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6 Committee of Unsecured Creditors

7 **THE UNITED STATES BANKRUPTCY COURT**  
8 **FOR THE DISTRICT OF ARIZONA**

9 In re

10 ARA MACAO HOLDINGS, L.P.,

11 Debtor.

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

Chapter 11

12  
13 **OFFICIAL COMMITTEE OF UNSECURED CREDITORS'**  
14 **SUPPLEMENTAL RESPONSE CONCERNING DEBTOR'S REQUEST**  
14 **TO APPOINT COMMITTEE OF LIMITED PARTNERS**

15 The Official Committee of Unsecured Creditors in the above-captioned reorganization  
16 case (the "Committee") hereby provides this supplemental response in opposition to the  
17 appointment of a committee of limited partners ("LPs") in this chapter 11 case.

18 **INTRODUCTION**

19 In the short time that has passed since the Court asked for supplemental briefing on the  
20 issue as to whether or not an LP committee should be appointed in this chapter 11 proceeding,  
21 a meeting of creditors was held on August 2, 2018 at the request of the Committee for the  
22 purposes of electing a new chapter 11 trustee (the "Trustee"). At that time, proxies  
23 representing more than 80% of the non-insider creditors in this case were filed of record and  
24 voted to elect Cary Forrester as Trustee.<sup>1</sup> Grant Lyon, the currently appointed Trustee, has

25  
26 <sup>1</sup> The U.S. Trustee will ultimately report on which of the proxies may be disqualified from voting  
27 because of objections filed to certain claim by Grant Lyon, interim chapter 11 trustee. Nonetheless,  
no party appearing at the election meeting disputed that a minimum 20% quorum was represented at  
the meeting and participated in the election as required under 11 U.S.C. § 702.

1 since withdrawn his objection to the election process and the Committee anticipates that the  
2 U.S. Trustee has or will shortly be filing a report certifying Mr. Forrester as the newly  
3 appointed Trustee. Dkts. 174 and 192. Because of the timing of this response due date, and  
4 the Debtor's denial of requests by the Committee and Trustee-elect Forrester to continue for  
5 two weeks the briefing on this issue and the hearing scheduled for August 13, 2018, the  
6 Committee is proceeding to file this response and attachments. However, the Committee  
7 urges the Court to take up this matter only after Trustee-elect Forrester has an ample  
8 opportunity to review and weigh in on the propriety of an LP committee in this case.

### 9 SUPPLEMENTAL RESPONSE

10 The Court previously asked the parties to provide supplemental briefing in this matter  
11 so that the Court could further analyze the applicable factors for appointing a committee of  
12 equity holders as outlined in *In re Leap Wireless Int'l., Inc.* 295 B.R. 135 (Bankr. S.D.Cal.  
13 2003) and *In re Nat'l R.V. Holdings, Inc.* 390 B.R. 690 (Bankr. C.D.Cal. 2008). In these  
14 cases, the courts generally considered the following:

- 15 1. The number of shareholders;
- 16 2. The complexity of the case;
- 17 3. The costs of a committee in relationship to concerns of equity's adequate  
18 representation;
- 19 4. The timing of the motion in relationship to the chapter 11 case; and
- 20 5. Solvency of the debtor.

21 *Id.*

22 The Court asked the parties to primarily focus on the solvency issue. In that regard the  
23 Committee responds as follows:

#### 24 **The Committee's Current Evaluation of Solvency.**

25 In short, the Committee believes that the Debtor is not solvent and that the current  
26 market value of its only asset, a 615 acre parcel of land in Belize with approximately one mile  
27 of ocean frontage (the "Property"), is approximately \$14 million, including approximately \$2

1 million of value for the Property's existing entitlements. After administrative costs of the  
2 bankruptcy estate, payment of stamp taxes to accomplish the transfer of the Property in a sale,  
3 and the payment of liquidation costs, the Committee expects that a current market transaction  
4 for the Property would net less than \$12 million to an estate that, based on the Debtor's  
5 schedules, has at least \$17 million in creditor claims.

6 The Committee's view of insolvency is informed by a market analysis the Committee  
7 has recently obtained from Robert W. Bogner and Associates, Inc. ("Bogner") an MAI  
8 certified appraiser experienced in evaluating and valuing resorts, marina resorts and  
9 developments all over the world. Specifically Bogner has provided the Committee a market  
10 analysis that reviews comparable properties currently being marketed for sale in the area  
11 immediately surrounding the Property (the "Bogner Analysis"). A copy of the Bogner  
12 Analysis, including a summary of Bogner's qualifications, is attached collectively as **Exhibit**  
13 **A** and is incorporated herein by this reference.

14 In summary, the Bogner Analysis evaluates comparable properties currently offered  
15 for sale in Belize in an effort to determine a value at which the Property might be offered for  
16 sale today. Specifically, the comparable properties identified by Bogner include a one  
17 thousand-acre parcel of land immediately north of the Property with two miles of ocean  
18 frontage, and two parcels of property more comparable in size and ocean frontage to the  
19 Property, (i.e., among others, 700 acres with one mile of ocean frontage currently offered for  
20 \$10 million and 688 acres with approximately 1.5 miles of ocean frontage currently offered  
21 for sale for \$10 million). As the Bogner Analysis suggests, there is an ample supply of  
22 comparable land in Belize and it is assumed that these properties (some of which have been  
23 marketed for years) will ultimately sell for less than their current asking price (or they may  
24 never sell at all), suggesting that, at best, the current value of the Property is \$14 million,  
25 including entitlements.

26 By contrast, and for the benefit of the Court, Bogner has reviewed and prepared a  
27 critique (the "Bogner Critique") of the 2015 appraisal upon which the Committee anticipates

1 the Debtor will rely. A copy of the Bogner Critique is attached hereto as **Exhibit B** and  
2 incorporated herein by this reference. In summary, according to the Bogner Critique, the  
3 2015 appraisal does not meet industry standards and its valuation conclusion cannot be  
4 supported in any way. Indeed, according to Bogner, “[n]o sales or listings of comparable  
5 sized parcels were even considered and had consideration been given to parcels being offered  
6 for sale of comparable size, a value of \$61 million would have been shown to be completely  
7 unreasonable.” The Bogner Critique concludes by indicating that “there is no basis for the  
8 concluded value, there is no evidence that the appraisal process was even followed, and there  
9 is no reason why any consideration should be given to the concluded result.”

10 The Debtor’s appraisal would have a reader believe that from 2006 to 2015, despite a  
11 world shaking economic downfall, the value of the Property has increased by more than 600%  
12 (now 800% based on Debtor’s now updated appraisal) and to a value that would exceed actual  
13 comparable properties for sale right now immediately adjacent to the Property by a multiple  
14 of three or more. By comparison, the Bogner Analysis that is relied upon by the Committee  
15 indicates a reasonable economic appreciation of the Property in light of world events on the  
16 average of 6% per year since 2006 and a present value that is directly in line with comparable  
17 properties currently offered for sale in the immediate vicinity of the Property.

18 Based on the foregoing, the Committee has concluded that the Debtor is not solvent  
19 and that a sale of the Property at this time would result in no recovery to LPs whatsoever.

20 **The Committee’s View on Other LP Committee Considerations.**

21 This case involves a finite group of creditors and LPs that are readily identifiable, can  
22 be communicated with, and are so interrelated with unsecured creditors that the LPs in this  
23 case comprise more than half of all unsecured creditors. Moreover, the stakeholders in this  
24 case are generally known to each other and can easily be engaged and canvassed in this case  
25 without the formation of a formal committee. Indeed, that could be no more apparent than in  
26 the results of the efforts of the Debtor and the Committee to raise competing support and  
27 opposition for the LP committee. In less than two weeks’ time, the Debtor and the Committee

1 engaged with the LPs so effectively that more than 80% of the LP interests weighed in on the  
2 formation of a committee through the filing of formal joinders (28.47% supporting and  
3 53.09% opposing the LP committee). This is not a case where the equity class is so disparate  
4 and broadly drawn that it requires a committee representation.

5 Likewise, this case is not complex. The Debtor has an interest in a single piece of land  
6 in Belize that must be administered either through a sale or a development plan. The  
7 Committee is on record preferring a reorganization and long term development plan over a  
8 short term sale that will not make creditors whole or return even one penny to LPs. Largely,  
9 creditors and LPs share the same identities and interests and, to the extent they differ, the  
10 Trustee will stand as a fiduciary to check and balance the Committee and its efforts to push  
11 for a reorganization of the Debtor.

12 As to the cost/benefit analysis, there are already substantial costs that will be incurred  
13 by this estate to support its existing constituencies. Counsels for the Debtor, the Trustee, and  
14 the Committee will certainly be seeking the recovery of fees and costs incurred in this  
15 reorganization, and other professionals will surely need to be engaged. A fourth constituency  
16 already has adequate representation by a trustee fiduciary, a common interest with creditors  
17 already represented by the Committee, and apparently a sense of allegiance to the Debtor (the  
18 Debtor first moved for the LP committee despite its questionable standing to do so). Combine  
19 these factors with the LP's ability to control the outcome of a plan vote by controlling the  
20 unsecured creditor class, and literally everyone already in this case is going to be looking out  
21 for the interests of the LPs whether or not they ask. There is simply no benefit to adding a  
22 fourth constituency that shares the same values and goals as those already in place and serves  
23 only to enrich professionals engaged by that committee.

24 Finally, as the Committee has previously argued, the appointment of an LP committee  
25 at this time is simply premature. A Trustee has just been elected, the Committee is just  
26 beginning work to assist with the Trustee's development of a plan that will repay creditors  
27 and, hopefully, repay LPs along with a healthy return on their investments. If and when any

1 party in this case takes an action that is contrary to the interests of LPs, one of the three  
2 existing constituencies can take up the cause for LPs or, failing that the 80%+ of LPs that are  
3 apparently already aware and engaged in this process can seek to have a committee appointed  
4 at that time.

5 **What's the Best Solution Here?**

6 The Committee strongly feels that LP's should have a voice and be heard in this  
7 process. The Committee has previously offered and repeats again its willingness to have two  
8 LP seats added to the Committee to participate and look out for the interests of LPs generally.  
9 The U.S. Trustee can select and appoint such members to the Committee at any time and if  
10 for any reason the LP members of the Committee become disaffected or do not believe their  
11 concerns are being heard, they can solicit the U.S. Trustee and this Court to reconsider the  
12 appointment of an LP committee at that time.

13 In the meantime, the Committee would very much like to get on with the business of  
14 reorganizing the Debtor and salvaging this project for the benefit of creditors and LP's alike.  
15 In that regard, the Committee has been working with Edgewater Resources, the previous  
16 development partner of the Debtor, to put together a development plan and seek financing to  
17 move this project along. While in its early stages (delayed by the Trustee appointment and  
18 election process), preliminary discussions with financing and development partner prospects  
19 suggest that there is substantial interest in this project now that it has new management and  
20 real prospects for reorganization. Based on the Committee's and Edgewater's efforts to date,  
21 it is entirely reasonable to expect that a plan of reorganization can be jointly developed with  
22 the Trustee, confirmed, and implemented as early as December of 2018 that will make all  
23 creditors whole (either by payment of claims or delivery of condos/home sites contracted for)  
24 and allow for current LPs to either recover their investments in whole or recommit them to the  
25 reorganized project and realize the returns on their investments that they have denied for as  
26 long as twelve years.

27 ///

1 For the foregoing reasons, the Committee respectfully requests that the Court deny the  
2 Debtor's request to appoint an LP committee at this time and grant such other and further  
3 relief as the Court may deem appropriate under the circumstances.

4 **DATED** this 6th day of August, 2018.

5 **ENGELMAN BERGER, P.C.**

6  
7 By /s/ PAC, SBA # 023154  
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10 3636 North Central Avenue, Suite 700  
11 Phoenix, Arizona 85012  
12 Attorneys for the Official  
13 Committee of Unsecured Creditors

11 COPY of the foregoing e-mailed this  
12 6th day of August, 2018, to:

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23 /s Marie K. Kelly

# EXHIBIT "A"

August 6, 2018

Mr. Patrick Clisham  
Engelman Berger, P.C.  
3636 North Central Ave., Ste 700  
Phoenix, Arizona 85012

Dear Mr. Clisham,

This document is a consulting work that addresses the Committee of Unsecured Creditors concerns to obtain a realistic review of the possible valuations of a property located at the north end of the Placencia Peninsula, Belize (“the AM Project, or “the Project”). Please be aware that this is not an appraisal of the Project, however many current listings are available near the Project from which a reasonable conclusion might be made regarding the Project’s current value. It should be noted that any such value would likely be at the high end of any achievable range as the listings are all “offers to sell” rather than closed transactions.

## I. Background and Scope of Work

Robert W. Bogner Associates is an experienced appraisal group having 40 years’ experience in hundreds of marina and resort properties throughout the United States and internationally. Robert W. Bogner Associates is already familiar with the Ara Macao Project and site as it previously provided some consulting services in 2012-2014 on the Project to Edgewater when Edgewater and IoVest were working on a joint venture.

The current scope of work is to determine the highest and best use of the property in an “as is” condition versus the potential values of the property in a future development condition. These two values could be utilized by the Bankruptcy Court in further determination of possible outcomes for a plan of reorganization for the project.

## II. Project Background

This project has been underway since 2004 with approximately \$8,100,000 in 81 limited partner units and approximately \$7,600,000 in creditor deposits from approximately 60 deposit holders that placed between \$100,000 to \$300,000 in deposits to purchase lots and condominium units within the resort. It is further understood that some \$3,700,000 of interest has accrued on the above creditor deposits.

The Project began reorganizing in 2018 through a Chapter 11 bankruptcy action, which was filed in Phoenix, AZ. The US Trustee appointed a Creditor Committee (“CC”) and a Plan of Reorganization (“POR”) is being prepared.

We understand that proposals for investment in the POR can be submitted at any time to its sponsors, and the CC and Trustee welcome any other development proposals for an alternative POR. An important goal of the CC is

to achieve Plan Confirmation (i.e. taking the Project out of bankruptcy) by December 2018 and begin Phase I construction shortly thereafter, as there is a seasonal window for most construction in Belize (due to seasonal rains) which typically lasts from January through June.

### III. Current Condition of the Property

The existing property was purchased in 2006 for \$6 million in an unentitled and unimproved condition. Since that time entitlements have been received for the current Edgewater plan which consists of a mixed-use, phased-in waterfront community containing up to 1012 residential units, marina, and several hotel sites. The residential units are expected to include beachfront lots, canal lots, as well as numerous condominiums. The project could start with a Phase I, which would require a \$10-\$15 million investment in hard construction costs, to be followed by future phases of similar investment sizes based on market demand and success of the previous phase<sup>1</sup>. It is noted that this phased-in waterfront master plan is a more marketable and fundable program than the previous plan, which had a \$100+ million phase I with complex construction/development costs and schedules.

The entitlement process has been completed with a January 2017 ECP certificate in addition to a roadway permit for the initial 3,000 linear foot road (see the attachments).

### IV. Approximate Value

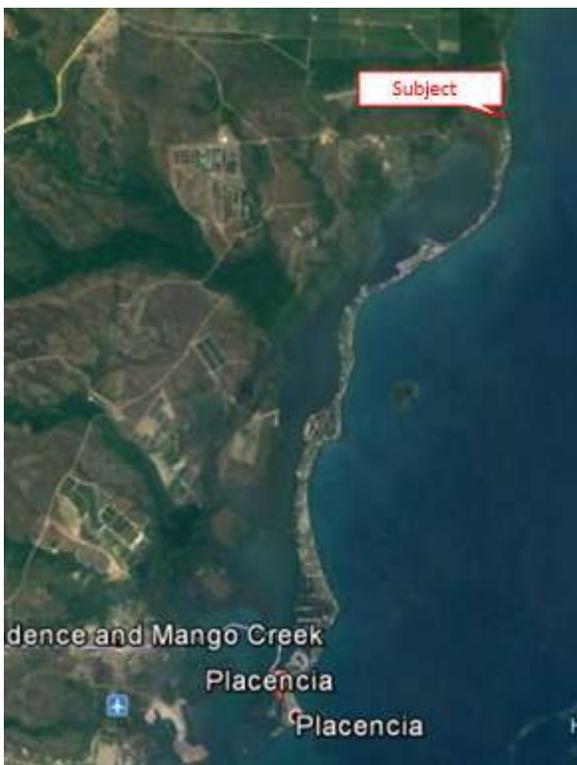
Robert Bogner wishes to stress that it has not had the benefit of seeing the comparable properties and that the information considered and the conclusion reached is based on what appear to be market norms. The Project reportedly owns 616 acres of land, including 5,363 feet of Caribbean Sea frontage. The key comparative benchmarks are accordingly both the acreage and the frontage. While the Project has entitlements already in place, my experience with large projects typically indicates that those entitlements are modified over time as the developer observes the pace of sales of those initial products, which sell best. Generally, the entitlements in a phase I are the only ones that have a measurable impact on value as any unentitled lands can become entitled while Phase I is being sold.

Value is generally a function of supply and demand and an initial observation indicates that there remains a considerable amount of supply of comparable land. Locally, the Mackinnon Belize Land and Development Company, Ltd. (the same entity that sold the Ara Macao Project its land in 2006) owns several thousand acres immediate to the north of the Ara Macao site, including a thousand acre parcel with about two miles of Caribbean frontage. It has reportedly been seeking a buyer for this land for a number of years and is currently asking for \$3,500 per frontage foot; this land could potentially become a competitor to the Project.

In addition to the above Mackinnon Belize land, the following "listings" (offerings) of properties for sale were discovered. Because they are listings, actual sale prices are likely to be lower (all \$ amounts are in US dollars).

- 941 acres w/11,500 feet of ocean frontage and near Placencia. \$46 million (\$48,884 per acre), and \$4,000 per ocean frontage foot
- 15,000-acre citrus farm with residence \$39 million (\$2,600 per acre)
- 15,000 inland acres \$15 million (\$1,000 per acre)
- 10,478-acre parcel with ocean and lagoon frontage (unspecified) \$30 million (\$2,863 per acre)
- \$15 million for 3000 inland acres (\$5,000 per acre)
- 700 acres w/approximately one mile of ocean front \$10 million (\$14,286 per acre) or about \$ 2,000 per frontage foot
- 688 acres w/7,500 ft. ocean front \$10 million (\$14,534 per acre) or \$1,333 per frontage foot

There are many other offerings in the Placencia area, but the above sampling gives an indication of trends. It was noted that land offering prices dropped rapidly away from the ocean and that prices were also influenced by proximity to a major town and established resort area.



The Project is located on the Placencia Peninsula, but it is near Riversdale at the north end of the peninsula, an area where development is less intense.

Properties located further south and near Placencia Village have a superior location such as the listing that indicated it was near Placencia Village (948 acres @ \$48,884 per acre and \$4,000 per ocean front ft.) Two of the offerings have similar asking prices of just over \$14,000 per acre and prices per frontage foot of \$1,333 and \$2,000. Given the Project's location, a reasonable estimation might arrive at a negotiated value based on a range of \$15,000 - \$20,000 per acre, and/or \$2,000-2,500 per frontage foot, both of which would support a value of about \$11-\$12M ( $\$17,500 \times 616 \text{ acres} = \$10.78 \text{ M}$  and  $\$2,250 \times 5,366 \text{ FF} = \$12.07 \text{ M}$ ).

A very generous estimate of the value of the entitlement work, say \$2m, might bring the property to an "As Is" value of \$12M, plus \$2M entitlements for a total "As Is" Value of \$14 M. The \$12M price would represent an average annual increase of about 6% versus the 2006 purchase price of \$6M.

## V. Liquidation Sale

My experience with forced property sales indicates that they sell for prices that are as little as 25% of “fair market value” and almost always less than half of an otherwise “fair market value” price.

Examples include three marina properties that I am familiar with; one that was sold sight unseen for about \$2M, then resold less than a year later for \$4M and presently has a value (5 years later) of about \$6M. The second is a pair of marinas having the same ownership that were purchased for \$9M (\$7M and \$2M respectively) about 3 years apart and sold in the past two months for \$24M, after an approximate 8 year holding period.

Using those sales as a guide, the subject is likely to be sold at a price under \$7M in a forced liquidation environment from which \$2M of administration costs would likely need to be deducted, for \$5m in net proceeds to investors.

## VI. Project Investment versus Land Values

The investment in the property to date totals about \$24M. Whether the property is sold as a liquidated asset or outright to another developer “As-Is”, the investment cannot be

Property Investment	
Existing Creditors plus Accrued Interest:	\$ 14,100,000
Existing Limited Partners:	\$ 8,100,000
Administration Cost & Belize Stamp Duty:	\$2,000,000
Total:	\$ 24,200,000

recovered (assuming current market conditions) through any scenario that involves simply a sale of the land on an “As Is” basis. While there is a development plan and entitlements, the plan and entitlements only have a value if they meet the development scheme of a prospective purchaser, which is improbable. In summary, a mere land sale provides no realistic prospect to recover the investment in the Project.

## VII. Developed Values

This Project nonetheless has some attractive features that could make it appealing to an experienced developer:

- Attractive location
- Fully Entitled, including Marina approval
- Significant Pool of Committed Buyers for Condominiums/Homesites

The value of the Committed Buyers is substantial to a future developer, as they would demonstrate strong early interest and activity levels in the property, which would both advance its development and reduce any perceived risk to additional future buyers.

It is beyond the scope of this review to attempt to assign a detailed value to possible development of the Project. Nonetheless, in the right hands and with sufficient guaranteed funding, the Project is likely to deliver substantial additional value, potentially at least doubling the “As-Is” land value.

## VIII. Conclusion

In reviewing the prospective outcomes for the Project, there seems to be an obvious conclusion: the more precipitate the course of action, the less favorable the outcome for the Project's investors:

Project Land Sale ("Liquidation"): \$ 5,000,000

Project Land Sale ("Orderly Market Transaction") \$ 12,000,000

❖ Above proceeds assume deduction of \$2,000,000 of Administration/Stamp Duty Costs)

A "Best Use" of the land clearly supports a case for its development, given that both a Liquidation and an Orderly Market sale both would entail significant losses for Creditors, and no recovery for Limited Partner Investors. Any prospective land purchaser would likely have to repeat the same steps that have already been made in getting the Project entitled, incurring both additional hard costs and holding costs along the way, and perhaps making the Project's efforts to date valueless.

Indeed, while there can be no guarantee that all Creditors would make a full recovery though the development of the Project, any losses are likely to be less, and possibly substantially less, than what would certainly be realized through the direct sale of the Project's land on an undeveloped basis.

Given that there are entitlements and a development plan already in place, as well as a pool of prospective early buyers with substantial deposits, **the Best Use for the Project's land appears to be to seek a suitable party to continue the development under the Project's existing plan.**

Sincerely,



Robert W. Bogner, Certified General Appraiser

**STATEMENT OF  
QUALIFICATIONS AND  
EXPERIENCE**

*ROBERT W. BOGNER &  
ASSOCIATES INC.*

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email: [bob@rbogner.com](mailto:bob@rbogner.com)

## BACKGROUND

Robert W. Bogner & Associates, Inc. was organized by Robert W. Bogner, for the purpose of conducting commercial and development, residential real estate appraisals, and other related real estate assignments.

Robert W. Bogner & Associates, Inc. is a Michigan corporation located in St. Joseph, Michigan. It was established in 1992.

Assignments completed have included:

- appraisal of fee simple and fractional interests in real estate
- preparation of real estate market studies
- provision of impartial advice and counseling for real estate development projects

These property types have been appraised for the purpose of lending decisions, condemnation, tax appeal, estate planning and title transfer.

## PERSONNEL

### Robert W. Bogner, President

**Education:**

University of Michigan, Ann Arbor, Michigan  
1972-75 Bachelor Degree, Business Administration

**Other Education:**

American Institute of Real Estate Appraisers, now  
the Appraisal Institute

All necessary education to obtain the MAI  
designation.

**Employment:**

1978-79

Tarrant Savings and Loan  
Fort Worth, Texas  
Staff Appraiser (Residential)

1979-80

American Savings and Loan  
Southfield, Michigan  
Staff Appraiser (Residential)

1981-Today

Self Employed Fee Appraiser (Commercial) concentrating in the valuation of complex properties, waterfront PUD's and commercial marinas.

**Professional Designations:**

Formerly a member, Appraisal Institute (MAI) #9102, until 2016, a designation he acquired in 1992. Because of its decline as a professional organization, Robert W. Bogner voluntarily left the Appraisal Institute. Robert W. Bogner has held Certified General Appraisal license 1201001310 for 20 years.

**Experience:**

Robert W. Bogner has extensive experience in valuation for mortgage loans, appealing of valuation for taxation, property takings under the Fifth Amendment and valuation for trusts. Certified for valuation of complex properties by Michigan Department of Transportation. Vast experience in the appraisal of waterfront properties and especially commercial marinas, apartments, industrial buildings, development land and single and multiple tenant commercial buildings. Robert W. Bogner has valued many special use properties including family fun centers and resorts with multiple profit centers.

**Licensing:**

Certified General Appraiser  
Michigan #1201001310  
Indiana #CG41300016

**Experience (Property Types)**

- waterfront and marina properties
- retail centers and buildings
- special purpose properties
- office buildings
- vacant land

- industrial buildings
- single family residential
- complex residential valuations including residential PUD's and development properties
- agricultural properties and farms
- condemnation issues including road rights of way (total and partial takings in easement and fee), utility easements and avigation easements.

***Relevant to waterfront and PUD properties, Robert W. Bogner has acted as appraiser or consultant for the following properties (a sampling):***

- Manistee Village, Manistee Michigan, a waterfront PUD with a gross real estate sales in excess \$250M.
- Heritage Harbor, a 900 unit PUD on the Illinois River projected to have gross sales in excess of \$500 M.
- Jefferson Beach Marina, Sr. Clair Shores, Michigan, 800 slip commercial marina (Numerous times)
- Belle Maer Harbor, Harrison Twp., Michigan, a 850 slip marina (Numerous Times)
- Sandusky Yacht Club, Sandusky, Ohio
- Dune Harbor, Portage, Indiana, a 415 unit waterfront PUD with a 400 slip marina amenity with gross sales in excess of \$200 M.
- Portage Marina, Portage Indiana, a 300 slip municipal marina financed with municipal bonds
- Harbor Isle Marina, St. Joseph, Michigan, a 210 unit PUD (\$84M in gross sales) with a 110 slip marina
- Whiskey Island, Cleveland, Ohio, a 200 slip existing marina with proposed expansion
- Great Lakes Yacht Club, St. Clair Shores, Michigan, a 200 slip yacht club
- Harbor Club Apartments, Harrison Twp., Michigan, an apartment and marina property
- Grosse Point Yacht Club, Grosse Pointe, Michigan. Historic club with marina.
- Bay Harbor Marina and Marina Village, Petoskey, Michigan Commercial development with international recognition
- Marina and housing market study, City of Rochester New York for redevelopment of the Port of Rochester and creation of new housing at the Port with gross values in excess of \$400M.
- Proposed resort, Penasco, Mexico. 500 slip marina and multi phase development focused on the Sea of Cortez.
- Ara Macao; consulting for proposed resort in Belize

# EXHIBIT "B"

# Robert W. Bogner and Associates, Inc.

Robert W. Bogner and Assoc., Inc.  
1101 Broad Street, Box 3  
St. Joseph, Michigan 49085

Phone: 269-313-7747  
e-mail: bob@rbogner.com

August 6, 2018

Mr. Patrick Clisham  
Engelman Berger, P.C.  
3636 North Central Ave., Ste 700  
Phoenix, Arizona 85012

Dear Mr. Clisham,

This letter addresses a document that has been made available and identified as Exhibit "H" and that reported a value of \$61,000,000 for 615.5 acres of land just south of Riversdale, Belize. The report was prepared by Mr. Calvin E. S. Neal Sr., and has an effective date of valuation of November 19, 2015 and a report date of November 30, 2015.

The report has a total of 22 pages, of which 7 pages deal with the valuation process that includes the scope of the assignment, discussion of the neighborhood and economic variables and trends, description of the property and valuation conclusions. Shown after the conclusion is a drawing of the site and sales that are presumably used as the basis for the conclusion.

## Rights Considered and Values Estimated

Property Rights: From Page 3, Fee Simple

Value: From Page 5, Market Value as of the Effective Date (presumed) and "Forecast Value", presumed to be a prospective value as of some unidentified future date but considering a development and construction loan in the amount of \$2.5 million dollars (slightly over \$4,000 per acre). Given the size of the development, a loan of \$2.5 million dollars would seem to be a small investment for that purpose and certainly not an investment that would radically change the land value.

Forecast Value is an undefined term, however.

Because of the Effective Date, reference is made in this document to that version of the Uniform Standards of Professional Appraisal Practice (USPAP) that was in effect in 2014-2015. Of note is that the term "Summary Appraisal" is no longer in use,

## Reporting

The appraisal is identified as a Summary Appraisal Report in the Letter of Transmittal, however no other qualifiers are present in the body of the report. From the Letter:

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The Summary Appraisal Report is intended to comply with the Appraisal requirements in SR 2-2 of the Uniform Standards of Professional Appraisal Practice (USPAP) and the provisions set forth by the International Real Estate Institute (IREI). As such, this Appraisal Report presents reasoning and analysis used in the development of our Appraisal opinions. Detailed supporting documentation concerning data, reasoning and analysis will be retained in our files.

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As of 2104-2015, the term Summary Appraisal was no longer in use as it was determined that the nature of the reporting of an appraisal was to be handled in the scope of work.

The reader is informed that an “appraisal” is a process of developing a value. That process is the same, regardless of the level of reporting, though USPAP does indicate what it considers to be a minimal level of reporting (basically, showing ones work and support reasoning).

SR 2-2 refers to Standard Rule 2-2 of USPAP that specifically pertains to reporting the conclusions of an appraisal, with appraisal being the “process” of developing a value. As of 2015 the following text was specific to the reporting of the results in an appraisal:

**(viii) summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions; exclusion of the sales comparison approach, cost approach, or income approach must be explained;**

Comment: An Appraisal Report must include sufficient information to indicate that the appraiser complied with the requirements of STANDARD 1. The amount of detail required will vary with the significance of the information to the appraisal.

The appraiser must provide sufficient information to enable the client and intended users to understand the rationale for the opinions and conclusions, including reconciliation of the data and approaches, in accordance with Standards Rule 1-6.

When reporting an opinion of market value, a summary of the results of analyzing the subject sales, agreements of sale, options, and listings in accordance with Standards Rule 1-5 is required.<sup>24</sup> If such information is unobtainable, a statement on the efforts undertaken by the appraiser to obtain the information is required. If such information is irrelevant, a statement acknowledging the existence of the information and citing its lack of relevance is required.

The Comments are a part of the Standard and specifically state that an appraisal cannot be so limited in reporting that the intended user cannot determine how the appraisal problem was solved. When the author states:

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“Detailed supporting documentation concerning data, reasoning and analysis will be retained in our files”

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he deprives anyone from understanding how the conclusion was reached. The report essentially states a conclusion based on a value per front foot and a value per acre with no analysis whatsoever and nothing indicating what information was relied upon in making the conclusions.

### Development

In developing the appraisal, USPAP indicates the following in SR 1-4 in reference to a Sales Comparison Approach:

**Standards Rule 1-4**

**In developing a real property appraisal, an appraiser must collect, verify, and analyze all information necessary for credible assignment results.**

- (a) When a sales comparison approach is necessary for credible assignment results, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.**

While (a) indicates that comparable sales that are available should be analyzed, market research under the development standard indicates that all information should be considered in developing results, including listings. Apparently neither sales nor listings of large parcels were considered.

### Analysis

Sales, presumably those relied upon by the appraiser, are listed at the end of the report. Of note is that the highest priced sales are improved properties and that the largest vacant land sale is just under 20 acres in size. Out of 68 sales listed, only two would be considered acreage sales as opposed to being either improved or “lots” and those parcels have 10.01 acres and selling for \$760,000 or \$76,000 per acre, and 19.505 acres and selling for \$900,000 or \$46,036 per acre. None of the sales, in my opinion, would qualify as “comparable” with the subject simply considering the enormous difference in size.

Assuming the largest sale, 19.505 acres, has some water frontage, that indication would seem to fly in the face of a concluded unit value for the subject of just under \$100,000 per acre. If the 10.01 acre parcel is otherwise similar with the 19.505 other than size, the marginal price paid for 9.49 acres (difference in size) is \$140,000 (difference in price) or \$14,752 per acre. That price IS in line with current listings of larger parcels near the subject, of which there are many and some were previously supplied and listed below. Please be aware that these current listings and even if sold at full price, do not support the conclusion made in the appraisal.

- 941 acres w/11,500 ft. of ocean frontage. \$46M and near Placencia, a better location than Ara Macao. \$48,884 per acre (\$4,000 per ocean ff). This is the highest priced, large parcel discovered.
- 15,000 acre citrus farm with residence \$39M, \$2,600 per acre
- 15,000 inland acres \$15M \$10k per acre
- 10,478 acre parcel with ocean and lagoon frontage \$30M \$2,863 per acre
- \$15M for 3000 inland acres; \$5,000 per acre
- 700 acres w/ mile of ocean front \$10M \$14,286 per acre \$2,000 per FF
- 688 acres w/ 7,500 ft. ocean front \$10M \$14,534 per acre \$1,333 per FF

From descriptions, the last two listings above are very similar with Ara Macao, supported by the marginal price of \$14, 752 per acre from the only two sales Mr. Neal lists that are in any way comparable.

The actual purchase price of the subject was about \$6,000,000 in 2006. Mr. Neal would have us believe that 10 years and a \$2.5 Million investment, from the requested loan, would result in an annual rate of return of 295% and assuming equal investment of that loan over the 10 years. I believe that is absurd.

### Conclusion

My opinion is that the appraisal provided does not meet the requirements of the Uniform Standards of Professional Appraisal Practice in several key areas that I have noted. No sales or listings of comparable sized parcels were even considered and had consideration been given to parcels being offered for sale of comparable size, a value of \$61 Million would have been shown to be completely unreasonable. Lacking that consideration, there is no basis for the concluded value, there is no evidence that the appraisal process was even followed and there is no reason why any consideration should be given to the concluded result.

Sincerely,



Robert W. Bogner, Certified General Appraiser