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5
6 UNITED STATES BANKRUPTCY COURT

7 FOR THE DISTRICT OF ARIZONA

8 In re

9 ARA MACAO HOLDINGS, L.P.,

10 Debtor.

Chapter 11

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

**STIPULATION TO APPOINT CHAPTER 11
TRUSTEE**

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14 Ara Macao Holdings, L.P., Debtor and Debtor-in-Possession (“**Debtor**”), files this
15 Stipulation to Appoint Chapter 11 Trustee (the “**Trustee Stipulation**”) agreeing to the
16 appointment of a chapter 11 Trustee in this bankruptcy case.¹ This Stipulation is supported by
17 the record of this Bankruptcy Case and by the following Memorandum of Points and Authorities.

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I. JURISDICTION**

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

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

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27 ¹ Debtor recommends Christopher Linscott of Keegan, Linscott & Kenon (“**KLN**”) as a potential
28 chapter 11 Trustee. KLN is a full service nationally affiliated accounting firm with certified
public accountants, fraud examiners and insolvency and restructuring advisors.

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. On or about April 6, 2018, the Petitioning Creditors filed a motion for *Immediate*
9 *Appointment of a Chapter 11 Trustee* [DE 6] (the “**Trustee Motion**”). On April 18, 2018, Debtor
10 filed its *Objection to Petitioning Creditors Motion for Immediate Appointment of a Chapter 11*
11 *Trustee* (under seal) (“**Debtor’s Objection**”) and Petitioning Creditors filed their reply on May
12 11, 2018 [DE 73].

13 8. On April 24, 2018, Dr. Eugene Ingles (“**Ingles**”) filed his *Objection to Petitioning*
14 *Creditors’ Motion for Immediate Appointment of a Chapter 11 Trustee and Joinder* [DE 42]
15 joining in Debtor’s Objection and opposing the appointment of a chapter 11 trustee. On May 31,
16 2018, Ingles joined in the request for the appointment of a chapter 11 trustee [DE 91].

17 9. Oral argument on the Trustee Motion occurred on May 16, 2018 and the matter
18 was scheduled for an evidentiary hearing on June 28, 2018 at 9:00 a.m.

19 10. On June 7, 2018, Debtor filed a *Motion to Authorize the Return of Interests*
20 relating to the outstanding shares in Ara Development, Ltd., a Belize Chapter 250 company and
21 the transfer of shares to Debtor.

22 11. On June 7, 2018, Debtor filed a *Motion to Appoint Committee of Limited Partners*
23 requesting the formation of a committee of Debtor’s limited partners on account of the divergent
24 interests of limited partners and creditors of Debtor’s bankruptcy estate.

25 12. On June 7, 2018, Debtor filed *Debtor’s Motion for Order Authorizing the Sale of*
26 *Property Outside the Ordinary Course of Business* seeking to facilitate the sale of the Property
27 (as defined below) and the payment of all required claims and interests.

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1 **II. BACKGROUND**

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

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

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

14 16. The Property is located near Francis Ford Coppola's landmark and luxurious
15 Turtle Inn in Belize.

16 17. Although the Property has not been fully developed, Debtor and its management
17 have been working on obtaining necessary approvals, securing funding, and attracting joint
18 venture partners including, without limitation, environmental clearance and approvals to
19 subdivide the Property from agencies of the Belizean government issued on March 23, 2017.

20 18. Debtor believes that the Property has substantial value based on a November 2015
21 appraisal valuing the Property at \$37,255,468 "as is" and \$61,000,000 improved.

22 19. There are currently approximately 90 limited partners in Debtor, with collective
23 investments totaling nearly \$9 million. Ingles is believed to be the limited partner with the largest
24 limited partnership interest.

25 **III. RELIEF REQUESTED**

26 20. This bankruptcy proceeding which started as an involuntary proceeding represents
27 the third attempt by all or some of the Petitioning Creditors to take over control of the Debtor.
28 While Debtor contests the allegations of the Petitioning Creditors and maintains that cause does

1 not exist to appoint a chapter 11 trustee, Debtor believes that it is in the best interest of the
2 Debtor's limited partners to permit a neutral third-party chapter 11 trustee to take over control
3 and management of Debtor. Although Debtor has filed the Sale Motion, it believes that a Trustee
4 with the benefit of input from a committee of limited partners can best determine how to proceed
5 free from the distractions over control.

6 21. While Debtor is cognizant that a trustee is appointed by the Office of the United
7 States Trustee, Debtor recommends Christopher Linscott as a potential chapter 11 trustee. Debtor
8 believes that Mr. Linscott and his firm have the requisite knowledge and experience to perform
9 in the role of chapter 11 trustee including a background in forensic accounting and reorganization
10 experience with the bankruptcy process.

11 WHEREFORE, Debtor stipulates and agrees to the appointment of a chapter 11 trustee
12 and requests that the Court enter an order vacating the evidentiary hearing scheduled for June 28,
13 2018 and granting such other and further relief it deems just and proper.

14 DATED this 7th day of June 2018.

15 **BURCH & CRACCHIOLO, P.A.**

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17 By /s/ Alan A. Meda (#009213)
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20 Served this 7th day of June 2018
21 on the following:

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9 /s/ Tracy Dunham
Tracy Dunham

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