

1 Alan A. Meda (#009213)
2 BURCH & CRACCHIOLO, P.A.
3 702 East Osborn Road, Suite 200
4 Phoenix, Arizona 85014
5 Tel: 602.274.7611
6 ameda@bcattorneys.com

7 *Attorneys for Ara Macao Holdings, L.P.*

8 UNITED STATES BANKRUPTCY COURT

9 FOR THE DISTRICT OF ARIZONA

10 In re

11 ARA MACAO HOLDINGS, L.P.,

12 Debtor.

13 Chapter 11

14 Case No.: 3:18-bk-03615-PS

15 **DEBTOR'S MOTION FOR ORDER
16 AUTHORIZING THE SALE OF
17 PROPERTY OUTSIDE THE ORDINARY
18 COURSE OF BUSINESS**

19 Debtor, by and through its counsel undersigned, pursuant to Bankruptcy Code §§ 105(a),
20 363 and 365, hereby respectfully request this Court set a hearing, and at the hearing, approve a
21 procedure to facilitate the sale of the Debtor's Property (as defined below) which, Debtor
22 believes, will result in the payment in full of all claims and interests in this case. This motion is
23 supported by the following Memorandum of Points and Authorities.

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **I. JURISDICTION**

26 1. This case was initiated as an involuntary proceeding filed on April 6, 2018 (the
27 "**Petition Date**") by KB Partners I, L.P., Christopher de Sibert, Daniel Dorgan, Gary Nitsche,
28 Richard Umbach and Edgewater Resources, LLC ("**Petitioning Creditors**") under chapter 11 of
Title 11 of the United States Code (the "**Bankruptcy Code**").

2. On or about May 8, 2018, the involuntary proceeding was converted to a voluntary
Chapter 11 proceeding [DE 18].

1 3. The Debtor continues to operate its business and manage its assets as a debtor in
2 possession in accordance with sections 1107 and 1108 of the Bankruptcy Code.

3 4. The Court has jurisdiction over the Bankruptcy Cases under 28 U.S.C. §§ 157 and
4 1334.

5 5. This matter presents a core proceeding under 28 U.S.C. § 157(b)(2).

6 6. No trustee or examiner has been appointed in the Bankruptcy Cases, nor has an
7 official committee of unsecured creditors been established.

8 7. The statutory predicates for the relief sought herein are §§ 105(a), 363, and 365
9 of the Bankruptcy Code.

10 8. No trustee or examiner has been appointed in this bankruptcy case, nor has an
11 Official Committee of Unsecured Creditors been established.

12 **II. BACKGROUND**

13 9. Debtor is a limited partnership formed in Illinois in 2004.

14 10. Debtor's general partner is Ara Macao Management Company, LLC ("**AMMC**").
15 AMMC has two members, ioVest Development, LLC ("**ioVest**"), and Edgewater Resources,
16 LLC ("**Edgewater**"). ioVest holds a majority of the interests in AMMC and Edgewater holds a
17 minority interest currently vested at 5% and increasing to as high as 20% upon completion of
18 various benchmarks. Edgewater receives other benefits under the AMMC Operating Agreement
19 such as designation of Edgewater as General Contractors for the development of the Debtor.
20 ioVest is the designated manager of AMMC. ioVest is managed by Paul Goguen.

21 11. The primary asset of Debtor includes an approximately 616-acre parcel of prime
22 developable resort property in Belize (the "**Property**"), which includes nearly one mile of
23 Caribbean beachfront. The Property (with title held in escrow) was fully paid for in 2007.

24 12. The Property is located near Francis Ford Coppola's landmark and luxurious
25 Turtle Inn in Belize.

26 13. Although the Property has not been fully developed, Debtor and its management
27 have been working on obtaining necessary approvals, securing funding, and attracting joint
28 venture partners including, without limitation, environmental clearance and approvals to

1 subdivide the Property from agencies of the Belizean government issued on March 23, 2017.

2 14. Debtor believes that the Property has substantial value based on a November 2015
3 appraisal valuing the Property at \$37,255,468 “as is” and \$61,000,000 improved.

4 15. There are currently approximately 90 limited partners in Debtor, with collective
5 investments totaling nearly \$9 million. Dr. Eugene Ingles is believed to be the limited partner
6 with the largest limited partnership interest.

7 16. Debtor is informed and believes that the numerous limited partners in Debtor
8 prefer an orderly sale of the Property and that such a sale would facilitate the best manner in
9 which creditors can be paid and partners can receive a return of their investment. Debtor believes
10 that based on the current world favorable economic climate, a sale of the Property at this time
11 would maximize the Property’s value for the benefit of the bankruptcy estate.

12 17. Debtor believes and asserts that a sale of the Property would be in the best interests
13 of Debtor’s bankruptcy estate including Debtor’s creditors and limited partners. As such, Debtor
14 seeks approval of the sale of the Property pursuant to the terms set forth herein, or to the extent
15 required by the Court, pursuant to a confirmed plan of reorganization.

16 **III. PROPOSED SALE.**

17 18. Debtor believes that a sale of the Property including any and all appurtenant rights
18 and benefits relating to the Property, pursuant to the terms set forth herein including any approved
19 bid procedures, marketing period, real estate sales professionals, will maximize recovery for the
20 Debtor’s estate.

21 19. Debtor proposes the following terms for a proposed sale (the “**Proposed Sale**”):

22 a. **Property to be Sold:** 616 acres on the Placencia Peninsula, Stann Creek
23 District, Belize including all entitlements and environmental approvals.

24 b. **Purchase Price:** \$37,265,468 to be marketed as separate transactions.

25 (i) Blocks B & D – 177.242 acres for \$21,452,000.

26 (ii) Blocks A & C – 439.263 acres for \$15,813,468.

27 c. **Qualified Bidder:** In order to be a Qualified Bidder, a prospective buyer shall
28

1 provide its bona fides including proof of the availability of funds.

2 d. **Feasibility Period:** Buyer will have ninety (90) days after delivery of due
3 diligence items to conduct any due diligence, inspections, and tests deemed
4 necessary by Buyer at Buyer's expense. If during this period Buyer determines
5 that the purchase is not feasible, it will provide seller written notice of termination
6 before the expiration of the Feasibility Period.

7 e. **Earnest Money:** In order to continue to be a Qualified bidder, a proposed
8 buyer shall have completed its feasibility, executed a purchase and sale agreement
9 which shall be subject to bankruptcy court approval, and have deposited \$250,000
10 earnest money deposit into escrow. This sum shall be a refundable deposit and
11 placed in escrow with a title company upon the execution of a purchase and sale
12 agreement with the estate.

13 f. **Court Approval.** The sale transaction is subject to Bankruptcy Court approval.
14 Upon approval, the winning bidder will deposit an additional \$250,000 into the
15 escrow account (for a total earnest money deposit of \$500,000) if the agreement
16 is not cancelled by buyer prior to that date. All earnest money will be credited to
17 the purchase price at closing and will become non-refundable upon court
18 approval.

19 g. **Closing:** Buyer shall close the sale of the Property no later than sixty (60) days
20 after being approved by the Court.

21 20. The Proposed Sale will be conducted as an auction before the Bankruptcy Court
22 at a date to be established by the Court (the "**Auction**"). The Auction will be conducted pursuant
23 to bidding procedures, marketing periods, and an auction date to be separately approved by the
24 Court.

25 21. Debtor proposes the Proposed Sale in good faith and in the sound exercise of its
26 business judgment. The Proposed Sale at auction ensures that any possible competing bidder will
27 have the opportunity to bid (assuming it becomes a Qualified Bidder), thus further ensuring that
28 the Proposed Sale will be effected through an arms-length transaction. The Proposed Sale will

1 provide Debtor's estate with sufficient proceeds to satisfy all of the claims and interests in this
2 case, including all obligations required under Debtor's limited partnership agreement. Debtor
3 believes that the Proposed Sale is in the best interests of the estate, including the creditors of the
4 estate and Debtor's limited partners, and that sound, good, and valid business reasons exist to
5 permit the Proposed Sale pursuant to 11 U.S.C. § 363 of the Bankruptcy Code.

6 22. Debtor requests that the Property be sold free and clear of all claims, liens,
7 encumbrances, and other interests pursuant to § 363(f) of the Bankruptcy Code. Debtor believes
8 the Property to be unencumbered. To the extent there are any liens, the expected purchase price
9 far exceeds the amount of any such liens. Accordingly, Debtor believes that a sale of the Property
10 free and clear of liens in accordance with 11 U.S.C. § 363(f) is proper.

11 23. Debtor further requests that the Court determine that the prevailing bidder is a
12 "good faith" purchaser under § 363(m). When a bankruptcy court enters an order approving a sale
13 under § 363(b)(1), the court may make a finding that the purchaser is a "good faith" purchaser
14 under Bankruptcy Code § 363(m). *In re Onouli-Kona Land Co.*, 846 F.2d 1170, 1174 (9th Cir.
15 1988). Section 363(m) protects the rights of good faith purchasers at a sale under § 363. *In re*
16 *Ewell*, 958 F.2d 276, 279 (9th Cir. 1992). A "good faith purchaser" is not defined by the
17 Bankruptcy Code; however, the Ninth Circuit defines a lack of good faith as fraudulent conduct
18 during the sale proceedings that "involves fraud, collusion between the purchaser and other
19 bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." *In re Suchy*,
20 786 F.2d 900, 902 (9th Cir. 1985). Where a party has purchased estate property in good faith,
21 § 363(m) supports the "policy of finality" encouraged by bankruptcy courts and protects the
22 finality of the sale. *In re Onouli-Kona Land Co.* 846 at 1172.

23 **IV. CONCLUSION.**

24 WHEREFORE, Debtor respectfully requests that the Court enter an Order:

- 25 A. Authorizing the sale of the Property to the highest successful bidder;
26 B. Adopting bid procedures for utilization at the Auction of the sale of the Property;
27 C. Authorizing the sale of the Property free and clear of all liens, encumbrances,
28 claims, and interests;

1 D. Directing that any liens, encumbrances, claims, and interests attach to the
2 proceeds in their respective priorities and that the proceeds of sale be paid and applied in
3 accordance with such priorities to the respective parties holding such liens, encumbrances,
4 claims, and interests or otherwise paid and applied as may be set forth in a confirmed plan of
5 reorganization;

6 E. Finding that the successful bidder is a bona fide purchaser in good faith protected
7 by 11 U.S.C. § 363(m).

8 F. Grant such other and further relief as the Court deems proper.

9 DATED this 7th day of June 2018.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BURCH & CRACCHIOLO, P.A.

By /s/ Alan A. Meda (#009213)
Alan A. Meda
Attorneys for Ara Macao Holdings, LP