjustment, notices of assessments, revenue agent reports, closing agreements, settlement agreements, information document requests and other similar documents, notices or correspondence that any of Offshore GP, Onshore GP and Icahn Capital Management has received from, sent to or entered into with the IRS, or other taxing authority since November 1, 2004.

(c) No issue has been raised in writing in any prior examination or audit of the Tax Returns of Offshore GP, Onshore GP or Icahn Capital Management that was not resolved and that, by application of similar principles, reasonably can be expected to result in the assertion of a material deficiency for any other Tax period not so examined or audited and for which the statute of limitations (taking into account extensions) has not expired.

(d) All Taxes that were due and payable, without regard to whether such Taxes have been assessed or have been shown as due on such Tax Returns (except for Taxes being contested in good faith through appropriate Proceedings and as to which adequate reserves have been established in accordance with GAAP) have been timely paid by Offshore GP, Onshore GP and Icahn Capital Management, including any Taxes owed with respect to any completed and settled audit, examination or deficiency.

(e) No U.S. federal, state, local or foreign audits, claims, assessments or other administrative or court Proceedings are presently pending with regard to any Taxes or Tax Returns of Offshore GP, Onshore GP or Icahn Capital Management. None of Offshore GP, Onshore GP and Icahn Capital Management has received written notice of any such pending audits, claims, assessments or Proceedings nor has any taxing authority (whether domestic or foreign) to the Knowledge of the Contributors, threatened to assert against Offshore GP, Onshore GP or Icahn Capital Management any material deficiency or material claim for Taxes in excess of the reserves established on the Financial Statements. There are no outstanding waivers extending the statutory period of limitation relating to the payment of Taxes due from Offshore GP, Onshore GP or Icahn Capital Management.

(f) There are no Encumbrances for Taxes upon any property or assets of Offshore GP, Onshore GP or Icahn Capital Management, except for Encumbrances for Taxes not yet due and payable and Encumbrances for Taxes that are being contested in good faith by appropriate Proceedings and as to which adequate reserves have been established in accordance with GAAP.

(g) Offshore GP, Onshore GP and Icahn Capital Management have withheld from payments to their employees, independent contractors, creditors, stockholders and any other applicable Person proper amounts for all periods and, to the extent required, have remitted such amounts to the appropriate Governmental Entities, in compliance in all material respects with all Tax withholding provisions of applicable U.S. federal, state, local and foreign Laws (including income, social security and employment Tax withholding for all types of compensation).

(h) Offshore GP, Onshore GP and Icahn Capital Management have no obligation to pay or to contribute to the payment of any material Tax or any portion of a material Tax (or any amount calculated with reference to any portion of a material Tax) of any Person other than Offshore GP, Onshore GP or Icahn Capital Management , including under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign Law), as transferee or successor, by Contract or otherwise.

(i) No claim for any Taxes has been made in writing, or otherwise to the Knowledge of the Contributors, by any authority in a jurisdiction where Offshore GP, Onshore GP or Icahn Capital Management has not filed Tax Returns that Offshore GP, Onshore GP or Icahn Capital Management is, or may be, subject to taxation by that jurisdiction.

(j) Offshore GP, Onshore GP and Icahn Capital Management have not engaged in a listed transaction described in Treasury Regulation Section 301.6111-2(b).

(k) Each of Offshore GP, Onshore GP and Icahn Capital Management has disclosed on its federal income Tax Returns all positions taken therein that could give rise to a substantial understatement of federal income Tax within the meaning of Code Section 6662.

(l) Prior to the Closing Date, Offshore GP, Onshore GP and Icahn Capital Management have not been required to include in income any adjustment pursuant to Code Section 481 by reason of a change in accounting method initiated by any such entity and the IRS has not initiated or proposed any such adjustment or change in accounting method (including any method for determining reserves for bad debts maintained by Offshore GP, Onshore GP or Icahn Capital Management). None of Offshore GP, Onshore GP and Icahn Capital Management has any application pending with any Governmental Entity requesting permission to change any accounting methods.

(m) None of Offshore GP, Onshore GP and Icahn Capital Management has executed any closing agreement pursuant to Section 7121 of the Code or any predecessor provision thereof, or any similar provision of state, foreign or local Law which, based on current facts and circumstances, could have an effect on any period after the Closing Date.

(n) Offshore GP, Onshore GP and Icahn Capital Management do not have any outstanding requests for any Tax ruling from any taxing authority or has ever received a Tax ruling.

(o) To the Knowledge of the Contributors, none of Offshore GP, Onshore GP and Icahn Capital Management owns an interest in a passive foreign investment company within the meaning of Code Sections 1291-1297.

(p) Offshore GP, Onshore GP and Icahn Capital Management have made adequate provisions in accordance with GAAP, in the Financial Statements, for the payment of all Taxes for which Offshore GP, Onshore GP or Icahn Capital Management may be liable for the periods covered by such financial statements that were not yet due and payable as of the date of such statement, regardless of whether the Liability for such Taxes is disputed. Since December 31, 2006, Offshore GP, Onshore GP and Icahn Capital Management have not accrued any Liability for any material Tax, other than in the ordinary course of its activities or business.

(q) Set forth in Schedule 3.23(q) of the Contributors' Disclosure Schedules is a list of all entities treated as corporations for U.S. federal income tax purposes in which any Contributor has an interest, directly or indirectly. Each of Offshore GP, Onshore GP and Icahn Capital Management is and has always been treated as a partnership and has not been treated as a corporation for U.S. federal Income Tax purposes.

3.24 Powers of Attorney. Except as set forth in Schedule 3.24 of the Contributors' Disclosure Schedules, no Partnership, Contributor or employee of any Contributor or any Partnership (in connection with the business of a Contributor, Partnership or Fund) has any outstanding power of attorney.

3.25 Finders' Fees. No Contributor or Partnership has incurred, become liable for or otherwise entered into any Contract with respect to any broker's commission, finder's fees or similar payment relating to or in connection with the transactions contemplated by this Agreement or any Ancillary Document.

3.26 Trading Policies.

(a) True, correct and complete copies of the written trading policies (including as regards insider trading that the Contributors and the Partnerships require relevant employees to sign have been delivered to the Issuer prior to the date hereof. All relevant employees of each Contributor and each Partnership have executed acknowledgements that they are bound by the provisions of such trading policies.

(b) To the Knowledge of the Contributors, there have been no material violations or allegations of material violations of such trading policies.

3.27 Delinquent And Wrongful Acts

(a) No Contributor or Partnership has received written notification that any investigation or inquiry is being or since December 31, 2005 has been conducted by any Governmental Entity or other Person in respect of the affairs of such Contributor or Partnership.

(b) No Contributor, Partnership or, to the Knowledge of the Contributors, director, officer, agent, employee or other person acting on behalf of any such Person has, in the course of his actions for, or on behalf of, any Contributor or any Partnership (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds (iii) or made any bribe, unlawful rebate, payoff, influence payment, kickback or other unlawful payment to any Person.

3.28 Books and Records. The books and records of the Contributors and the Partnerships are true, correct and complete in all material respects. The books and records of the Contributors and the Partnerships contain all of the documents and information required by applicable Law and the written procedures and policies of the Contributors and the Partnerships. Such books and records reflect full and current reconciliation of all financial information for each Client. All Client account statements required by applicable Laws and the governing documents pertaining to such Client relationships have been prepared.

3.29 Investment Intent. The Contributors are acquiring the AREP Units issued hereunder for investment and not with a view to or for distributing or reselling such AREP Units or any part thereof in violation of applicable securities Laws, without prejudice, however, to such Contributor's right to sell or otherwise dispose of all or any part of such AREP Units pursuant to an effective registration statement under the Securities Act or under an exemption from such registration and in compliance with applicable federal and state securities Laws. Nothing contained herein shall be deemed a representation or warranty by such Contributor to hold the AREP Units for any period of time.

3.30 Access to Information. Each Contributor acknowledges that it has reviewed the Issuer SEC Reports and that it has been afforded (a) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Issuer concerning the terms and conditions of the issuance of the AREP Units pursuant to the terms of this Agreement and the merits and risks of investing in the AREP Units; (b) access to information about the Issuer and the Issuer's financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment and (c) the opportunity to obtain such additional information that the Issuer possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to such investment. No such inquiries nor any other investigation conducted by or on behalf of any Contributor or its representatives or counsel shall modify, amend or affect any Contributor's right to rely on the truth, accuracy and completeness of the Issuer's representations and warranties contained in this Agreement or in any Ancillary Document.

3.31 Investor Status. Each Contributor is an "accredited investor" as defined in Rule 501(a) under the Securities Act.

3.32 Experience of the Contributors. Each Contributor has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the AREP Units, and has so evaluated the merits and risks of such investment. Each Contributor is able to bear the economic risk of an investment in the AREP Units for an indefinite period of time and, at the present time, is able to afford a complete loss of such investment.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE ISSUER

As an inducement to the Contributors and Icahn to enter into this Agreement, the Issuer makes the following representations and warranties, except as set forth in the Issuer's Disclosure Schedules (it being agreed that any exceptions to such representations and warranties shall clearly identify the sections of this Agreement to which they apply).

4.1 Organization and Qualification of the Issuer. The Issuer is duly organized and validly existing under the Laws of the State of Delaware with all requisite power and authority to own, lease and operate its properties and to carry on its business as they are now being, or are presently contemplated to be, owned, leased, operated and conducted. The Issuer is licensed or qualified to do business and is in good standing (where the concept of "good standing" is applicable) as a foreign limited partnership in each jurisdiction where the nature of the properties owned, leased or operated by it and the business now being conducted or presently contemplated to be conducted by it require such licensing or qualification (except where the failure to be so licensed or qualified or be in good standing will not individually or in the aggregate adversely affect the validity or enforceability of this Agreement or have a Material Adverse Effect on the Issuer).

4.2 Authority.

(a) The Issuer has the right, authority and power under its Organizational Documents and applicable Laws to enter into this Agreement and each Ancillary Document to which it is a party and to carry out the transactions contemplated hereby and thereby, including, without limitation, to receive the Partnership Interests and issue the AREP Units to the Contributors in consideration therefor.

(b) The execution, delivery and performance by the Issuer of this Agreement and each Ancillary Document to which it is a party has been duly authorized by all necessary action of the Issuer and, to the extent required by the Issuer's Organizational Documents or applicable Laws, the partners thereof, and by the Special Committee and no other action on the part of the Issuer is required in connection therewith.

(c) This Agreement and each Ancillary Document executed and delivered by the Issuer, constitutes a legal, valid and binding obligation of the Issuer, enforceable against it in accordance with its terms, except as enforceability may be restricted, limited or delayed by applicable bankruptcy or similar laws affecting creditors' rights generally.

4.3 No Conflicts. The execution, delivery and performance by the Issuer of this Agreement and the Ancillary Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby:

(a) do not and will not violate any provision of its Organizational Documents;

(b) do not and will not violate any Law applicable to the Issuer, its assets or employees or require the Issuer to obtain any Consent that has not been obtained (any such required Consents that have been obtained are set forth in Schedule 4.3(b) of the Issuer's Disclosure Schedules); and

(c) do not and will not result in a breach of, constitute a default under, result in an adverse change under, accelerate any obligation under or give rise to a right of termination of, any Contract, Encumbrance, License, Order, determination or arbitration award to which the Issuer is a party or by which any of its assets are bound or affected, or result in the creation or imposition of any Encumbrance on any of its assets or of any Person's interests in the Issuer, in each case other than any such breach, default, adverse change, acceleration, termination right or Encumbrance arising as a result of any action by Icahn or any of his Affiliates other than the Issuer.

4.4 Finders' Fees. The Issuer has not incurred, become liable for or otherwise entered into any Contract with respect to any broker's commission, finder's fees or similar payment relating to or in connection with the transactions contemplated by this Agreement or any Ancillary Document.

4.5 The AREP Units. The AREP Units have been duly authorized by all required action on the part of the Issuer. The AREP Units, when issued in accordance with this Agreement, will be duly issued and free and clear of all Encumbrances. Assuming the representations and warranties of the Contributors and Icahn contained in Sections 3.29-3.32 are true and correct, the issuance by the Issuer of the AREP Units to be issued to the Contributors pursuant to this Agreement is exempt from registration under the Securities Act.

4.6 Investment Intent. The Issuer is acquiring the Partnership Interests for investment and not with a view to or for distributing or reselling such Partnership Interests or any part thereof in violation of applicable securities Laws, without prejudice, however, to the Issuer's right to sell or otherwise dispose of all or any part of such Partnership Interests pursuant to an effective registration statement under the Securities Act or under an exemption from such registration and in compliance with applicable federal and state securities Laws. Nothing contained herein shall be deemed a representation or warranty by the Issuer to hold the Partnership Interests for any period of time.

4.7 Tax.

(a) The Issuer is classified as a partnership and not an association taxable as a corporation for U.S. federal income Tax purposes.

(b) The Issuer has timely filed all material Tax Returns required to be filed through the date of this Agreement with respect to the income, properties or operations of the Issuer and its Subsidiaries. All such returns are true, correct and complete in all material respects under applicable U.S. federal, state, local, or foreign Tax Laws.

4.8 Access to Information. The Issuer acknowledges that it has reviewed the Disclosure Materials and that it has been afforded (a) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Contributors, the Partnerships and the Funds concerning the terms and conditions of the contribution and exchange of the Partnership Interests pursuant to this Agreement and the merits and risks of investing in the Partnership Interests; (b) access to information about the Contributors, the Partnerships and the Funds and their respective financial conditions, results of operations, businesses, properties, management and prospects sufficient to enable it to evaluate its investment and (c) the opportunity to obtain such additional information that the Contributors or the Partnerships possess or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to such investment. No such inquiries nor any other investigation conducted by or on behalf of the Issuer or its representatives or counsel shall modify, amend or affect the Issuer’s right to rely on the truth, accuracy and completeness of the representations and warranties of the Contributors and Icahn contained in this Agreement or in any Ancillary Document.

4.9 Investor Status. The Issuer is an “accredited investor” as defined in Rule 501(a) under the Securities Act.

4.10 Experience of Investor. The Issuer has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Partnership Interests, and has so evaluated the merits and risks of such investment. The Issuer is able to bear the economic risk of an investment in the Partnership Interests for an indefinite period of time and, at the present time, is able to afford a complete loss of such investment.

ARTICLE V

COVENANTS

5.1 Legending of AREP Units. The Contributors agree to the imprinting, so long as is required by this Section 5.1, of the following legend on any certificate evidencing AREP Units (with such corrections or changes thereto as may be agreed by the Contributors and the Issuer):

> “THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. THE SHARES HAVE BEEN ACQUIRED FOR INVESTMENT AND MANNY NOT BE SOLD, TRANSFERRED, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SHARES UNDER THE SECURITIES ACT OF 1933 OR AN OPINION OF COUNSEL THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT.”

Certificates evidencing AREP Units shall not be required to contain such legend or any other legend (i) while a registration statement covering the resale of such AREP Units is effective under the Securities Act; (ii) following any sale of such AREP Units under any such registration statement or pursuant to Rule 144 of the Securities Act or (iii) if such AREP Units are eligible for sale under Rule 144(k) of the Securities Act. At such time as a legend is no longer required for any AREP Units, the Issuer will, no later than three Business Days following the delivery by a Contributor to the Issuer or the Issuer's transfer agent of a legended certificate representing such AREP Units and, if reasonably requested by the Issuer, a legal opinion reasonably satisfactory to the Issuer regarding the removal of such legend, deliver or cause to be delivered to such Contributor a certificate representing such AREP Units that is free from all restrictive and other legends.

5.2 Access to Information. Other than with respect to investigations, inquiries, requests or Proceedings involving disputes between the Issuer, on the one hand, and the Contributors, on the other hand, the Issuer shall, upon the request of the Contributors, giving reasonable notice to the Issuer, use its reasonable best efforts to cause the Partnerships on and after the Closing Date, to the extent permitted by applicable Laws and confidentiality obligations, to afford promptly to the Contributors and their respective counsel, financial advisors, auditors and other designated representatives to make available to and provide them with reasonable access during normal business hours to their properties, books, records and employees, to the extent reasonably related to any legal, administrative or other Proceeding arising out of any business and operations of the Partnerships prior to the Closing; *provided* that any such access by any Contributor shall not unreasonably interfere with the conduct of the business of the Issuer or its Subsidiaries.

5.3 Decisions of the Issuer. The following matters shall be undertaken solely at the direction of the Audit Committee: (a) the exercise or determination of remedies to be exercised by the Issuer under this Agreement or any Ancillary Document or (b) the exercise by the Issuer of discretion in connection with any matter under this Agreement or any Ancillary Document, including any waiver.

5.4 Right to Use Icahn Name. The parties acknowledge that the right to use the Icahn name solely with respect to the activities of the Partnerships and the management of the Funds is among the assets of the Partnerships. In the event that the Issuer sells or otherwise transfers, or causes its Subsidiaries to sell or otherwise transfer, the interests in the Partnerships and the rights to manage the Funds (and any successors to the Partnerships or the Funds), substantially as a whole, to a party that is not an Affiliate of the Issuer, the Issuer shall be entitled to transfer such right to use the Icahn name to such third-party acquirer solely with respect to the activities of the Partnerships and management of the Funds.

ARTICLE VI

TAX MATTERS

6.1 Consistent Reporting. Except to the extent the Earn-out Consideration is treated as interest, the Contributors and the Issuer will treat the contribution of Partnership Interests to the Issuer in exchange for the Aggregate Consideration as a nonrecognition transaction within the meaning of Code Section 721(a). No party, on a Tax Return or otherwise, will take any position inconsistent with the treatment set forth in this Section 6.1.

6.2 No Change. Before the Closing Date, the Partnerships will not, and will not permit any of the Funds to, make or change any Tax election, change any annual accounting period, adopt or change any accounting method, file any amended Tax Return or claim for refund, enter into any closing agreement, settle any Tax claim or assessment relating to any Partnership, surrender any right to claim a refund of Taxes, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment relating to any Contributor, or take any other similar action relating to the filing of any Tax Return or the payment of any Tax without the prior written consent of the Issuer, which consent shall not be unreasonably withheld, conditioned or delayed.

6.3 Cooperation on Tax Matters. The Issuer and the Contributors shall cooperate with each other and with each other's agents, including accounting firms and legal counsel, in connection with Tax matters, including: (i) preparation and filing of Tax Returns; (ii) examinations of Tax Returns and (iii) any administrative or judicial Proceeding in respect of Taxes assessed or proposed to be assessed. Any information or documents provided under this Section 6.3 shall be kept confidential by the party receiving the information or documents, except as may otherwise be necessary in connection with the filing of Tax Returns, the preparation of any financial statements in connection with any administrative or judicial Proceedings, or as otherwise required by Law.

6.4 704(c) Methods. The Contributors will cause the general partner of the Issuer, to the extent possible, to take such action as is necessary, including selecting methods under Section 704(c), to cause each AREP Unit to have the same economic and tax characteristics to any purchaser or acquiror thereof as each other AREP Unit, provided that the Contributors consult with the Audit Committee with respect to all Section 704(c) elections relating to this transaction.

ARTICLE VII

EMPLOYEES

7.1 Service Credit; Welfare Benefits.

(a) Each Transferred Employee shall be given credit for all service with the Contributors, the Partnerships and their respective predecessors under any employee benefit plans or arrangements of the Issuer and its Affiliates, including any such plans providing vacation, sick pay, severance and retirement benefits maintained by the Issuer and its Affiliates in which such Transferred Employees participate for purposes of eligibility, vesting and entitlement to benefits, including for severance benefits and vacation entitlement (but not for accrual of pension benefits), to the extent past service was recognized for such Transferred Employees under the comparable plans of the Contributors and the Partnerships or any of their Affiliates immediately prior to the Closing, and to the same extent past service is credited under such plans or arrangements for similarly situated employees of the Issuer and its Affiliates. Notwithstanding the foregoing, nothing in this Section 7.1(a) shall be construed to require crediting of service that would result in (i) duplication of benefits; (ii) service credit for benefit accruals under a defined benefit pension plan or (iii) service credit under a newly established plan for which prior service is not taken into account for employees of the Issuer and its Affiliates generally.

(b) In the event of any change in the welfare benefits provided to Transferred Employees following the Closing, the Issuer shall use commercially reasonable efforts to cause (i) the waiver of all limitations as to pre-existing conditions, exclusions and waiting periods with respect to participation and coverage requirements applicable to the Transferred Employees under any such welfare benefit plans to the extent that such conditions, exclusions or waiting periods would not apply in the absence of such change and (ii) for the plan year in which the Closing Date occurs, the crediting of each Transferred Employee with any co-payments and deductibles paid prior to any such change in satisfying any applicable deductible or out-of-pocket requirements after such change.

7.2 Assumption of Existing Arrangements. The Issuer shall assume and honor, or cause its Affiliates to assume and honor, all obligations with respect to the current and former employees of any Partnership (including, without limitation, the Transferred Employees) pursuant to the arrangements and terms set forth in Schedule 7.2.

7.3 No Third-Party Beneficiaries. Without limiting the generality of Section 10.5, nothing in this Article VII, express or implied, is intended to confer any rights, benefits, remedies, obligations or liabilities under this Agreement upon any Person (other than the parties to this Agreement and their respective successors and assigns), including any current or former employee (including any Transferred Employee) to continued employment, any severance or other benefits from any Contributor, any Partnership, the Issuer or any of their respective Affiliates. In addition, (i) nothing in this Article VII shall be treated as an amendment of any Plan and (ii) nothing in this Article VII will prohibit the Issuer from amending, modifying or terminating any Plan pursuant to, and in accordance with, the terms thereof. No person other than the parties hereto shall have any rights or claims under, as a result of or in respect of this Article VII or any term or provision hereof.

ARTICLE VIII

INDEMNIFICATION

8.1 Survival. The representations and warranties of the Contributors and Icahn contained in this Agreement or in any Ancillary Document (the statements in which Ancillary Documents shall be deemed to constitute several representations and warranties hereunder of such party delivering such Ancillary Documents) shall survive the Closing until the third anniversary of the Closing Date, except for (i) the representations and warranties made in Section 3.20 (Employee Benefit Plans) and Section 3.23 (Taxes), which shall survive until 30 days after the expiration of the applicable statute of limitations, if any, to the subject matter thereof and (ii) the representations and warranties made in Section 3.1 (Organization and Qualification of the Contributors and Icahn; Status), Section 3.2 (Authority), Section 3.4 (Ownership Interests) and Section 3.25 (Finders' Fees), all of which shall survive indefinitely; provided, however, (x) any breach of representation or warranty in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to the preceding clause, if written notice of the inaccuracy or breach thereof giving rise to such right of indemnity (setting forth the basis therefor in reasonable detail) shall have been given to the party against whom such indemnity may be sought prior to such time and (y) any representation or warranty made falsely by a party hereto fraudulently, intentionally, willfully or recklessly shall survive the Closing without limitation. The representations and warranties of the Issuer contained in this Agreement and in the Ancillary Documents shall survive the Closing and the members of the Icahn Group shall have the right to bring legal actions against the Issuer in respect of breaches thereof even if there is no indemnification coverage therefor. Covenants and other agreements contained in this Agreement which by their nature or the terms thereof are intended, or can reasonably be construed, to survive the Closing shall survive the execution and delivery of this Agreement, the Closing and the consummation of the transactions contemplated hereby, without limitation, and the members of the Icahn Group shall have the right to bring legal actions against the Issuer in respect of breaches thereof, even if there is no indemnification coverage therefore. Each of the Contributors agrees to give the Issuer prompt notice of any matter which it obtains actual knowledge and as to which any Issuer Indemnified Party would have a right to receive indemnification hereunder. The right to indemnification, payment of damages and other remedies based on representations, warranties, covenants and obligations in this Agreement shall not be affected by any investigation conducted or any knowledge acquired (or capable of being acquired) at any time, whether before or after the Closing Date, with respect to the accuracy or inaccuracy of or compliance with any such representation, warranty, covenant or obligation.

8.2 Indemnification. From and after the Closing, subject to the terms and conditions of this Article VIII, the Contributors and Icahn, jointly and severally, shall indemnify, defend and hold harmless the Issuer and its Affiliates (including, without limitation, Icahn Offshore GP, Icahn Onshore GP, Icahn Capital Management and the Master Funds) and their respective officers, directors, employees, independent contractors, stockholders, principals, controlling persons, partners, agents, counsel, members, managers and representatives and each of their respective successors, assigns and personal representatives (individually, a "Issuer Indemnified Party" and collectively, the "Issuer Indemnified Parties") from and against, and will pay to any Issuer Indemnified Party the amount of, any Damages incurred or suffered by any Issuer Indemnified Party arising out of or relating to: (i) any breach or inaccuracy of any representation or warranty of Icahn or any Contributor contained in this Agreement or any Ancillary Document or any claim by a third party which, if true, would constitute a breach of any such representation or warranty; (ii) any breach of any covenant or agreement of Icahn or any Contributor contained in this Agreement or any Ancillary Document or any claim by a third party which, if true, would constitute a breach of any such covenant or agreement; (iii) fraud by Icahn or any Contributor in connection with the transactions contemplated hereby or by any Ancillary Document; (iv) any actual or alleged breach of fiduciary duty by any Contributor or Icahn to any Client or Fund investor related to the transactions contemplated hereby or by any Ancillary Document or to the conduct of the business of the Contributors, the Partnerships or the Funds on or prior to the Closing Date; (v) (x) all Liabilities for Taxes of Onshore GP, Offshore GP or Icahn Capital Management for any Pre-Closing Tax Period or Pre-Closing Straddle Period, and (y) all Taxes owed on account of the assets or the operation of Onshore GP, Offshore GP or Icahn Capital Management for any Pre-Closing Tax Periods and Pre-Closing Straddle Periods that are imposed on the Issuer or its Subsidiaries as a result of the transactions contemplated by this Agreement (to the extent exceeding reserves therefor); (vi) any broker's, finder's, financial advisor's or other similar fees and commissions payable by Icahn or any Contributor in connection with the transactions contemplated by this Agreement; or (vii) any Excluded Asset or Excluded Liability (as each such term is defined in the Management Contribution Agreement), provided that this clause (vii) shall cease to apply to the Retained Agreements (as defined in the Management Contribution Agreement) after the assignment thereof to Icahn Capital Management as contemplated thereby.

8.3 Procedures.

(a) The party seeking indemnification under Section 8.2 (the "Indemnified Party") agrees to: (i) give prompt notice to the party against whom indemnity is sought (the "Indemnifying Party") of the assertion of any claim, or the commencement of any Proceeding ("Claim"), in respect of which indemnity may be sought under such Section and (ii) provide the Indemnifying Party such information with respect thereto that the Indemnifying Party may reasonably request. The failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent such failure shall have actually and adversely prejudiced the Indemnifying Party. If, upon receipt of notice of a breach of this Agreement or any Ancillary Document by an Indemnified Party to an Indemnifying Party, the Indemnifying Party gives prompt notice to the Indemnified Party that the breach is capable of being remedied within 90 days, the Indemnified Party agrees not to commence any Proceeding with respect to such breach until the expiration of the 90-day period.

(b) The Indemnifying Party shall be entitled to participate in the defense of any Claim asserted by any third party ("Third-Party Claim") and, subject to the limitations set forth in this Section 8.3, shall be entitled to control and appoint lead counsel for such defense at any time with counsel of its choice satisfactory to the Indemnified Party, in each case at the Indemnifying Party's sole expense, unless the nature of the claim creates an ethical conflict or it is otherwise inadvisable, in the reasonable judgment of the Indemnified Party, for the same counsel to represent the Indemnified Party and the Indemnifying Party, so long as (i) the Indemnifying Party notifies the Indemnified Party in writing within 15 days after the Indemnified Party has given notice of the Third-Party Claim that the Indemnifying Party will indemnify the Indemnified Party from and against the entirety of any Damages the Indemnified Party may suffer resulting from, arising out of, relating to, in the nature of or caused by the Third Party Claim or raised in any related Proceeding; (ii) the Indemnifying Party provides the Indemnified Party with evidence reasonably acceptable to the Indemnified Party that the Indemnifying Party will have the financial resources to defend against the Third-Party Claim and fulfill its indemnification obligations hereunder; (iii) the Third-Party Claim involves only a claim for money damages and no other relief and (iv) the Indemnifying Party conducts the defense of the Third-Party Claim actively and diligently. In all other cases the Indemnified Party may defend the Third-Party Claim with counsel of its choosing at the expense of the Indemnifying Party and the Indemnifying Party shall, upon request of the Indemnified Party, pay the fees and expenses (including the fees and expenses of legal counsel) incurred by the Indemnified Party in defending such Third-Party Claim, as such fees and expenses are incurred in advance of the final disposition of such Third-Party Claim upon receipt of an undertaking by the Indemnified Party to repay such payment if it is ultimately determined that such Indemnified Party is not entitled to indemnification under this Article VIII, which undertaking shall be accepted by the Indemnifying Party without reference to the financial ability of such Indemnified Party to make such repayment.

(c) If the Indemnifying Party shall assume the control of the defense of any Third-Party Claim in accordance with the provisions of this Section 8.3, (i) the Indemnifying Party shall obtain the prior written consent of the Indemnified Party (which shall not be unreasonably withheld, delayed or conditioned) before entering into any settlement of such Third-Party Claim, if the settlement does not release the Indemnified Party from all Liabilities with respect to such Third-Party Claim or the settlement imposes injunctive or other equitable relief against the Indemnified Party and (ii) the Indemnified Party shall be entitled to participate in the defense of such Third-Party Claim and to employ separate counsel of its choice for such purpose. The fees and expenses of such separate counsel shall be paid by the Issuer**.** In addition, the Indemnified Party shall not settle any Third-Party Claim without the prior written consent of the Indemnifying Party.

(d) If, following the issuance of a final written determination, the Issuer is obligated by any Governmental Entity in connection with an audit or action for Taxes to make any Tax payment with respect to a Pre-Closing Tax Period or a Pre-Closing Straddle Period, then the Contributors shall, within 15 days of the Issuer's receiving a final written determination that it is obligated to pay such Tax, pay to the Issuer the amount of such Tax.

(e) Each party shall reasonably cooperate, and cause their respective Affiliates to reasonably cooperate, in the defense or prosecution of any Third-Party Claim and shall furnish or cause to be furnished such records, information and testimony, and attend such conferences, discovery Proceedings, hearings, trials or appeals, as may reasonably be requested in connection therewith.

8.4 Limitations of Indemnification Obligations.

(a) The Contributors and Icahn shall have no Liability pursuant to Section 8.2(i) for indemnification or Damages arising from any inaccuracy of any of the representations or warranties of the Contributors and Icahn (other than those in Sections 3.1, 3.2, 3.4, 3.20, 3.23, 3.25, 3.29 and 3.30) unless and until Damages arising from such inaccuracies exceed $7,000,000 (the "Threshold"), in which case the Contributors and Icahn shall be liable for all such Damages, including the first $7,000,000.

(b) In no event shall the aggregate Liability for indemnification under Section 8.2(i) arising from any inaccuracy of any of the representations and warranties of the Contributors and Icahn exceed the Aggregate Consideration (the "Cap").

(c) Indemnity claims (i) pursuant to clauses (ii) through (viii) of Section 8.2 or (ii) for fraud, willful misconduct or intentional misrepresentation shall not be subject to the Threshold or the Cap, and such claims shall be paid from the first dollar of Liability for indemnification or Damages incurred by the Issuer Indemnified Parties in connection therewith.

(d) The sole and exclusive remedy of the Issuer Indemnified Parties with respect to any and all claims for any breach of any representation or warranty set forth herein or in any Ancillary Document shall be pursuant to the indemnification provisions set forth in this Article VIII.

8.5 Calculation of Damages.

(a) Taxes for which indemnification is provided under this Article VIII shall not be (i) increased to take account of any net Tax costs incurred by the receiving party arising from the receipt of indemnity payments hereunder or similar payments hereunder or (ii) reduced to take account of any net Tax benefit realized by the receiving parties arising from the incurrence or payment of any such Taxes.

(b) Notwithstanding anything to the contrary in this Agreement, for purposes of the indemnification provisions in this Article VIII, the determination of the amount of any Damages shall be made without giving effect to any "Material Adverse Effect" qualification or any materiality or similar qualification contained in the representations, warranties, covenants or obligations herein.

8.6 Investigation. It shall be no defense to an action for breach of this Agreement that a party hereto or its agents have (or have not) made investigations into the affairs of the other parties hereto or that such other parties could not have known of the misrepresentation or breach of warranty.

8.7 Tax Character. The Contributors and the Issuer agree that any payments pursuant to this Article VIII will be treated for federal and state income Tax purposes as adjustments to the Aggregate Consideration paid for the Partnership Interests, and that they will report such payments on all Tax Returns in a manner consistent with such characterization.

ARTICLE IX

DEFINITIONS

9.1 Defined Terms. As used in this Agreement, the following defined terms have the meanings indicated below:

"2007 After-Tax Earnings" means the After-Tax Earnings for Fiscal Year 2007, as set forth in the Final After-Tax Earnings Statement for such year.

"2008 After-Tax Earnings" means the After-Tax Earnings for Fiscal Year 2008, as set forth in the Final After-Tax Earnings Statement for such year.

"2009 After-Tax Earnings" means the After-Tax Earnings for Fiscal Year 2009, as set forth in the Final After-Tax Earnings Statement for such year.

“2010 After-Tax Earnings” means the After-Tax Earnings for Fiscal Year 2010, as set forth in the Final After-Tax Earnings Statement for such year.

“2011 After-Tax Earnings” means the After-Tax Earnings for Fiscal Year 2011, as set forth in the Final After-Tax Earnings Statement for such year.

“2007 Earn-out Amount” has the meaning ascribed to it in Section 1.3(b)(i).

“2008 Earn-out Amount” has the meaning ascribed to it in Section 1.3(b)(ii).

“2009 Earn-out Amount” has the meaning ascribed to it in Section 1.3(b)(iii).

“2010 Earn-out Amount” has the meaning ascribed to it in Section 1.3(b)(iv).

“2011 Earn-out Amount” has the meaning ascribed to it in Section 1.3(b)(v).

“20-Day Volume-Weighted Average Price” means the arithmetic average of the Volume-Weighted Average Price of the AREP Units for each of the final 20 Trading Days of the Fiscal Year immediately preceding the issuance of any AREP Units hereunder.

“Affiliate” means, with respect to any specified Person, any other Person that, directly or indirectly, owns or controls, is under common ownership or control with, or is owned or controlled by, such specified Person.

“After-Tax Earnings” means, for any Fiscal Year during the Earn-Out Period, all income of the Issuer and any of its Subsidiaries constituting Hedge Fund Earnings, less all expenses paid by the Issuer and its Subsidiaries properly allocable to the Hedge Fund Earnings (excluding (i) base salary and other compensation payable to Icahn or accrued in connection with such base salary or other compensation and (ii) any amounts payable or accrued or expenses or deductions incurred or accrued in connection with the acquisition by the Issuer of the Partnership Interests), plus or minus, as the case may be, any Income Tax expense or Income Tax benefit (current or deferred) of the Issuer and its Subsidiaries with respect to the Hedge Fund Earnings. The After-Tax Earnings and each item thereof shall be determined in accordance with GAAP. After-Tax Earnings may be positive, negative, or zero. If in a Fiscal Year during the Earn-out Period, the After-Tax Earnings were negative, then an amount equal to the lesser of (x) the Income Taxes included in the computation by the Issuer and its Subsidiaries of After-Tax Earnings for such Fiscal Year, but only to the extent that such Income Taxes are attributable to a change of Tax Laws applicable to amounts included in the determination of After-Tax Earnings in a year prior to the year for which After-Tax Earnings are being computed and (y) the amount by which the After-Tax Earnings were negative, shall be carried forward and treated as Income Taxes payable in the succeeding Fiscal Year (a “Tax Carryforward”). For the Fiscal Year ending December 31, 2007, After -Tax Earnings will be determined based on (i) the management fees payable to Icahn Capital Management for the fiscal quarter ending on December 31, 2007 (and management fees for the fiscal quarter ending September 30, 2007 shall not be included in After-Tax Earnings) and (ii) all Incentive Allocation Earnings payable in respect of such entire Fiscal Year.

“After-Tax Earnings Statement” has the meaning ascribed to it in Section 1.3(a)(i).

"Aggregate After-Tax Earnings" means the sum of the 2007 After-Tax Earnings, the 2008 After-Tax Earnings, the 2009 After-Tax Earnings, the 2010 After-Tax Earnings and the 2011 After-Tax Earnings, provided that in determining Aggregate After-Tax Earnings, no Tax Carryforward shall be given effect.

"Aggregate Consideration" has the meaning ascribed to it in Section 1.2.

"Aggregate Earn-Out Amount" means the sum of the 2007 Earn-Out Amount, the 2008 Earn-Out Amount, the 2009 Earn-Out Amount, the 2010 Earn-Out Amount and the 2011 Earn-Out Amount.

"Agreement" has the meaning ascribed to it in the preamble.

"Ancillary Document" means any agreement, certificate, instrument or other document to be executed and delivered pursuant hereto, as contemplated hereby or in connection with the consummation of the transactions contemplated by this Agreement and shall include, without limitation, the Management Contribution Agreement, the Employment Agreements, the Registration Rights Agreement and the Release.

"API" has the meaning ascribed to it in the recitals.

"AREH" has the meaning ascribed to it in the recitals.

"AREP Units" means the depository units representing limited partnership interests of the Issuer that are listed and traded on the NYSE.

"Audit Committee" means the Audit Committee of the Board of Directors of the general partner of the Issuer, as the same may be constituted from time to time.

"Business Day" means any day of the year other than (i) any Saturday or Sunday or (ii) any other day on which commercial banks located in New York City are generally closed for business.

"Cap" has the meaning ascribed to it in Section 8.4(b).

"Catch-up Earn-out Amount" has the meaning ascribed to it in Section 1.3(b)(vi).

"CCI Administrative" has the meaning ascribed to it in the recitals.

"CCI Offshore" has the meaning ascribed to it in the preamble.

"CCI Onshore" has the meaning ascribed to it in the preamble.

"Claim" has the meaning ascribed to it in Section 8.3(a).

"Client" means any Feeder Fund or Master Fund to whom Icahn Management, Icahn Capital Management or any other Partnership has provided, or has agreed to provide in the future, Management Services. For the avoidance of doubt, "Client" shall not include investors, only investment funds.

"Closing" has the meaning ascribed to it in Section 2.1.

"Closing Date" has the meaning ascribed to it in Section 2.1.

"Closing Date Consideration" has the meaning ascribed to it in Section 1.2.

"Code" means the Internal Revenue Code of 1986, as amended.

"Consents" means any consent, approval, petition, License or order of, registration, declaration or filing with, or notice to, or waiver from, any federal, state, local, foreign or other Governmental Entity or any Person, including any security holder, Client, creditor or vendor which is necessary to be obtained, made or given in connection with the execution and delivery of this Agreement or any Ancillary Document, the performance by a Person of its obligations under this Agreement or any Ancillary Document and the consummation of the transactions contemplated by this Agreement or any Ancillary Document.

"Consent to Assignment" has the meaning ascribed to it in Section 2.2(i).

"Contract" means any contract, lease, commitment, understanding, sales order, purchase order, agreement, indenture, mortgage, note, bond, right, warrant, instrument, plan, permit or license, whether written or oral, which is binding and enforceable.

"Contributors" has the meaning ascribed to it in the preamble.

"Contribution Agreement" has the meaning ascribed to 2.2(n)

"Contributors' Disclosure Schedules" means the disclosure schedules of the Contributors and Icahn attached hereto and delivered pursuant to Article III of this Agreement.

"Covered Affiliate Agreement" has the meaning ascribed to it in Section 2.2(e).

"Covered Employees" has the meaning ascribed to it in Section 3.20(a).

"Damages" means any and all damages, losses (including diminution in value), Liabilities, Claims, demands, Proceedings, penalties, obligations, charges, deficiencies, Taxes, interest, settlement payments, reasonable costs and expenses of every kind whatsoever (including, without limitation, reasonable costs of investigating, preparing or defending any such Claim or Proceeding and reasonable legal fees and disbursements), as and when incurred by an Indemnified Party and whether or not involving a Third-Party Claim.

"Disclosure Materials" means the diligence materials relating to the Contributors, the Partnerships and the Funds and made available to the Issuer prior to the Closing Date in the electronic data room maintained by counsel to the Contributors.

"Earn-out Amount" means (a) the aggregate value of AREP Units that shall be issuable in respect of the After-Tax Earnings for a particular Fiscal Year during the Earn-out Period, as set forth in the Final After-Tax Earnings Statement for such Fiscal Year or (b) the Catch-up Earn-out Amount, as applicable.

"Earn-out Consideration" has the meaning ascribed to it in Section 1.2.

"Earn-out-Period" means Fiscal Years 2007, 2008, 2009, 2010 and 2011, inclusive.

"Employment Agreement Amendments" has the meaning set ascribed to in Section 2.2(g).

"Employment Agreements" has the meaning ascribed to it in Section 2.2(h).

"Encumbrance" means any mortgage, lien (except for any lien for Taxes not yet due and payable), pledge, security interest, option, right of any third party, encumbrance or other adverse claim of any kind or description.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means any entity that would be deemed a "single employer" with any Contributor or any Partnership under Section 414(b), (c), (m) or (o) of the Code or Section 4001 of ERISA.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Feeder Funds" means, collectively, Icahn Fund Ltd., a Cayman Islands company, Icahn Cayman Partners L.P., a Cayman Islands limited partnership, Icahn Partners Master Fund II Feeder LP, a Delaware limited partnership, Icahn Fund II Ltd., a Cayman Islands company, and Icahn Fund III Ltd, a Cayman Islands company.

"Final After-Tax Earnings Statement" has the meaning ascribed to it in Section 1.3(a)(iii).

"Financial Statements" has the meaning ascribed to it in Section 3.8(a).

"Fiscal Year" means the fiscal year of the Issuer and the Funds, ending on December 31 of such year.

"Fund Financial Statement" has the meaning ascribed to it in Section 3.6(e).

"Funds" means, collectively, the Master Funds, the Feeder Funds and any other funds, investment vehicles or separately managed accounts now or hereafter managed by the Partnerships.

"GAAP" means U.S. generally accepted accounting principles at the time in effect, as consistently applied.

"Governmental Entity" means any court, tribunal, arbitrator, authority, regulatory or administrative agency, commission, licensing board, official or other instrumentality of the United States or foreign country or any state, county, city or other political subdivision thereof or any self-regulatory authority.

"Hedge Fund Earnings" means the aggregate of (i) management fees payable to Icahn Capital Management with respect to the Funds pursuant to the Management Agreements and (ii) the Incentive Allocation Earnings, and shall exclude any revenues or earnings received by the Issuer as an investor in the Funds.

"Icahn" has the meaning ascribed to it in the preamble.

"Icahn Capital Management" has the meaning ascribed to it in the recitals.

"Icahn Capital Management Partnership Interests" has the meaning ascribed to in the recitals.

"Icahn Employment Agreement" has the meaning set ascribed to in Section 2.2(f).

"Icahn Group" means (i) the Partnerships, (ii) the Contributors, (iii) Icahn, (iv) the Funds and (v) all officers, partners, directors and executive or professional employees of any of the foregoing. Notwithstanding the foregoing, the following individuals and entities shall not be considered either (a) members of the Icahn Group or (b) Persons who are "associated with" the Icahn Group, in each case for any purposes of this Agreement: (1) Richard Elden; (2) James Gordon; (3) Aegis Capital Corp.; (4) Icahn Cayman Partners, L.P.; (5) any limited partner of Onshore Master Fund I (other than CCI Funding Corp., Koala Holding Limited Partnership and any other person who otherwise would be deemed to be a member of the Icahn Group pursuant to item (v) above); (6) any shareholder of Icahn Fund Ltd., Icahn Fund II Ltd. or Icahn Fund III Ltd. (other than Icahn and his Affiliates); (7) any limited partner of Icahn Partners Master Fund II Feeder LP (other than any person who otherwise would be deemed to be a member of the Icahn Group pursuant to item (v) above); or (8) any officers, partners, directors or executive or professional employees of any of the foregoing (other than any person who otherwise would be deemed to be a member of the Icahn Group pursuant to item (v) above).

"Icahn Management" has the meaning ascribed to it in the preamble.

"Icahn Partners Holding" has the meaning ascribed to it in the preamble.

"Incentive Allocation" has the respective meanings ascribed to it in Section 3.05(b) of the Third Amended and Restated Limited Partnership Agreement of Icahn Partners Master Fund LP dated February 1, 2007 (which is also applicable to Icahn Fund Ltd.); Section 3.06(b) of the Amended and Restated Limited Partnership Agreement of Icahn Partners Master Fund II L.P. dated February 1, 2007 (which is also applicable to Icahn Fund II Ltd.); Section 3.06(b) of the Amended and Restated Limited Partnership Agreement of Icahn Partners Master Fund III L.P. dated April 1, 2007 (which is also applicable to Icahn Fund III Ltd.); Section 3.05(b) of the Fourth Amended and Restated Limited Partnership Agreement of Icahn Partners LP dated February 1, 2007; and Annex I, Section (a) of the Amended and Restated Limited Partnership Agreement of Icahn Cayman Partners L.P. dated March 1, 2007.

"Incentive Allocation Earnings" means, for any Fiscal Year during the Earn-out Period, the aggregate of the Issuer's share of the Incentive Allocation payable to each of Offshore GP and Onshore GP, as reported in the audited financial statements of each Master Fund for such Fiscal Year.

"Income Tax" mean any Tax (i) measured by gross or net income of the Person on which Tax is imposed and (ii) which would be included in such Person's provisions for Taxes under GAAP.

"Indebtedness" means (i) any obligation for borrowed money or issued in substitution for or exchange of indebtedness for borrowed money; or (ii) any obligation evidenced by any note, bond, debenture or other debt security.

"Indemnified Party" has the meaning ascribed to it in Section 8.3(a).

"Indemnifying Party" has the meaning ascribed to it in Section 8.3(a).

"Independent Auditor" means (a) a nationally recognized public accounting firm mutually acceptable to the Contributors and the Issuer or (b) if the Issuer and Contributors are unable to agree on such a firm, then Contributors shall select one firm and the Issuer shall select one firm and those two firms shall select a third firm, in which event, the "Independent Auditor" shall mean such third firm. In no event shall a public accounting firm which has provided auditing, accounting, consulting or other professional services within the prior two years, or has been retained to provide any such services, to the Issuer or any of the Contributors be named as the Independent Auditor without the prior written consent of the Issuer and each of the Contributors.

"Investment Advisers Act" means the Investment Advisers Act of 1940, as amended, and the rules and regulations thereunder.

"Investment Company Act" means the Investment Company Act of 1940, as amended, and the rules and regulations thereunder.

"IRS" means the Internal Revenue Service.

"Issuer" has the meaning ascribed to it in the preamble.

"Issuer Indemnified Party" and "Issuer Indemnified Parties" have the meanings ascribed to them in Section 8.2.

"Issuer's Disclosure Schedules" means the disclosure schedules of the Issuer attached hereto and delivered pursuant to Article IV of this Agreement.

"Issuer SEC Reports" means each Form 10-K, Form 10-Q, Form 8-K, registration statement under the Securities Act and proxy or information statement, together with any amendments thereto, required to be filed by the Issuer with the SEC since December 31, 2004.

"Knowledge of the Contributors" or "the Contributors' Knowledge" means the actual knowledge, or the actual knowledge a person would have after reasonable inquiry, of Icahn, Vincent Intrieri, Keith A. Meister, Keith Schaitkin or Keith Cozza.

“Law” means any law, principle of common law, statute, rule, regulation, ordinance, code, requirement, Order or other pronouncement having the effect of law of the United States or foreign country or any state, county, city or other political subdivision thereof or of any Governmental Entity.

“Leases” has the meaning ascribed to it in Section 3.21.

“Liability” means any liability or obligation (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due and regardless or when or by whom asserted).

“License” means licenses, permits, certificates of authority, authorizations, approvals, registrations, findings of suitability, variances, exemptions, certificates of occupancy, orders, franchises and similar consents granted or issued by any Governmental Entity.

“License Agreement” has the meaning ascribed to it in Section 2.2(m).

“Management Agreement” means any investment management, advisory or sub-advisory agreement under which any Partnership provides Management Services as of any date of determination.

“Management Contribution Agreement” has the meaning ascribed to in the recitals.

“Management Services” means any services which involve (i) the management of an investment account or fund; (ii) the giving of advice with respect to the investment and/or reinvestment of assets or funds or (iii) otherwise acting as an “investment adviser” within the meaning of the Investment Advisers Act, and performing activities related or incidental thereto.

“Master Fund II” has the meaning ascribed to it in the recitals.

“Master Fund III” has the meaning ascribed to it in the recitals.

“Master Funds” has the meaning ascribed to it in the recitals.

“Material Adverse Effect” as to any Person, means any event, occurrence, fact, condition, development, change or effect that, individually or in the aggregate with other events, occurrences, facts, conditions, developments, changes or effects, has a material adverse effect on the business, earnings, operations, assets, Liabilities, properties, condition (financial or otherwise), results of operations or net worth of such Person.

“Non-Competition Agreement” has the meaning ascribed to it in Section 2.2(j)

“NYSE” means the New York Stock Exchange.

“Offshore GP” has the meaning ascribed to it in the recitals.

“Offshore Master Fund I” has the meaning ascribed to it in the recitals.

"Offshore Master Funds" has the meaning ascribed to it in the recitals.

"Offshore Partnership Interests" has the meaning ascribed to it in the recitals.

"Onshore GP" has the meaning ascribed to it in the recitals.

"Onshore Master Fund I" has the meaning ascribed to it in the recitals.

"Onshore Partnership Interests" has the meaning ascribed to it in the recitals.

"Order" means any writ, judgment, decree, demand, injunction or similar order of any Governmental Entity (in each such case, whether preliminary or final).

"Organizational Documents" means, (i) with respect to any Person that is a corporation, its articles or certificate of incorporation or memorandum and articles of association, as the case may be, and bylaws; (ii) with respect to any Person that is a limited partnership, its certificate of limited partnership and limited partnership agreement; (iii) with respect to any Person that is a limited liability company, its certificate of formation and limited liability company or operating agreement; (iv) with respect to any Person that is a trust or other entity, its declaration or agreement of trust or constituent document and (v) with respect to any other Person, its comparable organizational documents, in each case, as any such document has been amended or restated.

"Partnership Interests" has the meaning ascribed to it in the recitals.

"Partnerships" means Offshore GP, Onshore GP, the Master Funds, Icahn Management, Icahn Capital Management and CCI Administrative.

"Permitted Encumbrances" means (a) Encumbrances disclosed in the Financial Statements or securing Liabilities reflected in the Financial Statements in accordance with GAAP, (b) Encumbrances for Taxes, assessments and similar charges that are not yet due or are being contested in good faith, and (c) Encumbrances relating to an investment of any Fund.

"Person" means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Entity.

"Plan" and "Plans" have the meanings ascribed to them in Section 3.20(a).

"Pre-Closing Straddle Period" means the portion of any Straddle Period that begins before the Closing Date and ends on the Closing Date.

"Pre-Closing Tax Period" means any taxable period that begins before the Closing Date and ends on or before the Closing Date.

"Principal Market" means the NYSE, or in the event that the AREP Units are no longer listed on the NYSE, the primary market or stock exchange on which the AREP Units are then listed or traded.

"Proceeding" means any action, arbitration, audit, examination, hearing, investigation, litigation, suit or other proceeding (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before or otherwise involving, any court or other Governmental Entity or referee, trustee, arbitrator or mediator.

"Registration Rights Agreement Amendment" has the meaning ascribed to it in Section 2.2(k).

"SEC" means the United States Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Shared Services Agreement" has the meaning ascribed to it in Section 2.2(l)

"Special Committee" means the special committee of independent directors of the Board of Directors of the general partner of the Issuer, as the same may be reconstituted from time to time.

"Straddle Period" means a taxable period that begins before the Closing Date and ends after the Closing Date.

"Subsidiary" means any corporation, partnership, limited liability company, joint venture or other entity in which a Person (a) directly or indirectly, owns or controls 50% or more of the voting stock or other ownership interests entitled to vote generally; (b) has the power to elect a majority of the board of directors or similar governing body of such Person or (c) acts as the general partner or manager, or has the legal power to direct the business or policies, of such Person.

"Tax" means any and all taxes, charges, fees, levies, duties, Liabilities, impositions or other assessments, including, without limitation, income, gross receipts, profits, excise, real or personal property, environmental, recapture, sales, use, value-added, withholding, social security, retirement, employment, unemployment, occupation, service, license, net worth, payroll, franchise, gains, stamp, transfer and recording taxes, fees and charges, imposed by the IRS or any other taxing authority (whether domestic or foreign including, without limitation, any state, county, local or foreign government or any subdivision or taxing agency thereof (including a United States possession)), whether computed on a separate, consolidated, unitary, combined or any other basis and such term shall include any interest whether paid or received, fines, penalties or additional amounts attributable to, or imposed upon, or with respect to, any such taxes, charges, fees, levies, duties, liabilities, impositions or other assessments.

"Tax Carryforward" shall have the meaning ascribed to it in the definition of After-Tax Earnings.

"Tax Return" means any report, return, document, declaration or other information or filing required to be supplied to any taxing authority or jurisdiction (foreign or domestic) with respect to Taxes, including attachments thereto and amendments thereof, and including, without limitation, information returns, any documents with respect to or accompanying payments of estimated Taxes, or with respect to or accompanying requests for the extension of time in which to file any such report, return, document, declaration or other information.

“Third-Party Claim” has the meaning ascribed to it in Section 8.3(b).

“Threshold” has the meaning set forth in Section 8.4(a).

“Trading Day” means (a) any day on which the AREP Units are listed or quoted and traded on the Principal Market or (b) if the AREP Units are not then listed or quoted and traded on any market or stock exchange, then any Business Day.

“Transferred Employee” means an individual who immediately prior to the Closing is an employee of any Contributor or any Partnership, and immediately following the Closing continues to be an employee of the Issuer or its Affiliates.

“Volume-Weighted Average Price” means, for the AREP Units as of any date, the dollar volume-weighted average sales price for the AREP Units on the Principal Market during the period beginning at 9:30:01 a.m., New York City time (or such other time as the Principal Market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York City time (or such other time as the Principal Market publicly announces is the official close of trading) as reported by Bloomberg through its “Volume at Price” functions, or, if the foregoing does not apply, the dollar volume-weighted average price of the AREP Units in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York City time (or such other time as such market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York City time (or such other time as such market publicly announces is the official close of trading) as reported by Bloomberg, or, if no dollar volume-weighted average sales price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the “pink sheets” by Pink Sheets LLC (formerly the National Quotation Bureau, Inc.). If the Volume-Weighted Average Price cannot be calculated for the AREP Units on a particular date on any of the foregoing bases, the Volume-Weighted Average Price of the AREP Units on such date shall be the fair market value as determined in good faith by the Issuer, absent manifest error.

ARTICLE X

MISCELLANEOUS

10.1 Expenses. Each of the parties will bear its own costs and expenses (including fees and disbursements of counsel, consultants and accountants) incurred in connection with this Agreement and the transactions contemplated hereby.

10.2 Entire Agreement.

(a) This Agreement supersedes all prior agreements between the parties with respect to its subject matter and constitutes (together with the Ancillary Documents) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. The exhibits and schedules identified in and attached to this Agreement are incorporated herein by reference and shall be deemed as fully a part hereof as if set forth herein in full.

(b) In the event of any inconsistency between the statements in the body of this Agreement and those in the exhibits and schedules (other than an exception expressly set forth as such in the Contributors' Disclosure Schedules or the Issuer's Disclosure Schedules with respect to a specifically identified representation or warranty), the statements in the body of this Agreement will control.

10.3 Waiver. Subject to Section 5.5, any term or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the party waiving such term or condition. No waiver by any party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by Law or otherwise afforded, will be cumulative and not alternative.

10.4 Amendment. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each party hereto, provided that any amendment, supplement or modification to be executed and delivered by the Issuer in connection with this Agreement or any Ancillary Document shall require the approval of the Audit Committee.

10.5 No Third-Party Beneficiaries. The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors or permitted assigns and personal representatives, and it is not the intention of the parties to confer third-party beneficiary rights upon any other Person, except that each Indemnified Person shall be a third-party beneficiary of Article VIII.

10.6 Assignment; Binding Effect. No party may assign this Agreement or any right, interest or obligation hereunder. This Agreement is binding upon, inures to the benefit of and is enforceable by the parties hereto and their respective successors, permitted assigns and personal representatives.

10.7 Interpretation.

Unless the context clearly requires otherwise:

(a) The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(b) When a reference is made in this Agreement to a section, subsection, article, exhibit or schedule, such reference shall be to a section, subsection, article, exhibit or schedule of this Agreement unless otherwise clearly indicated to the contrary. Any capitalized terms used in any schedule hereto and not otherwise defined therein shall have the meanings set forth in this Agreement.

(c) Whenever the words “include,” “includes” or “including” are used in this Agreement they shall be deemed to be followed by the words “without limitation” and, unless the context otherwise requires, “neither,” “nor,” “any,” “either” and “or” shall not be exclusive.

(d) The words “hereof,” “herein” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and article, section, paragraph, exhibit and schedule references are to the articles, sections, paragraphs, exhibits and schedules of this Agreement unless otherwise specified.

(e) The meaning assigned to each term defined herein shall be equally applicable to both the singular and the plural forms of such term, and words denoting any gender shall include all genders. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

(f) A reference to any party to this Agreement or any other agreement or document shall include such party’s successors and permitted assigns.

(g) A reference to “$,” “U.S.$,” “U.S. dollars” or “dollars,” shall mean the legal tender of the United States of America.

(h) Any reference to any Law means such Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Law means that provision of such Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision.

(i) Each accounting term used herein that is not specifically defined herein shall have the meaning given to it under GAAP.

(j) Any reference to a party’s being satisfied with any particular item or to a party’s determination of a particular item presumes that such standard will not be achieved unless such party shall be satisfied or shall have made such determination in its sole or complete discretion.

(k) The parties are each represented by legal counsel and have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

(l) The principles of interpretation set forth in this Section 10.7 shall apply equally to all Ancillary Documents.

10.8 Specific Performance. In addition to any and all other remedies that may be available at law in the event of any breach of this Agreement, the parties shall be entitled to specific performance of the agreements and obligations of the other parties hereunder and to such other injunctive or other equitable relief as may be granted by a court of competent jurisdiction.

10.9 Further Assurances. The parties agree (a) to furnish upon request to each other such further information, (b) to execute and deliver to each other such other documents, and (c) to do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the transactions contemplated by this Agreement.

10.10 Severability. If any provision of this Agreement is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Agreement shall not in any way be affected or impaired thereby and the parties will attempt to agree in good faith upon a valid and enforceable provision that is a reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Agreement

10.11 Delays or Omissions. It is agreed that no delay or omission to exercise any right, power or remedy accruing to any party, upon any breach, default or noncompliance by any other party under this Agreement, shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of or in any similar breach, default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent or approval of any kind or character on any party's part of any breach, default or noncompliance under this Agreement, or any waiver on such party's part of any provisions or conditions of the Agreement must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, or otherwise afforded to any party, shall be cumulative and not alternative.

10.12 Remedies. The indemnification rights under Article VIII are independent of and in addition to such rights and remedies as the parties may have at law or in equity or otherwise for any misrepresentation, breach of warranty or failure to fulfill any agreement or covenant hereunder on the part of any party hereto, including the right to seek specific performance, rescission or restitution, none of which rights or remedies shall be affected or diminished by Article VIII.

10.13 Governing Law. This Agreement shall be governed by and construed under the laws of the State of New York as applied to agreements among New York residents entered into and to be performed entirely within New York.

10.14 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Facsimile and .pdf counterpart signatures to this Agreement shall be treated in all manner and respects as original counterparts and will be considered to have the same binding legal effect as if they were the original signed version thereof delivered in person.

10.15 Consent to Jurisdiction. Each party irrevocably submits to the exclusive jurisdiction of any New York State court in the County of New York or any courts of the United States of America located in the Southern District of New York, and each party hereby agrees that all Proceedings brought by such party hereunder shall be brought in any such court. Each party irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such Proceeding brought in any such court, any claim that any such Proceeding brought in such a court has been brought in an inconvenient forum and the right to object, with respect to any such Proceeding brought in any such court, that such court does not have jurisdiction over such party or the other party. In any such Proceeding, each party waives, to the fullest extent it may effectively do so, personal service of any summons, complaint or other process and agrees that the service thereof may be made by any means permitted by Section 10.16. Each party agrees that a final non-appealable judgment in any such Proceeding brought in such a court shall be conclusive and binding.

10.16 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be delivered personally, by certified or registered mail, return receipt requested, and postage prepaid or by courier or overnight delivery, addressed as follows:

If to Icahn or the Contributors:

Icahn Associates Corp.
767 Fifth Avenue, Suite 4700
New York, NY 10153
Attention: Marc Weitzen

with a copy (which shall not constitute notice) to:

Bingham McCutchen LLP
399 Park Avenue
New York, NY 10022
Attention: Floyd I. Wittlin, Esq.

If to the Issuer:

Special Committee of the
Board of Directors of American Property Investors, Inc.
510 East 86th Street

New York, NY 10028

Attention: Jack Gumpert Wasserman, Esq.

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with a copy (which shall not constitute notice) to:

American Real Estate Partners, L.P.
445 Hamilton Avenue
White Plains, NY 10601
Attention: Felicia Buebel, Esq.

and

Proskauer Rose LLP
1585 Broadway
New York, NY 10036
Attention: Peter G. Samuels, Esq.

and

Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
Attention: William D. Regner, Esq.

or to such other address as a party may from time to time designate in writing in accordance with this Section 10.16. Each notice or other communication given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been received (a) on the Business Day it is sent, if sent by personal delivery; (b) the earlier of receipt or three Business Days after having been sent by certified or registered mail, return receipt requested and postage prepaid or (c) on the first Business Day after sending, if sent by overnight delivery.

[End of text. Signature page follows.]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the parties hereto as of the date first above written.

AMERICAN REAL ESTATE PARTNERS, L.P.

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

By: /s/ Andrew Skobe

Name: Andrew Skobe
Title:

CCI ONSHORE CORP.

By: /s/ Edward Mattner

Name: Edward Mattner
Title:

CCI OFFSHORE CORP.

By: /s/ Edward Mattner

Name: Edward Mattner
Title:

ICAHN MANAGEMENT LP

By: CCI Manager LLC, its general partner

By: /s/ Edward Mattner

Name: Edward Mattner
Title:

/s/ Carl C. Icahn

Carl C. Icahn

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (''Agreement'') is made and entered into as of the 8th day of August, 2007 (the "Effective Date"), by and between American Real Estate Partners, L.P., a Delaware limited partnership ("AREP"), Icahn Capital Management LP, a Delaware limited partnership (the ''Manager'' and, together with AREP, the "Employer"), and Carl C. Icahn (''Executive''). Where the context permits, references to "the Employer" shall include AREP, the Manager and any successor entities thereto. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in Section 10 herein.

W I T N E S S E T H:

WHEREAS, AREP is a master limited partnership that is a diversified holding company engaged in a variety of businesses, including real estate and home fashions;

WHEREAS, AREP is acquiring the asset management operations operated by the predecessor of the Manager and with respect to which the Executive has provided services;

WHEREAS, the Manager is an indirect wholly-owned subsidiary of AREP and provides certain services to the Funds;

WHEREAS, AREP and the Manager desire to secure the services of Executive for their benefit and the benefit of their controlled Affiliates from and after the date hereof; and

WHEREAS, Executive desires to provide such services subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, together with other good and valuable consideration the receipt of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. SERVICES AND DUTIES. From and after the Effective Date, Executive shall be employed by AREP in the capacity of its executive Chairman and by the Manager in the capacity of its Chairman and Chief Executive Officer; in such capacity Executive shall be a member and Chairman of the Manager's Management Committee (the "MC"). In addition, Executive shall act as and perform the duties of the chief executive officer of each of the general partners of the Funds. The principal location of Executive's employment with Employer shall be such present location at which Employer maintains its principal location, although Executive understands and agrees that Executive may also be required to travel from time to time for business reasons. Executive shall devote his substantial time and efforts to overseeing the strategic and business affairs of AREP and the asset management operations of the Manager, subject in each case to his ability to continue to engage in his current outside business activities and such other future outside business activities as are otherwise consistent with Section 7 of this Agreement and comparable in scope to the outside business activities now conducted by Executive. Executive will perform such duties as are required by Employer from time to time and normally associated with Executive's position, together with such additional duties, commensurate with Executive's positions with Employer and with its Affiliates, as may be assigned to Executive from time to time by the Board of Directors of American Property Investors, Inc., the general partner of AREP (the "Board"), or the MC consistent with the terms of this Agreement. Executive shall follow and comply with all policies and procedures and compliance manuals adopted by or in respect of Employer and its Affiliates, as may be applicable to Executive. Notwithstanding the foregoing, nothing herein shall prohibit Executive from (i) subject to prior approval of the Board and the MC, accepting directorships unrelated to Employer that do not give rise to any conflict of interests with Employer or its Affiliates and (ii) engaging in charitable and civic activities, so long as such outside interests, individually or in the aggregate, do not materially interfere with the performance of Executive's duties hereunder.

2. TERM. Executive's employment under the terms and conditions of this Agreement will commence on the Effective Date. The term of this Agreement shall commence on the Effective Date and end on December 31, 2012 or immediately following such earlier time that Executive's employment terminates under Section 5 (such period, the "Term"). The Term may be renewed or extended by mutual agreement of the parties up to sixty (60) days prior to the end of the Term and if Executive does not intend to renew or extend the term, he shall provide notice prior to such sixty (60) day period. The decision by the Employer not to extend the Term shall not be deemed a termination of Executive's employment by Employer without Cause for purposes of this Agreement. If the Term expires, and Executive is employed by Employer thereafter, unless the parties agree otherwise in writing, such employment shall be ''at-will'' on terms and conditions to be set by Employer.

3. COMPENSATION.

(a) Base Salary. In consideration of Executive's full and faithful satisfaction of Executive's duties under this Agreement, Employer agrees to pay to Executive a salary in the amount of $900,000 per annum (the ''Base Salary''), payable in such installments as Employer pays its similarly placed employees (but not less frequently than each calendar month), subject to usual and customary deductions for withholding taxes and similar charges, and customary employee contributions to the health, welfare and retirement programs in which Executive is enrolled from time to time. The Base Salary shall be reviewed on an annual basis by the Board and the MC and adjusted at the sole discretion of the Board and the MC; provided, however, in no event shall the Base Salary be reduced without Executive's written approval.

(b) Annual Bonus Incentive. In addition to Base Salary, Executive shall be eligible for an annual bonus incentive (the "Annual Bonus Incentive" or "Bonus") as determined in accordance with Exhibit A for each calendar year or portion thereof during the Term, provided that Executive remains employed by Employer during such period. Any Bonus earned by Executive pursuant to Exhibit A shall be paid in the manner provided in Exhibit A, provided such payment (other than Deferral Amount(s)) shall be made no later than two and one-half months after the end of the period to which such Bonus relates or ten days after the earnings for the calendar year are announced, whichever occurs first. Payment of the Bonus for each year shall in all circumstances be contingent upon a certification of the Board that the determination, calculation and payment of the Bonus is correct.

(c) Withholding. All taxable compensation payable to Executive pursuant to this Section 3 or otherwise pursuant to this Agreement shall be subject to all applicable and customary withholding taxes and such other excise or employment taxes as are required under Federal law or the applicable law of any state or governmental body to be collected with respect to compensation paid by Employer to an employee.

(d) Other AREP Compensation. Other than as provided for in this Agreement, Executive in his capacity as an employee under this Agreement shall not be entitled to any other form of direct or indirect compensation from AREP or its controlled Affiliates (including any fees, remuneration or other benefits) without the express prior consent of the Board.

4. BENEFITS AND EXPENSE REIMBURSEMENT.

(a) Retirement and Welfare Benefits. During the Term, Executive will be entitled to participate in the usual and customary employee benefit plans and programs offered to employees at Executive's level by Employer or its Affiliates, including sick time, vacation or paid time off, and participation in Employer's or Affiliates' medical, dental and insurance programs, as well as the ability to participate in Employer's or Affiliates 401(k) retirement savings plan, in each case in accordance with and subject to the terms of such plans as in effect from time to time. Nothing in this Section 4, however, shall require Employer or its Affiliates, if applicable, to adopt or maintain any benefit plan or provide any type or level of benefits to its employees, including Executive.

(b) Reimbursement of Expenses. Employer shall reimburse Executive for any expenses reasonably and necessarily incurred by Executive in furtherance of Executive's duties hereunder, including travel, meals and accommodations, upon submission by Executive of vouchers or receipts and in compliance with such rules and policies relating thereto as Employer may from time to time adopt.

5. TERMINATION. Executive's employment shall be terminated at the earliest to occur of the following: (i) at the end of the Term unless Executive agrees to continue working for Employer on mutually agreeable terms, (ii) the date on which the Board delivers written notice that Executive is being terminated for Disability (as defined below), or (iii) the date of Executive's death. In addition, Executive's employment with Employer may be terminated: (A) by Employer for ''Cause'' (as defined below), effective on the date on which a written notice to such effect is delivered to Executive; (B) by Employer at any time without Cause, effective on the date on which a written notice to such effect is delivered to Executive or such other date as is reasonably designated by Employer; or (C) by Executive with "Good Reason" (as defined below).

(a) Termination by Employer with Cause. If Executive's employment with Employer is terminated by Employer with Cause, Executive shall not be entitled to any further compensation or benefits other than accrued but unpaid Base Salary (payable as provided in Section 3(a) hereof), any accrued and unused vacation pay through the date of such termination (collectively, the ''Accrued Benefits") and fifty percent (50%) of the Unpaid Bonus (as defined below).

(b) Termination by Employer without Cause or by Executive with Good Reason. If Executive's employment is terminated by Employer without Cause or by Executive with Good Reason prior to the end of the Term hereof, then Executive shall be entitled to: (i) the Accrued Benefits and any earned and unpaid portion of an Annual Bonus Incentive for the year prior to the year of termination (the "Unpaid Bonus"); (ii) a lump sum separation payment equal to one (1) time the annual Base Salary plus one (1) time the Average Bonus (as defined below); and (iii) for any year other than 2007, the Annual Bonus Incentive determined for the full year based solely upon the operations and investment performance of AREP and its controlled Affiliates through the date of termination and annualized for the remainder of the year multiplied by a fraction, the numerator of which is the number of months (including the month of termination) during the then current year that Executive was employed under this Agreement and the denominator of which is twelve (12) (the "Pro-Rata Annual Bonus Incentive"). "Average Bonus" means the three-year average (or such lesser period during the Term, if applicable) of the Annual Bonus Incentive; provided, however, that in the event such termination occurs on or after December 31, 2007 and prior to the end of the 2008 Bonus period, the amount of the Average Bonus shall be equal to the average of (A) the 2007 Annual Bonus Incentive actually paid (or payable) to Executive and increased to represent an annualized amount and (B) the 2008 Annual Bonus Incentive which would have been paid if Executive had been employed at the end of the 2008 Bonus period based solely upon the operations and investment performance of AREP and its controlled Affiliates through the termination date (and as otherwise determined in accordance with Exhibit A). In the event such termination occurs prior to the end of the 2007 Bonus period, the Average Bonus shall be equal to the 2007 Annual Bonus Incentive which would have been paid if Executive had been employed at the end of the 2007 Bonus period based solely upon the operations and investment performance of AREP and its controlled Affiliates through the termination date and annualized for the remainder of the year (and as otherwise determined in accordance with Exhibit A).

(c) Voluntary Resignation, Death or Disability. If Executive's employment is terminated voluntarily by Executive or by reason of Executive's death or Disability prior to the end of the Term, in lieu of any other payments or benefits, Executive (or Executive's estate, as applicable) shall be entitled to (i) the Accrued Benefits and any Unpaid Bonus; (ii) a lump sum payment equal to the remaining Base Salary payable through December 31 of the year of termination (assuming Executive's employment had continued through December 31); and (iii) fifty percent (50%) of the Pro-Rata Annual Bonus Incentive as provided for in Exhibit A, but which shall be determined based upon an interpolation of full year results for the year of termination based on actual results as of the date of termination; provided that in the event of Executive's voluntary termination hereunder, Executive shall only be entitled to fifty percent (50%) of the Unpaid Bonus payable under subsection (i) and shall not be entitled to any payments under subsection (ii) herein.

(d) Termination in Connection with a Change in Control. If Executive's employment is terminated by Employer without Cause or by Executive with Good Reason within the twelve-month period following the occurrence of a Change in Control, then in lieu of any other payments set forth in this Section 5, Executive shall be entitled to: (i) the Accrued Benefits and any Unpaid Bonus; (ii) a lump sum separation payment equal to two (2) times the annual Base Salary plus two (2) times the Average Bonus; and (iii) a pro-rata Annual Bonus Incentive for the year of termination.

(e) Resignation as Officer or Director. Upon the termination of employment for any reason, Executive shall resign each position (if any) that Executive then holds as an officer or director of Employer or any of its Subsidiaries or controlled Affiliates.

(f) Section 409A. To the extent required to comply with Section 409A of the Code, as determined by Executive's counsel, if requested by Executive, one or more payments under this Section 5 shall be delayed to the six-month anniversary of the date of Executive's separation from service, within the meaning of Section 409A of the Code.

(g) Release and Payment. All payments to the Executive provided for in this Section 5 shall be conditioned upon Executive's (or Executive's estate, as applicable) providing Employer with a signed release limited in scope to employment related claims in a form acceptable to the Board. All such payments shall be made to Executive in cash within sixty (60) days of his death or other termination of employment.

6. MAINTENANCE OF FUNDS. If at any time between the Effective Date and the fifth (5th) anniversary of the Effective Date, Executive shall, for any reason, cease to serve as Chairman and Chief Executive Officer of the Manager and as the individual primarily responsible for the management of the Funds' investment portfolios (a "Triggering Event"), Executive may elect to withdraw investments in one of more of the Funds, provided that Executive (directly or through his Affiliates, other than AREP and its controlled Affiliates) shall, from the date of the Triggering Event until the later of (x) the fifth anniversary of the Effective Date and (y) the third anniversary of the Triggering Event (such later date, the "End Date"), maintain investments in one or more of the Funds in an aggregate amount equal to not less than $1 billion, and shall not withdraw such amount or any amounts earned with respect thereto (the "Icahn Fund Commitment"); provided that for purposes of this Section 6 only, if both a majority of the Board and a majority of the independent Directors, on the Board vote to terminate Executive's employment without cause, Executive shall not be subject to the Icahn Fund Commitment. For the avoidance of doubt, at the time of the Triggering Event, Executive may withdraw any investments of Executive or his Affiliates (other than AREP or its controlled Affiliates) in the Funds exceeding an aggregate of $1 billion. From and after the Triggering Event, the Icahn Fund Commitment shall be subject to a management fee of 2% and an incentive allocation of 20%. If at any time between the date of the Triggering Event and the End Date the value of the Icahn Fund Commitment is less than $1 billion, the management fee and incentive allocation assessed against the Icahn Committed Funds shall equal to the fees applicable if the value of the Icahn Fund Commitment were $1 billion.

7. RESTRICTIVE COVENANTS.

(a) The parties agree that the restrictive covenants set forth in Exhibit B hereto (the ''Restrictive Covenants'') are incorporated herein by reference and shall be deemed to be contained herein. Executive understands, acknowledges and agrees that the Restrictive Covenants apply (i) during his employment under this Agreement and during any period of employment by Employer or any controlled Affiliate following the termination of this Agreement or the expiration of the Term of this Agreement, and (ii), as provided in Exhibit B hereto, during the Non-Compete Period or any additional periods specified following termination of his employment with Employer and by any controlled Affiliate which may have employed him.

(b) Executive hereby acknowledges that the provisions of Exhibit B hereto are reasonable and necessary for the protection of Employer and its controlled Affiliates (the "Other Parties") and are not unduly burdensome to Executive and that Executive acknowledges such obligations under such covenants. Executive further acknowledges that the Other Parties will be irreparably harmed if such covenants are not specifically enforced. Accordingly, Executive agrees that, in addition to any other relief to which the Other Parties may be entitled, including claims for damages, the Other Parties shall be entitled to seek and obtain injunctive relief (without the requirement of any bond) from a court of competent jurisdiction for the purpose of restraining Executive from an actual or threatened breach of such covenants.

8. ASSIGNMENT. This Agreement, and all of the terms and conditions hereof, shall bind Employer and its successors and assigns and shall bind Executive and Executive's heirs, executors and administrators. No transfer or assignment of this Agreement shall release Employer from any obligation to Executive hereunder. Neither this Agreement, nor any of Employer's rights or obligations hereunder, may be assigned or are otherwise subject to hypothecation by Executive. Employer may assign the rights and obligations of Employer hereunder, in whole or in part, to any of Employer's Subsidiaries or Affiliates, or to any other successor or assign in connection with the sale of all or substantially all of Employer's assets or equity or in connection with any merger, acquisition and/or reorganization, provided the assignee assumes, in an assumption agreement in form reasonably satisfactory to Executive, the obligations of Employer hereunder.

9. REPRESENTATIONS AND WARRANTIES. Executive represents as follows:

(a) To the best of his knowledge, except as known to Employer, he is not a party to, or involved in, or under investigation in, any pending or threatened litigation, proceeding or investigation of any governmental body or authority or any private person, corporation or other entity.

(b) Executive is not subject to any restriction whatsoever which would cause him to not be able fully to fulfill his duties under this Agreement.

10. DEFINITIONS. As used in this Agreement, the following defined terms have the meanings indicated below:

(a) ''Affiliate" or "Affiliates" means with respect to any specified Person, any other Person that, directly or indirectly, owns or controls, is under common ownership or control with, or is owned or controlled by, such specified Person; provided "controlled Affiliates" shall only mean a person that, directly or indirectly, is controlled by AREP.

(b) ''Cause'' means:

(i) the willful engaging by Executive in illegal, fraudulent or unethical conduct or gross misconduct which, in each case, is materially and demonstrably injurious (x) to Employer or its Subsidiaries or Affiliates, (y) to the reputation of Executive, Employer or its Subsidiaries or Affiliates, or (z) to any of Employer's funds or businesses; or

(ii) conviction of a felony or guilty or nolo contendere plea by Executive with respect thereto; or

(iii) a material breach by Executive of this Agreement (x) if such breach is curable (in the reasonable judgment of the Board) and is not cured within ten (10) business days following receipt of a notice of such breach or (y) if such breach is not curable (in the reasonable judgment of the Board); provided that Employer shall be required to provide notice under this sentence only one time during any calendar year in connection with any single category of events constituting Cause hereunder.

For purposes of this definition, no act or failure to act on the part of Executive shall be considered ''willful'' unless it is done, or omitted to be done, by Executive in bad faith or without reasonable belief that Executive's action or omission was in the best interests of Employer (or its Affiliates, if applicable) or was done or omitted to be done with reckless disregard to the consequences. Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board or based upon the advice of counsel for Employer shall be conclusively presumed to be done, or omitted to be done, by Executive in good faith and in the best interests of Employer. Cause shall not exist hereunder unless and until Employer has delivered to Executive, along with a notice of termination for Cause, a copy of a resolution duly adopted by the Board (excluding Executive if Executive is a member of the Board) at a meeting thereof called and held for such purpose (after reasonable notice to Executive and an opportunity for Executive, together with counsel, to be heard before the Board), finding that in the good faith opinion of the Board an event set forth in clauses (i) through (iii) has occurred and specifying the particulars thereof in detail.

(c) "Change in Control" means an event described in Section 409A(a)(2)(A)(v) of the Code, and regulations promulgated thereunder.

(d) "Code" means the Internal Revenue Code of 1986, as amended.

(e) ''Disability'' means, as determined by the Board in good faith, Executive's inability, due to disability or incapacity, to perform all of Executive's duties hereunder on a full-time basis for (i) periods aggregating one-hundred-eighty (180) days, whether or not continuous, in any continuous period of three-hundred-and-sixty-five (365) days or, (ii) where Executive's absence is adversely affecting the performance of Employer in a significant manner, periods greater than ninety (90) days and Executive is unable to resume Executive's duties on a full time basis within ten (10) days of receipt of written notice of the Board's determination under this clause (ii).

(f) "Fund" or "Funds" mean any one or more funds or similar collective investment vehicles or managed accounts formed primarily for the purpose of investing the capital of third parties (whether formed as a limited partnership, a corporation, a limited liability company or other similar form) managed by Employer or its controlled Affiliates.

(g) "Good Reason" means the occurrence of one of the following:

(i) a material diminution or other material adverse change in Executive's office, duties, salary, benefits or responsibilities;

(ii) a material breach by the Employer of this Agreement; or

(iii) a requirement by the Employer that Executive's principal place of work be moved to a location more than fifty (50) miles away from its then current location.

Good Reason shall not exist hereunder unless Executive first provides sixty (60) days prior written notice to the Board which notice alleges the occurrence of one of the aforementioned events in specific detail. Notwithstanding the foregoing, however, Executive shall not have the ability to terminate this Agreement if the facts alleged in such written notice have been cured prior to the expiration of such sixty (60) day notice period.

(h) "Non-Compete Period" means:

(i) in the event of a termination of employment upon the expiration of the Term or any employment with Employer or its controlled Affiliates following the Term, or in the event of a termination by Employer for Cause or by Executive without Good Reason, a period consisting of the Term plus the two (2) year period following the termination of employment;

(ii) in the event of a termination by Executive with Good Reason or by Employer without Cause (other than in connection with the occurrence of a Change in Control), the period consisting of the Term plus the one (1) year period following the termination of employment; and

(iii) in the event of a termination of employment because of death or Disability, or in the event of a termination by Executive with Good Reason or by Employer without Cause in connection with the occurrence of a Change in Control, the period consisting of the Term only.

(i) "Person" means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or governmental entity.

(j) ''Subsidiary'' means a subsidiary of Employer (or other referenced entity, as the case may be) as defined in Rule 405 of Regulation C of the Securities Act of 1933, as amended.

11. GENERAL.

(a) Notices. Any notices provided hereunder must be in writing and shall be deemed effective upon the earlier of one business day following personal delivery (including personal delivery by telecopy or telex), or the third business day after mailing by first class mail to the recipient at the address indicated below:

To Employer:

General Counsel
American Real Estate Partners, LP
445 Hamilton Avenue, Suite 1210
White Plains, New York 10601

General Counsel
Icahn Capital Management, LP
767 Fifth Avenue
New York, New York 10153

Notices to Executive shall be given at the location set forth in Employer's records, or to such other address or to the attention of such other person as the recipient party may have specified by prior written notice to the sending party.

(b) Severability. Any provision of this Agreement which is deemed invalid, illegal or unenforceable in any jurisdiction shall, as to that jurisdiction and subject to this paragraph be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof in such jurisdiction or rendering that or any other provisions of this Agreement invalid, illegal, or unenforceable in any other jurisdiction. If any covenant should be deemed invalid, illegal or unenforceable because its scope is considered excessive, such covenant shall be modified so that the scope of the covenant is reduced only to the minimum extent necessary to render the modified covenant valid, legal and enforceable.

(c) Entire Agreement. This document, together with its attached exhibits, constitutes the final, complete, and exclusive embodiment of the entire agreement and understanding between the parties related to the subject matter hereof and supersedes and preempts any prior or contemporaneous understandings, agreements, or representations by or between the parties, written or oral.

(d) Counterparts. This Agreement may be executed on separate counterparts, any one of which need not contain signatures of more than one party, but all of which taken together will constitute one and the same agreement.

(e) Amendments. No amendments or other modifications to this Agreement may be made except by a writing signed by both parties. Nothing in this Agreement, express or implied, is intended to confer upon any third person any rights or remedies under or by reason of this Agreement.

(f) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and/or to be performed in that State, without regard to any choice of law provisions thereof. Except as provided under Section 11(k) hereto, all disputes arising out of or related to this Agreement shall be submitted to the state and federal courts of New York, and each party irrevocably consents to such personal jurisdiction and waives all objections thereto, but does so only for the purposes of this Agreement.

(g) Survivorship. The provisions of this Agreement necessary to carry out the intention of the parties as expressed herein (including, without limitation, the Restrictive Covenants provided in Section 7 hereof and Exhibit B hereto) shall survive the termination or expiration of this Agreement.

(h) Waiver. The waiver by either party of the other party's prompt and complete performance, or breach or violation, of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or violation, and the failure by any party hereto to exercise any right or remedy which it may possess hereunder shall not operate or be construed as a bar to the exercise of such right or remedy by such party upon the occurrence of any subsequent breach or violation. No waiver shall be deemed to have occurred unless set forth in a writing executed by or on behalf of the waiving party. No such written waiver shall be deemed a continuing waiver unless specifically stated therein, and each such waiver shall operate only as to the specific term or condition waived and shall not constitute a waiver of such term or condition for the future or as to any act other than that specifically waived.

(i) Captions. The captions of this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision hereof.

(j) Construction. The parties acknowledge that this Agreement is the result of arm's-length negotiations between sophisticated parties, each afforded representation by legal counsel. Each and every provision of this Agreement shall be construed as though both parties participated equally in the drafting of the same, and any rule of construction that a document shall be construed against the drafting party shall not be applicable to this Agreement.

(k) Arbitration. Except as necessary for Employer, its Subsidiaries, Affiliates, and their respective successors or assigns or Executive to specifically enforce or enjoin a breach of this Agreement (to the extent such remedies are otherwise available, including as provided and limited in Section 11(l) hereof), the parties agree that any and all disputes that may arise in connection with, arising out of or relating to this Agreement, or any dispute that relates in any way, in whole or in part, to Executive's services on behalf of Employer or any Affiliate, the termination of such services or any other dispute by and between the parties or their Subsidiaries, Affiliates, and their respective successors or assigns, shall be submitted to binding arbitration in New York, New York, before JAMS, pursuant to the JAMS Employment Arbitration Rules & Procedures (the "Rules"), including the internal appeal process provided for in Rule 32 of the Rules, and before a single arbitrator to be mutually agreed upon by the parties. If JAMS is not in business or is no longer providing arbitration services, then the American Arbitration Association shall be substituted for JAMS for the purposes of arbitration under this section, and its Commercial Arbitration Rules (and not National Rules for the Resolution of Employment Disputes) shall be used. The parties further agree that each party shall pay its own costs, arbitration expenses and attorneys' fees, unless the arbitrator (or appeal panel) determines it is just and proper under the circumstances to award costs, arbitration expenses and/or attorneys' fees to either party and provided further, that if either party prevails on a statutory claim, which affords the prevailing party an award of costs and attorneys' fees, then the arbitrator may award reasonable costs and attorneys' fees to the prevailing party, consistent with applicable law. The arbitrator shall issue a written decision and award supported by essential findings of fact and conclusions of law. The arbitrator shall have no jurisdiction or authority to issue any award contrary to or inconsistent with this Agreement or applicable law. Judgment in a court of competent jurisdiction may be had on the decision and award of the arbitrator (or the appeal panel). For this purpose, the parties agree to submit to the jurisdiction of the state courts located in the Borough of Manhattan, New York and the U.S. District Courts for the Southern District of New York. Subject to Section 11(l) hereof, this arbitration obligation extends to any and all claims that may arise by and between the parties or their Subsidiaries, Affiliates and their respective successors or assigns, and expressly extends to, without limitation, claims or causes of action for wrongful termination, impairment of ability to compete in the open labor market, breach of an express or implied contract, breach of the covenant of good faith and fair dealing, breach of fiduciary duty, fraud, misrepresentation, defamation, slander, infliction of emotional distress, disability, loss of future earnings, and claims under the United States Constitution, and applicable state and federal fair employment laws, federal and state equal employment opportunity laws, and federal and state labor statutes and regulations, including, but not limited to, the Civil Rights Act of 1964, as amended, the Fair Labor Standards Act, as amended, the Americans With Disabilities Act of 1990, as amended, the Rehabilitation Act of 1973, as amended, the Employee Retirement Income Security Act of 1974, as amended, the Age Discrimination in Employment Act of 1967, as amended, and any other state or federal law.

(l) Third Party Beneficiaries. Except as expressly provided herein, nothing in this Agreement shall confer any rights or remedies upon any Person other than the parties hereto. In any provision of this Agreement that provides rights or remedies to, or permits the assignment of rights to, Affiliates or Subsidiaries of Employer, the terms “Affiliates” and “Subsidiaries” shall be construed to exclude any Fund and any entities controlled by any Fund. In the discretion of the MC, any right or remedy which a Fund or an entity controlled by a Fund would otherwise have (but for the immediately preceding sentence) may be asserted or pursued by Employer or another Affiliate of Employer on behalf of such Fund or its controlled entity; further, in the discretion of the MC, any obligation (including, without limitation, any obligation to arbitrate) which a Fund or an entity controlled by a Fund might otherwise have under this Agreement may be exclusively undertaken by Employer or another Affiliate of Employer on behalf of such Fund or its controlled entity.

[signature page to follow]

IN WITNESS WHEREOF AND INTENDING TO BE LEGALLY BOUND THEREBY, the parties hereto have executed and delivered this Agreement as of the year and date first above written.

AMERICAN REAL ESTATE PARTNERS, L.P.

By: AMERICAN PROPERTY INVESTORS, INC.,
Its General Partner

By: /s/ Andrew Skobe

ICAHN CAPITAL MANAGEMENT LP

By: /s/ Edward Mattner

Name: Edward Mattner
Title:

/s/ Carl C. Icahn

CARl C. ICAHN

Signature Page for

AREP/New Icahn Capital Management LP/Carl C. Icahn Employment Agreement

Exhibit A

Annual Bonus Incentive

As provided for in the Employment Agreement, for each calendar year (or portion thereof) during the Term, Executive shall be eligible to receive the AREP Bonus Incentive and the Hedge Fund Bonus Incentive (together, the "Annual Bonus Incentive" or "Bonus"). The Bonus for such calendar year shall be in an amount equal to the AREP Bonus Incentive, if any, plus the Hedge Fund Bonus Incentive, if any, calculated as set forth herein.

1. AREP Bonus Incentive. The AREP Bonus Incentive for any completed calendar year shall be equal to the product derived under subclauses (III) or (IV), if applicable, calculated by (I) determining the amount of Covered Net Income, if any, for such calendar year, (II) determining the Covered Net Income Growth Rate, if any, for such calendar year, (III) multiplying the amount of Covered Net Income in excess of $400,000,000, if any, by the Payout Percent corresponding to the Covered Net Income Growth Rate and (IV), in the event there are Covered Net Losses carried forward from prior calendar years ended during the Term (the "Net Loss Carry Forward"), multiplying the product derived in (III) by the Loss Adjustment Percent.

For purposes of the foregoing calculations, the following terms shall have the following meanings:

(a) "Covered Net Income" or "Covered Net Losses" shall mean AREP's net income or losses for the applicable calendar year (or portion thereof) excluding all income and losses that arise out of or result from the operations of the Hedge Fund Business (as defined below) but including any income or losses (i) attributable to any amounts invested by AREP and its controlled Affiliates in the funds or the Hedge Fund Business or (ii) attributable to any incentive allocations and/or management fees reinvested or not withdrawn by AREP and its controlled Affiliates (but excluding any income or loss on any amounts which represent a management fee and/or incentive allocation payable to AREP or its controlled Affiliates). Covered Net Income or Covered Net Losses shall be determined on the basis of "net income" or "net loss" for AREP on a consolidated basis and determined in accordance with United States generally accepted accounting principles and as reported in AREP's audited financial statements (the "Financial Statements"), but (u) excluding any amounts accrued with respect to the Bonus provided for under this Agreement (and related employer payroll taxes for the applicable period), (v) excluding any amounts payable or accrued or expenses or deductions incurred or accrued in connection with the acquisition by AREP of the Hedge Fund Business, (w) excluding any gain from the sale of AREP's casino business under the terms of the transaction for such sale that has been entered into and disclosed as of the date hereof (as such documentation may be amended in accordance with its terms), (x) for determining any gain or loss realized from the sale of any asset acquired by AREP and/or its controlled Affiliates from the Executive and his Affiliates (other than AREP and its controlled Affiliates) after the Effective Date measured on a cost basis equal to the price paid by AREP or its controlled Affiliates for the acquisition of such asset, as such cost basis may be adjusted; (y) excluding all results relating to or arising from the Hedge Fund Business (except as provided for in sub-clauses (i) and (ii) in the preceding sentence) and (z) subject to such adjustment as the Audit Committee of the Board (the "Audit Committee") may determine, in its good faith judgment, to account for any acquisitions, dispositions, discontinued operations or any other extraordinary, infrequent, non-recurring or comparable occurrences or matters (including, for example, any adjustments based solely on changes in accounting method), and such determination of the Audit Committee shall be final and conclusive, absent manifest error. "Hedge Fund Business" shall mean the operations of any controlled Affiliate or Subsidiary of AREP that engages, in whole or in part, in any business deriving its revenues or income from providing investment management services.

(b) “Covered Net Income Growth Rate” for a calendar year shall be the positive percentage (if any) obtained by dividing (i) the excess (if any) of Covered Net Income for such year over $400,000,000 by (ii) $400,000,000; provided that with respect to 2007 (x) Covered Net Income shall be determined with respect to operations on and after the Effective Date, and (y) the amount of $400,000,000 as used in subclauses (i) and (ii) herein shall be reduced on a pro rata basis to account for the number of days between the Effective Date and December 31, 2007.

(c) “Payout Percent corresponding to the Covered Net Income Growth Rate” is set forth in Column II to Annex I attached hereto. In cases where the Covered Net Income Growth Rate exceeds five percent (5%) and does not directly correspond to a Payout Percent set forth on Annex I, the appropriate Payout Percent shall be interpolated on a straight line basis from the closest entry in Column II on Annex I and rounded to the nearest $1/100^{th}$ of a percent.

(d) “Loss Adjustment Percent” for a calendar year shall be a percentage obtained by dividing (x) the greater of (i) zero and (ii) the sum of the Net Loss Carry Forward, if any, and the current year Covered Net Income, if any, by (y) the Covered Net Income, if any, for the calendar year for which the AREP Bonus Incentive is being determined.

2. Hedge Fund Bonus Incentive. The Hedge Fund Bonus Incentive for any completed calendar year (or portion thereof) shall be equal to the product derived by multiplying the Fund Profit for such calendar year (or portion thereof) by the Payout Percent.

(a) “Fund Profit” shall be the aggregate net profits (if any) in respect of all of the fee-paying assets of the Funds under management as determined in accordance with the partnership agreement and other governing documents of the Funds (but in any case (i) including net realized and unrealized gains and losses, net of all applicable fees and expenses of the Funds and (ii) excluding from the calculation of net profits and losses any management fees or incentive allocations charged to the investors in the Funds in connection therewith) for each fiscal year of the Funds (or portion thereof) during the Term; provided that any such aggregate net profits shall be reduced to reflect previously incurred aggregate net losses (if any and determined in a manner consistent with net profits) (commencing as of the Effective Date) on all fee-paying assets of the Funds that have not already been offset against aggregate net profits (other than those losses incurred by investors on fee-paying assets who have redeemed their investments, to the extent that such losses will not reduce net profits of the Funds for purposes of determining incentive allocations).

(b) “Payout Percent” corresponding to the Fund Return (as defined below) is set forth in Column IV to Annex I attached hereto. In cases where the Fund Return exceeds ten percent (10%) and does not directly correspond to a Payout Percent set forth on Annex I, the appropriate Payout Percent shall be interpolated on a straight line basis from the closest entry in Column IV on Annex I and rounded to the nearest $1/100^{th}$ of a percent.

For purposes of determining the Payout Percent, the following terms have the following meanings:

(a) “Assets Under Management” shall be the sum of all assets under management in respect of all of the fee-paying assets of the Funds as of the first day of the year (or for calendar year 2007, the Effective Date) and as of the end of each calendar month thereafter during the relevant year divided by (13) (or in respect of 2007, divided by six (6); and for any other period during the Term of less than one (1) year, such sum shall be divided by the number of dates on which the Assets Under Management are measured during such period). For purposes of the foregoing, (i) Assets Under Management as of each month end (other than the first day of the year) shall be adjusted solely for subscriptions and redemptions with respect to fee paying assets, but shall not be adjusted during the year for net profits and losses and (ii) Assets Under Management as of the first day of the year shall include such net profits and losses that carry over from the immediately preceding year.

(b) “Fund Return” shall be a percentage equal to the quotient determined by dividing Fund Profit for the year (or shorter period) by Assets Under Management; provided that with respect to 2007, the foregoing percentage shall be adjusted to express an annualized amount

3. Mandatory Deferral. Fifty percent (50%) of the Annual Bonus Incentive payable to Executive with respect to any calendar year (or partial calendar year) hereunder (other than any Bonus (or portion thereof) payable to the Executive (or his estate) in the event of his termination of employment or death under Section 5 of the Employment Agreement) shall be deferred and treated as though invested in the Funds as of the Vesting Commencement Date (as defined below)(such deferred portion, the "Deferral Amount(s)"). Any Deferral Amount shall be deferred in a manner that complies with Section 409A of the Code. Deferral Amounts deemed invested in the Funds shall be deemed allocated pro rata across all the Funds (based on their respective Assets Under Management as of the applicable Vesting Commencement Date (as defined below) and shall be treated as though subject to a 2% annual management fee but shall not be treated as though charged a performance incentive fee. Executive's right to receive any amounts or payments in respect of the Deferral Amount shall be subject to and limited by the terms and provisions of this Agreement. Executive shall have no rights to receive any amounts or payments in respect of any Deferral Amount unless, and then only to the extent that, Executive is vested therein in accordance with the terms of this Agreement (such amounts so vested, the "Vested Amount"). During the Term, Executive's rights in any Deferral Amount shall vest at the rate of one-third (1/3) per annum on each anniversary of the last day of the calendar year with respect to which the bonus has been determined (the "Vesting Commencement Date), and be payable within sixty (60) days of vesting. In addition, all deemed returns, earnings and profits (as referred to herein) on Deferral Amounts shall vest at the same time as the Deferral Amount in respect of which such returns, earnings and profits are derived. The amount of any such deemed relating earnings and profits shall be calculated by Employer (whose determination shall be final and binding on all parties). Vesting of the Deferral Amount shall accelerate and be one hundred percent (100%) vested and payable in a lump sum payment within sixty (60) days upon the occurrence of any one of the following events during the Term:

(a) the employment of Executive is terminated by Employer without Cause or by the Executive for Good Reason; or

(b) the employment of Executive is terminated on account of death or Disability.

Except as provided in the final sentence of the paragraph immediately prior hereto (including clauses (a) and (b) above), Executive will only vest in Deferral Amounts during such periods as he continues to be an employee under this Agreement during the Term; provided that upon his completion of service through the end of the Term (12/31/12), all then unvested Deferral Amounts shall accelerate and be one hundred percent (100%) vested and payable in a lump sum payment within sixty (60) days of such date. Except for and to the extent of the one hundred percent (100%) vesting that would occur upon the occurrence of the events set forth in (a) and (b) immediately above, or in the immediately preceding sentence, all unvested amounts will be forfeited in all respects by Employee on any other cessation of his employment hereunder.

Exhibit B

Restrictive Covenants

Covenant Not to Compete. Executive acknowledges that (i) Executive will be a key employee of Employer, (ii) Executive will receive payments pursuant to Section 3 of this Agreement, (iii) Executive has and will continue to have knowledge, information and other know-how regarding Employer's business as a key employee thereof, and (iv) Executive has and will continue to develop relationships and contacts with Employer's clients and investors as a key employee of Employer, and that all of these factors would permit him to compete with Employer. Executive further acknowledges that the covenants set forth in this Exhibit B constitute a material inducement to Employer to employ Executive pursuant to this Agreement and that Employer would not have agreed to employ Executive unless Executive had agreed to the covenants set forth in this Exhibit B. Accordingly, Executive therefore covenants and agrees as follows:

Nature of Competition. During the Non-Compete Period, Executive shall not, without the Employer's prior written consent, directly or indirectly, for his own account, or in any capacity on behalf of any other third Person, whether as an officer, director, employee, partner, joint venturer, consultant, investor or otherwise, engage, or assist others to engage, in whole or in part, in any business deriving more than 25% of its revenues or income from providing investment management services (a "Competing Business"); provided, however, that ownership of stock of a business shall not be deemed a violation of this Exhibit B if and for so long as (i) the stock of such business is publicly traded; (ii) such ownership does not exceed 5% of the aggregate outstanding equity interest of such business and (iii) Executive does not otherwise participate in the management, operations or affairs of such business. Notwithstanding the foregoing, nothing in this Agreement shall be construed to prohibit Executive from rendering services to, acquiring an economic interest in or otherwise providing assistance to the Funds, the Employer or any of their controlled Affiliates or any pooled investment vehicle which is advised or sub-advised by the Partnerships or any of their respective controlled Affiliates, or providing investment management services (whether personally or as an employee or partner of a business formed for this purpose) solely on his own behalf or on behalf of one or more of his family members, including trusts of which his family members are the principal beneficiaries and Persons established solely for the benefit of, and wholly owned by, his family members. Furthermore, Executive may notify the Employer of any proposed activity for the purpose of soliciting a conclusion as to whether such activity would violate this Exhibit B. The Employer agrees that it shall approve or disapprove Executive's proposal within 30 days of such notice. If the Employer approves such activity for purposes of this Exhibit B, then such activity, as disclosed in Executive's request for approval, will not constitute a violation of this Exhibit B.

Non-solicitation. During the Non-Compete Period, Executive shall not, directly or indirectly, whether through his own efforts, or through the efforts, or in any way assisting or employing the assistance, of any other Person (including through any consultant or any Person employed by or associated with any entity with whom he may be employed or associated), do any of the following: (i) solicit or otherwise attempt to establish a Competing Business with any Person that was an investor in the Funds, or prospective investor in the Funds to whom any Contributor or any Partnership has made a proposal within the prior six months or (ii) solicit for employment, hire or otherwise engage in any capacity in any Competing Business any investment professional or executive who is or has within the previous one year been an employee or partner of any Contributor or any Partnership or any of their respective controlled Affiliates, or solicit any such Person to terminate his or her employment by such Contributor, Partnership or controlled Affiliate.

Confidential Information. During the Term and at all times thereafter, Executive shall hold in a fiduciary capacity for the sole benefit of Employer, its controlled Affiliates and the Funds, all secret or confidential information, knowledge or data (collectively, "Confidential Information"), including without limitation trade secrets, investments, contemplated investments, business opportunities, Fund or investment performance, valuation models and methodologies, relating to the business of the Funds, Employer, and their respective controlled Affiliates, and their respective businesses including, without limitation, the identity of any investors and the fact that such person is an investor in the Funds: (i) obtained by Executive during Executive's employment hereunder and (ii) not otherwise in the public domain. Executive shall not, without prior written consent of Employer (which may be granted or withheld in its sole and absolute discretion), use, or communicate or divulge any Confidential Information, or any related knowledge or data to anyone other than Employer or its controlled Affiliates or those designated by Employer or its controlled Affiliates, except to the extent compelled pursuant to the order of a court or other body having jurisdiction over such matter or based upon the advice of his counsel that such disclosure is legally required; provided, however, that Executive will assist Employer or its controlled Affiliates, at Employer or such Affiliates' expense, in obtaining a protective order, other appropriate remedy or other reliable assurance that confidential treatment will be accorded such information so disclosed pursuant to the terms of this Agreement.

All processes, technologies, investments, contemplated investments, business opportunities, valuation models and methodologies, and inventions (collectively, "Inventions"), including without limitation new contributions, improvements, ideas, business plans, discoveries, trademarks and trade names, conceived, developed, invented, made or found by Executive, alone or with others, during the Term, whether or not patentable and whether or not on Employer's, or its respective controlled Affiliates' time or with the use of their facilities or materials, shall be the property of Employer or such controlled Affiliates, as applicable, and shall be promptly and fully disclosed by Executive to Employer or such controlled Affiliates, as applicable. Executive shall perform all necessary acts (including, without limitation, executing and delivering any confirmatory assignments, documents, or instruments requested by Employer or its controlled Affiliates) to vest title to any such Invention in Employer or its respective controlled Affiliate, as applicable, to enable such party, at its expense, to secure and maintain domestic and/or foreign patents or any other rights for such Inventions.

Without limiting anything contained above, Executive agrees and acknowledges that all personal and not otherwise public information about Employer, the Funds and their respective Affiliates, including, without limitation, their respective investments, investors, transactions, historical performance, or otherwise regarding or concerning Employer or its controlled Affiliates, shall constitute Confidential Information for purposes of this Agreement. In no event shall Executive during or after his employment hereunder, disparage Employer or its controlled Affiliates or any of their respective officers, directors or employees.

The provisions of this Exhibit B shall not be deemed to limit any of the rights available to the respective parties under the any other agreements to which they may be parties and those which arise under applicable law.

Annex I

AREP Bonus Incentive		Hedge Fund Bonus Incentive	
I	**II**	**III**	**IV**
Covered Net Income Growth Rate	Payout Percent	Fund Return	Payout Percent
Below 5%	8%	Below 10%	0.30%
5%	8%	10%	0.30%
10%	11%	15%	0.50%
15%	14%	20%	0.70%
20%	17%	25%	0.90%
25%	20%	30%	1.10%
Above 25%	20%	Above 30%	1.10%

Annex II

Annual Bonus Incentive - Examples

AREP Bonus Incentive

Example 1: Profit Scenario (with Interpolation)

Employment Term Year	Covered Net Income (CNI)	Covered Net Income Growth Rate	Payout Percent (PP)	Payout Amount (PP x CNI > $400 mm)
Year 1	$100	n/a	n/a	0
Year 2	$400	n/a	n/a	0
Year 3	$500	25%	20%	$20
Year 4	$450	12.5%	12.5%[1]	$6.25
Year 5	$600	50%	20%	$40

Example 2: Cumulative Losses followed By Profit

Employment Term Year	Covered Net Income	Covered Net Income Growth Rate	Payout Percent	Payout Amount (PP x CNI > $400 mm x Loss Adjustment Percent (LAP)
Year 1	$500	25%	20%	$20
Year 2	($300)	n/a	n/a	0
Year 3	($300)	n/a	n/a	0
Year 4	$500	25%	20%	0[2]
Year 5	$700	75%	20%	51.43[3]

[1] In cases where the Covered Net Income Growth Rate exceeds 5% and does not directly correspond to a Payout Percent set forth on Annex I, the appropriate Payout Percent shall be interpolated on a straight line basis from the closest entry in Column II on Annex I and rounded to the nearest 1/100th of a percent. In the case of Growth Rates equal to 5% or greater, each 1% increment in Growth Rate translates into an additional 0.60% in Payout Rate. Thus, the Payout Percent for year 4 is interpolated as follows: a 12.5% Growth Rate is 2.5% greater than 10% which corresponds to an 11% Payout Rate; 2.5 x .60 = 1.5, which, when added to 11%, results in a Payout Percent equal to 12.5%.

[2] The Loss Adjustment Percent is 0, calculated as follows: the cumulative loss carry forward is equal to $600, and current year income is $500. Thus, (500 - 600)/500 = 0 [because 0 in the numerator is greater than -100]. The remaining $100 cumulative loss (in excess of current year income) is carried forward to year 5 (see footnote 3).

[3] The Loss Adjustment Percent is 85.714% (6/7), calculated as follows: the cumulative loss carry forward is equal to $100, and current year income is $700. Thus, (700 -100)/700 = 6/7. This amount, expressed as a percentage, is multiplied against the product of the Payout Percent multiplied by current year net income in excess of $400 million, or (20% x $300 x 85.714%) = $51.43.

Hedge Fund Bonus Incentive

Example 3

Employment Term Year	Assets Under Management	Fund Return	Payout Percent	Payout Amount
Year 1	$5 billion	10%	0.3%	$1.5 million
Year 2	$6 billion	20%	0.7%	$8.4 million
Year 3	$7 billion	25%	0.9%	$15.75 million
Year 4	$9 billion	25%	0.9%	$20.25 million
Year 5	$11 billion	13%	0.42%[4]	$6.006 million

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[4] In cases where Fund Return exceeds 10% and does not directly correspond to a Payout Percent set forth on Annex I, the appropriate Payout Percent shall be interpolated on a straight line basis from the closest entry in Column IV on Annex I and rounded to the nearest 1/100th of a percent. In the case of Fund Returns equal to 10% or greater, each 1% increment in Fund Return translates into an additional 0.04% in Payout Rate. Thus, in Year 5, the Payout Percent is interpolated as follows: a 13% Fund Return is 3% greater than 10% which corresponds to an 0.30% Payout Rate; 3 x 0.04% = 0.12%, which, when added to 0.30%, results in a Payout Percent equal to 0.42%.

NON-COMPETITION AGREEMENT

This Non-Competition Agreement, dated as of August __, 2007, is between American Real Estate Partners, L.P. ("AREP"), and Carl C. Icahn ("Icahn"). Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to them in the Contribution and Exchange Agreement (as defined below).

WHEREAS, Icahn is the indirect owner of interests in entities engaged in the business of providing investment management and related services (the "Business");

WHEREAS, pursuant to the Contribution and Exchange Agreement, dated as of August __, 2007 (the "Contribution and Exchange Agreement") by and among CCI Offshore Corp. ("CCI Offshore"), CCI Onshore Corp. ("CCI Onshore"), Icahn Management LP ("Icahn Management" and together with CCI Onshore and CCI Offshore, the "Contributors"), Icahn, and AREP, the Contributors will transfer 100% of their interests in certain limited partnerships constituting the Business (the "Companies") to AREP;

WHEREAS, Icahn holds significant direct or indirect economic interests in CCI Offshore, CCI Onshore and Icahn Management;

WHEREAS, one of the conditions to the consummation by AREP of the transactions contemplated by the Contribution and Exchange Agreement is that Icahn enters into this Non-Competition Agreement for the purpose of preserving for AREP's benefit the goodwill associated with the Business;

NOW, THEREFORE, to induce AREP to enter into and consummate the transactions contemplated by the Contribution and Exchange Agreement and to preserve the value of the Business (and, in particular, the goodwill associated therewith that is being transferred to AREP pursuant to the Contribution and Exchange Agreement), and in consideration of the mutual covenants and agreements herein contained, the parties hereto do hereby agree as follows:

1. Non- Competition. During the period commencing on the date hereof and ending on the tenth anniversary of the Closing Date (the "Non-Compete Period"), Icahn, shall not, without AREP's prior written consent, directly or indirectly, for his own account, or in any capacity on behalf of any other third person or entity, whether as an officer, director, employee, partner, joint venturer, consultant, investor or otherwise, engage, or assist others engaged, in whole or in part, in any business deriving more than 25% of its revenues or income from providing investment management services (a "Competing Business"); provided that ownership of stock of a business shall not be deemed a violation of this Section 1 if and for so long as (x) the stock of such business is publicly traded, (y) such ownership does not exceed 5% of the aggregate outstanding equity interest of such business and (z) Icahn does not otherwise participate in the management, operations or affairs of such business. Notwithstanding the foregoing, nothing in this Non-Competition Agreement shall be construed to prohibit Icahn from rendering services to, acquiring an economic interest in or otherwise providing assistance to the Companies, AREP or any of their controlled Affiliates or any pooled investment vehicle which is advised or subadvised by AREP, the Companies or any of their controlled Affiliates, or providing investment management services (whether personally or as an employee or partner of a business formed for this purpose) solely on his own behalf or on behalf of one or more of his family members, including trusts of which his family members are the principal beneficiaries and corporations, limited partnerships, limited liability companies or similar entities established solely for the benefit of, and wholly owned by, his family members. Furthermore, Icahn may notify AREP of any proposed activity for the purpose of soliciting a conclusion as to whether such activity would violate this Section 1. AREP agrees that it shall approve or disapprove Icahn's proposal within 30 days of receipt of such notice. If AREP approves such activity for purposes of this Section 1, then such activity, as disclosed in Icahn's request for approval, will not constitute a violation of this Section 1.

2. Non-solicitation. During the Non-Compete Period, Icahn shall not, directly or indirectly, whether through his own efforts, or through the efforts, or in any way assisting or employing the assistance, of any other person or entity (including through any consultant or any person employed by or associated with any entity with whom he may be employed or associated), do any of the following: (a) solicit or otherwise attempt to establish a Competing Business with any person, firm, corporation or other entity that was an investor in the Funds, or prospective investor in the Funds to whom any of the Companies has made a proposal within the six months prior to Icahn's termination of employment or (b) solicit for employment, hire or otherwise engage in any capacity in any Competing Business any investment professional or executive who is or has within the previous one year been an employee or partner of the Companies or any of their controlled Affiliates, or solicit any such person to terminate his or her employment by the Companies or any of their controlled Affiliates.

3. Certain Acknowledgments. Icahn acknowledges that (i) the past services rendered by him to the Companies are of a special and unusual character that have and have had a unique value to the Companies, (ii) he possesses relations, contacts, information and other know-how that would permit him to compete with the Companies or an Affiliate thereof, and reduce the value of the Business and the interests being transferred to AREP pursuant to the Contribution and Exchange Agreement and (iii) the covenants set forth in Sections 1 and 2 constitute a material inducement to AREP to consummate the transactions contemplated by the Contribution and Exchange Agreement and AREP would not have agreed to enter into or consummate the transactions contemplated by the Contribution and Exchange Agreement unless Icahn had agreed to the covenants set forth herein.

4. Miscellaneous.

(a) Blue-Pencil. If any of the agreements set forth in this Non-Competition Agreement shall be held to be invalid or unenforceable, the remaining parts thereof shall nevertheless continue to be valid and enforceable as though the invalid or unenforceable parts had not been included therein. In the event that any provision of this Non-Competition Agreement relating to the time period, geographic area, scope and/or subject matter shall be declared by a court of competent jurisdiction to exceed the maximum time period, geographic area, scope and/or subject matter such court deems enforceable, such time period, geographic area, scope and/or subject matter shall be deemed to become and thereafter be the maximum time period, scope and/or subject matter that such court deems enforceable, it being the intent and express agreement of the parties that the terms of this Non-Competition Agreement be enforced and interpreted in accordance with the terms to the greatest extent possible.

(b) Injunctive Relief. The parties agree that the covenants and obligations of Icahn with respect to non-competition and non-solicitation, and other matters contained herein relate to special, unique and extraordinary matters and that a violation of any of the terms of such covenants and obligations will cause AREP irreparable injury for which adequate remedies are not available at law. Therefore, Icahn agrees that AREP will be entitled to an injunction, restraining order or such other equitable relief as a court of competent jurisdiction may deem necessary or appropriate to restrain Icahn from committing any violation of the covenants and obligations referred to in this Non-Competition Agreement. Any such injunction may be obtained without the necessity of posting a bond. These injunctive remedies are cumulative and in addition to any other rights and remedies AREP may have at law or in equity.

(c) Construction. The terms and conditions of this Non-Competition Agreement are the result of negotiations between the parties and this Non-Competition Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its professional advisors participated in the preparation of this Non-Competition Agreement.

(d) Assignment. Icahn may not assign his rights or obligations hereunder. The rights and obligations of AREP hereunder shall inure to the benefit of and shall be binding upon AREP, each of its successors and permitted assigns and may not be assigned without the prior written consent of Icahn, such consent not to be unreasonably withheld or delayed.

(e) Applicable Law. This Non-Competition Agreement shall be governed in all respects, including as to validity, interpretation and effect, by the internal laws of the State of New York, without regard to conflicts of laws principles of such state or any other state.

(f) Consent to Jurisdiction; Etc..

(i) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court or federal court of the United States of America sitting in the County of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Non-Competition Agreement or the transactions contemplated hereby or for recognition or enforcement of any judgment relating thereto, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(ii) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Non-Competition Agreement or the transactions contemplated hereby in any New York State or federal court sitting in the County of New York. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(iii) Each party to this Non-Competition Agreement irrevocably consents to service of process in the manner provided for notices in Section 4(i). Nothing in this Non-Competition Agreement will affect the right of any party to this Non-Competition Agreement to serve process in any other manner permitted by law.

(g) Waiver of Jury Trial.

(i) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS NON-COMPETITION AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS NON-COMPETITION AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(ii) EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVER, (iii) IT MAKES SUCH WAIVER VOLUNTARILY, AND (iv) IT HAS BEEN INDUCED TO ENTER INTO THIS NON-COMPETITION AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 4(g).

(h) Amendment; Waiver. No amendment, modification or discharge of this Non-Competition Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification, discharge or waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the party granting such waiver in any other respect or at any other time. Neither the waiver by either party hereto of a breach of or a default under any of the provisions of this Non-Competition Agreement nor the failure by either party, on one or more occasions, to enforce any of the provisions of this Non-Competition Agreement or to exercise any right or privilege hereunder, shall be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder. The rights and remedies herein provided are cumulative and none is exclusive of any other, or of any rights or remedies that either party may otherwise have at law or in equity.

(i) Notices. All notices, requests, demands and other communications made in connection with this Non-Competition Agreement shall be in writing and shall be (a) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid or (b) transmitted by hand delivery addressed as follows:

if to AREP:

Special Committee of the
Board of Directors of American Property Investors, Inc.
510 East 86th Street
New York, NY 10028
Attention: Jack Gumpert Wasserman, Esq.

with a copy (which shall not constitute notice) to:

American Real Estate Partners, L.P.
100 South Bedford Rd.
Mt. Kisco, NY 10549
Attention: Felicia Buebel, Esq.

and

Proskauer Rose LLP
1585 Broadway
New York, NY 10036
Attention: Peter G. Samuels, Esq.

and

Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
Attention: William D. Regner, Esq.

if to Icahn:

Icahn Associates Corp.
767 Fifth Avenue, Suite 4700
New York, NY 10153
Attention: Marc Weitzen

with a copy (which shall not constitute notice) to:

Bingham McCutchen LLP
399 Park Avenue
New York, NY 10022
Attention: Floyd I. Wittlin, Esq.

or, in each case, such other address as may be specified in writing to the other parties hereto.

All such notices, requests, demands, waivers and other communications shall be deemed to have been received (x) if delivered by first-class, certified or registered mail, on the fifth Business Day after the mailing thereof, or (y) if delivered by personal delivery, on the day after such delivery.

(j) Counterparts. This Non-Competition Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same instrument.

(k) Entire Agreement. This Non-Competition Agreement and the other agreements referred to herein constitute the entire agreement between Icahn and AREP with respect to the subject matter hereof.

The signature page follows

IN WITNESS WHEREOF, the parties have executed this Non-Competition Agreement as of the date first above written.

AMERICAN REAL ESTATE PARTNERS, L.P.

BY: AMERICAN PROPERTY INVESTORS, INC., ITS GENERAL PARTNER

By: /s/ Andrew Skobe
Name:
Title:

CARL C. ICAHN

/s/ Carl C. Icahn

AGREEMENT

THIS AGREEMENT (this "Agreement"), dated as of August __, 2007, is entered into by and among **AMERICAN REAL ESTATE PARTNERS, L.P.**, a Delaware limited partnership ("AREP"), and the other signatories hereto (each a "Fund" and collectively the "Funds"):

W I T N E S S E T H

WHEREAS, on the date hereof, AREP is entering into an agreement pursuant to which its subsidiaries will acquire from affiliates of Carl C. Icahn interests in each of the general partners and the management company (collectively, the "Management Entities") that provide investment and administrative services to the Funds (the "Transaction");

WHEREAS, pursuant to the governing documents of the Funds, Mr. Icahn and certain of his affiliates are currently subject, for the benefit of the Funds, to certain restrictions on their investment and other activities (a form of the section of the Funds' offering memoranda describing such restrictions and related arrangements as of the date hereof is attached hereto as Exhibit A and such restrictions are hereafter referred to as the "Icahn Restrictions");

WHEREAS, as a condition to the consummation of the Transaction, the parties desire to cause AREP and certain of its subsidiaries to agree to be bound by certain investment and other restrictions similar to the Icahn Restrictions; and

WHEREAS, as a result of the Transaction certain financial and other information with respect to the Management Entities and the Funds will be required to be disclosed in certain of AREP's filings with the Securities and Exchange Commission ("SEC") and other regulatory agencies; and

WHEREAS, as a condition to the consummation of the Transaction, AREP has agreed that additional expenses incurred by the Funds as a result of their providing such information to AREP will either be paid for by AREP or reimbursed to the Funds.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **RESTRICTIONS**. AREP, on behalf of itself and its applicable subsidiaries, hereby agrees, for the benefit of the Funds, to be bound, and to cause its applicable subsidiaries to be bound, by the restrictions set forth in Exhibit B hereto (subject to the exceptions stated therein), which will be included in substantially such form in the offering memorandum of each Fund that provides an offering memorandum to investors and prospective investors.

2. **EXPENSES.** AREP hereby agrees that additional expenses incurred by the Funds as a result of providing financial and other information to AREP in connection with its filings with the SEC and other regulatory agencies, as reasonably determined by Icahn Capital Management LP, the management company to each Fund, will either be paid for by AREP or reimbursed to the applicable Funds by AREP.

3. **CONSTRUCTION.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN THE STATE OF NEW YORK.

4. **COUNTERPARTS; TELEFACSIMILE EXECUTION**. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed counterpart of this Agreement by telefacsimile shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile also shall deliver a n original executed counterpart of this Agreement, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

5. **AMENDMENTS**. The terms of this Agreement, including without limitation, Exhibit B hereto, may be amended or waived only with the written consent of each of the parties hereto. Notwithstanding the foregoing, a majority of the members of the Investor Committee (as such term is defined in the offering memoranda of the Funds) may amend, modify or waive any provision of this Agreement with respect to any particular transaction or series of related transactions.

6. **TERMINATION.** This Agreement, and all obligations of AREP (and certain of its subsidiaries as described in Exhibit B hereto), shall: (i) remain in effect for as long as AREP and its subsidiaries continue to beneficially own, directly or indirectly, at least a majority of the equity of any of the Management Entities; and (ii) thereafter terminate immediately and be of no further force or effect, automatically and without any further action of the parties required.

7. **MISCELLANEOUS**. The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors or permitted assigns and it is not the intention of the parties to confer third-party beneficiary rights upon any other person. No party may assign this Agreement or any right, interest or obligation hereunder without the prior written consent of the other parties hereto, provided, however, that AREP may assign this Agreement without the consent of the other parties to any entity that succeeds to all or substantially all of its business. If any provision of this Agreement is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Agreement shall not in any way be affected or impaired thereby and the parties will attempt to agree in good faith upon a valid and enforceable provision that is a reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Agreement This Agreement sets forth the entire agreement of the parties relating to the subject matter hereof except as otherwise set forth herein and supercedes all prior agreements respecting the subject matter hereof.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed and delivered as of the date first written above.

AMERICAN REAL ESTATE PARTNERS, L.P.
By: American Property Investors, Inc., its general partner

By: /s/ Andrew Skobe
Name: Andrew Skobe
Title: Chief Financial Officer

FUNDS:

ICAHN PARTNERS LP
By: Icahn Onshore LP, its general partner

By: /s/ Edward Mattner
Name: Edward Mattner
Title: Authorized Signatory

ICAHN FUND LTD.

By: /s/ Edward Mattner
Name: Edward Mattner
Title: Authorized Signatory

ICAHN FUND II LTD.

By: /s/ Edward Mattner
Name: Edward Mattner
Title: Authorized Signatory

ICAHN FUND III LTD.

By: /s/ Edward Mattner
Name: Edward Mattner
Title: Authorized Signatory

ICAHN PARTNERS MASTER FUND LP
By: Icahn Offshore LP, its general partner

By: /s/ Edward Mattner
Name: Edward Mattner
Title: Authorized Signatory

ICAHN PARTNERS MASTER FUND II LP
By: Icahn Offshore LP, its general partner

By: /s/ Edward Mattner
Name: Edward Mattner
Title: Authorized Signatory

ICAHN PARTNERS MASTER FUND III LP
By: Icahn Offshore LP, its general partner

By: /s/ Edward Mattner
Name: Edward Mattner
Title: Authorized Signatory

ICAHN CAYMAN PARTNERS L.P.
By: Icahn Offshore LP, its general partner

By: /s/ Edward Mattner
Name: Edward Mattner
Title: Authorized Signatory

ICAHN PARTNERS MASTER FUND II FEEDER LP
By: Icahn Offshore LP, its general partner

By: /s/ Edward Mattner
Name: Edward Mattner
Title: Authorized Signatory

EXHIBIT A

Icahn Restrictions[1]

Mr. Icahn and his Covered Affiliates (as defined below) have invested more than $300 million in the U.S. Fund and may invest more in the future. In addition, Mr. Icahn has agreed that, except through their participation in the Icahn Funds and as noted below, he and his Covered Affiliates will not invest in any assets they deem suitable for the Icahn Funds other than government and agency bonds and cash equivalents.

Mr. Icahn and the Covered Affiliates may acquire, outside of the Icahn Managed Funds (as defined below), up to 20%[2] of the amount of any security acquired by the Icahn Managed Funds (the “Co-Investment Right”), but only if such transaction (and subsequent disposition) is at the same time and price as applies to any of the Icahn Managed Funds, unless otherwise approved by the Investor Committee (see "Investor Committee" below). If multiple purchases of the same security are made over time by the Icahn Managed Funds, Mr. Icahn and the Covered Affiliates may reduce or eliminate their participation in such later purchases. However, the percentage participation by Mr. Icahn and the Covered Affiliates may not be increased from its lowest level during the course of a purchase program. Additionally, if Mr. Icahn and the Covered Affiliates do not participate at the same percentage level in each purchase made as part of a purchase program, they will ensure that their per-security profit is not higher than that of the Icahn Managed Funds. Mr. Icahn and his Covered Affiliates will not be prohibited from making additional investments in, or purchasing securities issued by, companies they controlled as of the initial closing of the U.S. Fund.

Mr. Icahn and the Covered Affiliates will be permitted to manage other funds, managed accounts or pooled investment vehicles ("Other Funds" together with the Fund, the "Icahn Managed Funds") and to invest in any of the Icahn Managed Funds. Those Other Funds will invest substantially in parallel with the U.S. Fund, subject to particular restrictions that may be applicable to such vehicles. For example, an affiliate of the Managing General Partner will also serve as the general partner of the U.S. Fund, which follows an investment program substantially similar to that of the Fund.

Mr. Icahn also may directly, or indirectly, manage and/or invest in feeder funds that invest substantially all of their assets in one or more of the Icahn Funds.

Mr. Icahn and the Covered Affiliates will be permitted to invest in funds, managed accounts or other pooled investment vehicles managed by unaffiliated third parties, and to participate in related coinvestment opportunities generated by vehicles in which they hold an interest as of the U.S. Fund's initial closing, or their affiliates.

The Fund will not invest in any securities issued by a company the securities of which were held by Mr. Icahn and companies he controlled as of the U.S. Fund's initial closing, if those holdings were greater than 5% or $50 million in market value of any class of such securities (“Specified Securities”), unless such holdings thereafter fall below those thresholds. Mr. Icahn and the Covered Affiliates shall not be restricted from making additional investments in such securities.

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1 Capitalized terms have the meanings ascribed to them in the applicable Confidential Memorandum of certain of the Icahn Funds.

2 The 20% will be determined based upon the aggregate holdings of such securities by the Icahn Managed Funds, Mr. Icahn and the Covered Affiliates.

Investment opportunities that are intended to be long-term control positions and that are in industries in which Icahn-controlled entities have active operating businesses may first be offered to such Icahn-controlled entities.

"Covered Affiliate" shall mean an entity controlled by Mr. Icahn. The term "Covered Affiliate" will not include (i) Other Funds; (ii) any publicly traded entity or its subsidiaries; or (iii) other entities with third-party holders to whom fiduciary obligations exist and that are not primarily engaged in the business of investing in securities, or their subsidiaries. "Covered Affiliates" will not include, for example, the following publicly traded entities in which Mr. Icahn and his affiliates have controlling interests: XO Communications, Inc., a Delaware corporation, and National Energy Group, Inc., a Delaware corporation and AREP.

From time to time, the Managing General Partner may deem it appropriate for the Fund to engage in a "principal transaction" (within the meaning of the Advisers Act). Any "principal transaction" will be considered and approved or disapproved by an independent representative appointed by the Managing General Partner.

EXHIBIT B

AREP Restrictions[3]

Pursuant to an agreement among AREP and each of the Icahn Funds (the "AREP Agreement"), AREP has agreed that, like Mr. Icahn and the Covered Affiliates, AREP and its subsidiaries (other than those subsidiaries (i) with third party holders to whom fiduciary obligations exist and that are not primarily engaged in the business of investing in securities, or their subsidiaries or (ii) that are publicly traded entities or their subsidiaries) will not invest in any assets that the Managing General Partner deems suitable for the Icahn Funds other than government and agency bonds and cash equivalents. AREP and its subsidiaries will be permitted to engage in the same activities as Mr. Icahn and the Covered Affiliates, including the ability to acquire or invest in non-public entities and to make investments in Specified Securities. In addition, AREP and its subsidiaries shall not be restricted from making additional investments in any securities issued by, or purchasing any securities issued by, a company the securities of which were held by AREP and its subsidiaries as of the date of the AREP Agreement. AREP and its subsidiaries, either alone or acting together with a group, will not be restricted from (i) acquiring all or any portion of the assets of any public company in or in connection with a negotiated transaction or series of related negotiated transactions or (ii) engaging in a negotiated merger transaction with a public company and, pursuant thereto, conducting and completing a tender offer for securities of the company. AREP will not participate in the Co-Investment Right. The terms of the AREP Agreement may be amended, modified or waived with the consent of AREP and each of the Icahn Funds, provided, however, that a majority of the members of the Investor Committee may, with the consent of AREP, amend, modify or waive any provision of the AREP Agreement with respect to any particular transaction or series of related transactions.

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[3] Capitalized terms have the meanings ascribed to them in the applicable Confidential Memorandum of certain of the Icahn Funds.

AMENDMENT NO. 1 TO REGISTRATION RIGHTS AGREEMENT

THIS AMENDMENT NO. 1 TO REGISTRATION RIGHTS AGREEMENT (this "Amendment"), dated as of August __, 2007, is entered into by and among **AMERICAN REAL ESTATE PARTNERS, L.P.**, a Delaware limited partnership (the "Company"), and the other signatories hereto (each a "Holder" and collectively the "Holders"):

W I T N E S S E T H

WHEREAS, the Company and the Holders are parties to that certain Registration Rights Agreement, dated as of June 30, 2005 (as amended, restated, supplemented, or modified from time to time, the "Registration Rights Agreement") for the registration of Depositary Units (as such term is defined in the Registration Rights Agreement);

WHEREAS, the current holdings of Depositary Units held by the Holders is as follows:

Name	Depositary Units
Cyprus, LLC	413,793
Highcrest Investors Corp.	3,452,586
Barberry Corp.	5,537,000
Gascon Partners	11,892,167
High Coast Limited Partnership	34,359,836

WHEREAS, at the time of the execution of this Amendment, the entities listed below will acquire additional Depositary Units from the Company as follows:

Name	Depositary Units
CCI Onshore Corp.	1,515,515
CCI Offshore Corp.	3,706,723
Icahn Management LP	3,410,441

WHEREAS, the Company and the Holders desire to amend the definitions of the terms "Holder" and "Holders" contained in the Registration Rights Agreement such that any Affiliate of any Holder that holds or hereafter acquires Depositary Units from time to time will have registration rights under the Registration Rights Agreement as if such Affiliate were a party thereto; and

WHEREAS, Section 6.3 of the Registration Rights Agreement provides that the Registration Rights Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each party thereto.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. DEFINITIONS. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Registration Rights Agreement, as amended hereby.

2. AMENDMENTS TO REGISTRATION RIGHTS AGREEMENT.

(a) Section 5.1 of the Registration Rights Agreement is hereby amended by amending and restating each of the following definitions in its entirety as follows:

"Holder" has the meaning ascribed to it in the forepart of this Agreement and shall additionally include any Affiliate of a Holder that holds Depositary Units or acquires Depositary Units from time to time and executes a signature page hereto under the caption "Additional Holders" and delivers a copy to the Company.

"Holders" has the meaning ascribed to it in the forepart of this Agreement and shall additionally include any Affiliate of a Holder that holds Depositary Units or acquires Depositary Units from time to time and executes a signature page hereto under the caption "Additional Holders" and delivers a copy to the Company.

3. CONSTRUCTION. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN THE STATE OF NEW YORK.

4. ENTIRE AMENDMENT; EFFECT OF AMENDMENT. This Amendment, and terms and provisions hereof, constitute the entire agreement among the parties pertaining to the subject matter hereof and supersedes any and all prior or contemporaneous amendments relating to the subject matter hereof. Except for the amendments to the Registration Rights Agreement expressly set forth in Section 2 hereof, the Registration Rights Agreement shall remain unchanged and in full force and effect.

5. COUNTERPARTS; TELEFACSIMILE EXECUTION. This Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Amendment by signing any such counterpart. Delivery of an executed counterpart of this Amendment by telefacsimile shall be equally as effective as delivery of an original executed counterpart of this Amendment. Any party delivering an executed counterpart of this Amendment by telefacsimile also shall deliver an original executed counterpart of this Amendment, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Amendment.

6. MISCELLANEOUS.

(a) Upon the effectiveness of this Amendment, each reference in the Registration Rights Agreement to "this Agreement", "hereunder", "herein", "hereof" or words of like import referring to the Registration Rights Agreement shall mean and refer to the Registration Rights Agreement as amended by this Amendment.

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IN WITNESS WHEREOF, the parties have caused this Amendment to be executed and delivered as of the date first written above.

AMERICAN REAL ESTATE PARTNERS, L.P.
By: American Property Investors, Inc., its general partner

By: /s/ Andew Skobe
Name: Andrew Skobe
Title: Chief Financial Officer

HOLDERS:

HIGHCREST INVESTORS CORP.

By: /s/ Keith Cozza
Name: Keith Cozza
Title: Assistant Treasurer

ARNOS CORP.

By: /s/ Edward Mattner
Name: Edward Mattner
Title: Vice President

CYPRUS, LLC
By: Barberry Corp., its managing member

By: /s/ Edward Mattner
Name: Edward Mattner
Title: Authorized Signatory

GASCON PARTNERS
By: Cigas Corp., its managing member

By: /s/ Edward Mattner
Name: Edward Mattner
Title: President

ADDITIONAL HOLDERS:

CCI ONSHORE CORP.

By: /s/ Edward Mattner
Name: Edward Mattner
Title: Authorized Signatory

CCI OFFSHORE CORP.

By: /s/ Edward Mattner
Name: Edward Mattner
Title: Authorized Signatory

ICAHN MANAGEMENT LP

By: /s/ Edward Mattner
Name: Edward Mattner
Title: Authorized Signatory

HOLDERS:

BARBERRY CORP.

By: /s/ Edward Mattner
Name: Edward Mattner
Title: Authorized Signatory

HIGH COAST LIMITED PARTNERSHIP
By: Little Meadow Corp., its general partner

By: /s/ Edward Mattner
Name: Edward Mattner
Title: Authorized Signatory

EXHIBIT 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

I, Keith A. Meister certify that:

1. I have reviewed this quarterly report on Form 10-Q of American Real Estate Partners, L.P. for the period ended June 30, 2007 (the "Report");

2. Based on my knowledge, this Report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this Report;

3. Based on my knowledge, the financial statements, and other financial information included in this Report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this Report;

4. The Registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting as defined in Exchange Act Rules 13a-15(f) and 15d-15(f) for the Registrant and we have:

a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this Report is being prepared;

b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in the Report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and

d) disclosed in this Report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting.

5. The Registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of Registrant's board of directors (or persons performing the equivalent functions):

a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

/s/ KEITH A. MEISTER

Keith A Meister
Principal Executive Officer and Vice Chairman of the Board of American Property Investors, Inc., the General Partner of American Real Estate Partners, L.P.

Date: August 9, 2007

EXHIBIT 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

I, Andrew R. Skobe, certify that:

1. I have reviewed this quarterly report on Form 10-Q of American Real Estate Partners, L.P. for the period ended June 30, 2007 (the “Report”);

2. Based on my knowledge, this Report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this Report;

3. Based on my knowledge, the financial statements, and other financial information included in this Report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this Report;

4. The Registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting as defined in Exchange Act Rules 13a-15(f) and 15d-15(f) for the Registrant and have:

a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this Report is being prepared;

b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) evaluated the effectiveness of the Registrant’s disclosure controls and procedures and presented in the Report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and

d) disclosed in this Report any change in the Registrant’s internal control over financial reporting that occurred during the Registrant’s most recent fiscal quarter (the Registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant’s internal control over financial reporting.

5. The Registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant’s auditors and the audit committee of Registrant’s board of directors (or persons performing the equivalent functions):

a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant’s ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant’s internal control over financial reporting.

/s/ ANDREW R. SKOBE

Andrew R. Skobe
Chief Financial Officer of American Property Investors, Inc., the General Partner of American Real Estate Partners, L.P.

Date: August 9, 2007

EXHIBIT 32.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

I, Keith A. Meister, Principal Executive Officer of American Property Investors, Inc., the General Partner of American Real Estate Partners, L.P. (the "Registrant"), certify that to the best of my knowledge, based upon a review of the American Real Estate Partners, L.P. quarterly report on Form 10-Q for the period ended June 30, 2007 of the Registrant (the "Report"):

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

/s/ KEITH A. MEISTER

Keith A Meister
Principal Executive Officer and Vice Chairman of the Board of American Property Investors, Inc., the General Partner of American Real Estate Partners, L.P.

Date: August 9, 2007

EXHIBIT 32.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

I, Andrew R. Skobe, Chief Financial Officer (Principal Financial Officer) of American Property Investors, Inc., the General Partner of American Real Estate Partners, L.P. (the "Registrant"), certify that to the best of my knowledge, based upon a review of the American Real Estate Partners, L.P. quarterly report on Form 10-Q for the period ended June 30, 2007 of the Registrant (the "Report"):

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

/s/ ANDREW R. SKOBE

Andrew R. Skobe
Principal Executive Officer and Vice Chairman of the Board of American Property Investors, Inc., the General Partner of American Real Estate Partners, L.P.

Date: August 9, 2007