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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA**

In re:

ARA MACAO HOLDINGS, L.P.,

Debtor.

Chapter 11

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

**TRUSTEE'S REPORT PURSUANT TO 11
U.S.C. § 1106**

Pursuant to 11 U.S.C. § 1106(a)(4), S. Cary Forrester, in his capacity as Chapter 11 Trustee for Ara Macao Holdings, L.P. (the "**Trustee**") hereby submits this report of his investigation into Debtor's affairs. The Trustee's investigation was conducted over a nineteen-month period beginning with his appointment on August 2, 2018 [DE 196] and continuing through the date of this report. Pursuant to Section 1106 of the Bankruptcy Code, the Trustee has investigated the "acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of the plan." To that end, the Trustee has conducted an extensive review of Debtor's affairs dating back to its inception in 2004. The Trustee's efforts are summarized as follows:

I. Debtor's Real Property in Belize.

Debtor purchased approximately 615 acres of vacant land situated just north of the Placencia Peninsula in Belize, Central America (the "**Property**") from MacKinnon Belize Land & Development, Ltd. ("**MacKinnon**") in 2004. The purchase price was \$6,000,000. Debtor paid the purchase price, together with interest and other charges, over approximately three years, with the final payment being made on August 15, 2007. Debtor did not take title to the Property, however, which remains with MacKinnon pending payment of the 8% stamp duty required by Belizean law.

Debtor has, in its files, a letter from MacKinnon dated February 9, 2008, confirming that the purchase price has been paid in full, and a written agreement with James Parker, MacKinnon's representative, dated October 20, 2015, in which he agrees to cooperate in the future transfer of title.

The Trustee's Belizean counsel, Rodwell Williams, has confirmed that he holds transfer documents for the Property that can be properly registered upon the payment of the outstanding stamp duty and related costs, although MacKinnon's assistance will be required.

II. Debtor's Management.

Until this case was filed, Debtor was managed by its general partner, Ara Macao Management Company, LLC ("**AMMC**"). AMMC replaced Debtor's original general partner, ioVest Development, LLC ("**ioVest**"), in 2014. AMMC is comprised of ioVest, which holds a 95% interest, and Edgewater Resources, LLC, a Michigan limited liability company ("**Edgewater**"), which holds a 5% interest. Paul Goguen, Vince Minniti, David Gronski, and Charles Baruffi are the

principals of ioVest. Ron Schultz and Greg Weykamp are the principals of Edgewater. Since his appointment in August of 2018, the Trustee has managed Debtor's affairs.

III. Debtor's Business.

From its inception in 2004 until this bankruptcy was filed, Debtor engaged in a series of failed attempts to obtain financing for the development of the Property, including traditional loans, equity infusions, and joint ventures. None were successful and the Property remains largely undeveloped, except for a dirt road and a water well. Before development can continue, title to the Property needs to be transferred, entitlements need to be updated, and the Property needs to be further subdivided. Before development can continue away from the beach, the inland portion of the Property, which is primarily a mangrove swamp, will have to be cleared and stabilized for construction.

Although there are no existing improvements other than the dirt road and water well, entitlements for the development of the Property are largely in hand. On October 20, 2015, the Belize Department of the Environment issued an Environmental Clearance for the proposed development of the first phase of the Property and, in February of 2017, the Belize Land and Surveys Department issued its Final Approval to Subdivide, which also relates only to the first phase of the development. These entitlements are held in the name of Ara Development, Ltd., a Belizean entity, which is wholly owned by Debtor.

IV. Bank Accounts, Insurance, and Trustee's Bond

One of the first tasks the Trustee undertook was to take control of Debtor's bank accounts. This involved confirming that the Debtor's account at JP Morgan

Chase Bank (“**Chase**”) had been closed contemporaneously with the Trustee’s appointment and opening a bank account in the name of the estate. The Trustee was unable to promptly obtain bank account records from the Debtor or Chase and was ultimately forced to subpoena them from Chase. He received the statements on January 14, 2019.

The Trustee also obtained public liability insurance policies for both the Property and Debtor’s sole vehicle, a 2003 Toyota Prado (Land Cruiser) presently located at the home of former project consultant Bradley Rinehart in Placencia, Belize. Also, as required by the Office of the United States Trustee, the Trustee obtained a bond in the amount of \$15,000, which was later increased to \$300,000 and renewed in August of 2019.

V. Debtor’s Records

The Trustee had difficulty in obtaining complete copies of Debtor’s records, and his efforts required multiple demands on Debtor’s principals and counsel. After obtaining approximately 55 gigabytes of data, the Trustee determined that portions of the files were still missing and, on October 11, 2018, obtained an order pursuant to Rule 2004 compelling Debtor to produce the balance of its files. Once copies of Debtor’s electronic files were obtained, the Trustee and his lawyers reviewed and catalogued the contents of the electronic files. The Trustee also obtained, reviewed, and organized Debtor’s paper files, consisting mostly of original “wet-ink” purchase agreements for condos, lots, and limited partnership interests.

In an effort to better understand Debtor’s history and the various development plans that had been pursued over the years, the Trustee and his

attorneys reviewed each of the general partner's status reports to stakeholders, beginning in 2005 and concluding in 2017. The reports detail numerous permutations of the development project, some with unique master plans, including Scarlet Macaw, Ara Macao, Chak Lum, and Ara Belize. The reports also detail Debtor's myriad potential funding sources and the constantly changing schedules for the commencement of the project, with Phase I-A originally scheduled to begin in December of 2006. The reports also frequently provide land valuations and comparisons to neighboring projects to allay the concerns of stakeholders as the delays continued.

The Trustee also reviewed Debtor's records for any negotiated agreements with other entities to determine if any were still active. Except as otherwise identified below or in Debtor's schedules, none appear to be.

VI. The Debtor and Related Entities.

The Trustee spent significant time analyzing the various business entities created by Debtor and its principals through different iterations of the development project. The most important are summarized as follows:

- **Debtor Ara Macao Holdings, LP** is an Illinois limited partnership formed in 2004 for the stated purpose of acquiring, developing, and selling a residential and commercial planned unit resort on the Property.
- **Ara Development, Ltd. ("ADL")** is a Belizean entity formed on June 28, 2006 to obtain the required environmental clearance and approval to subdivide the Phase 1 portion of the Property. These entitlements could not be obtained by Debtor because it is not a Belizean entity. Debtor

and ioVest were the original shareholders, but those interests were transferred to Paul Goguen before this case was filed. After obtaining Bankruptcy Court approval, the Trustee had those interests re-conveyed to Debtor in January of 2019.

- **Ara Macao Trust** is a Belizean trust established to take title to the Property, because an American entity is not permitted to hold title to land in Belize. The named trustee is Belize Land Trust Services Limited, whose principle is the Trustee's Belizean counsel, Rodwell Williams. The Property was never transferred to the trust and it is now considered to be an abandoned entity.
- **Ara Macao Management Company ("AMMC"), originally Ara Macao Development, LLC**, is a Michigan entity formed by ioVest and Edgewater in 2013, at which time it replaced ioVest as Debtor's general partner. This was effectuated through the first amendment to the Debtor's limited partnership agreement dated May 5, 2014. AMMC's operating agreement was amended in December of 2015 to remove Edgewater as a manager, but it retained its 5% equity interest, which the parties agreed to increase as the Project progressed.
- **Tropic Ventures, LLC** is an Arizona entity formed in September of 2016 to serve as a vehicle for SmartLife Insurance Holdings Company ("**SmartLife**") to invest up to \$6 million in a hotel to be constructed on the Property. SmartLife funded only \$165,000, however, which was treated as a loan to the Debtor and used to pay Debtor's expenses. Partial repayments were made using condominium and lot deposits

that would otherwise have gone to Debtor. Tropic Ventures filed a \$123,000 proof of claim that appears to be supported by its bank statements, but may nonetheless be objectionable because it appears to have received preferential transfers. As part of a broader joint development agreement, Smartlife was to have invested up to an additional \$25 million in Debtor, but never did so.

VII. Site Visit

The Trustee traveled to Belize in October of 2018. He inspected the Property, visited other projects and developments in the vicinity, and left with the overall impression that the development of the Property is feasible if financing can be obtained. While in Belize, he also met with Belizean counsel Rodwell Williams, discussed various Property-related issues, and met with stakeholders Ron Schults and Geoffrey De Sibert, who are attempting to obtain financing for the development of the Property.

VIII. Employment of Professionals

The Trustee has employed various professionals to assist him in the administration of the estate and the reorganization of Debtor's affairs, including the following:

- **Forrester & Worth, PLLC.** In August of 2018, the Trustee employed his law firm, Forrester & Worth, to represent him in the administration of the estate and to advise him in the performance of his official duties and functions.
- **Barrow & Williams, LLP.** In September of 2018, the Trustee employed Barrow & Williams as his Belizean counsel to provide advice on issues

of Belizean law. The firm had represented the Debtor since approximately 2004.

- **Edwards, Largay, Mihaylo & Co., PLC. (“ELM”).** In September of 2018, the Trustee, employed ELM as his tax accountants to review and, if necessary, amend the 2017 tax return, prepare any other returns required to be filed during the pendency of this case, and to provide general tax advice.
- **Moglia Advisors.** In October of 2018, the Trustee employed Moglia Advisors as his financial and restructuring advisors to assist in preserving and maximizing the value of the estate, providing advice in regard to Debtor’s business affairs, and formulating a plan of reorganization.
- **Urban Realty Solutions (“URS”).** In June of 2019, the Trustee employed URS to appraise the Property. URS is a real estate research and appraisal firm that provides appraisals and other studies on marina, commercial, industrial, and residential developments. URS completed its appraisal in August of 2019, but the Trustee has not yet made its findings public.
- **Kolb Stewart & Associates, Inc. (“KSA”).** In October of 2019, the Trustee employed KSA, a private investigation firm, to assist him in evaluating the collectability of potential claims against two insiders, as more fully described below.
- **Bryan Cave Leighton Paisner LLP (“BCLP”).** In December of 2019, the Trustee employed BCLP to assist him in evaluating the international

multi-party transaction proposed by Edgewater for the development of the Property.

- **Cushman & Wakefield Iowa Commercial Advisors (“Cushman”)**. In February of 2020, the Trustee filed an application to employ Cushman to aggressively market the Property for an asking price of \$15 million. The application remains pending as of the date of this report.

IX. Post-Petition Loans to the Estate

On September 18, 2018, the Court authorized the Trustee to borrow \$300,000 from certain stakeholders, in return for granting them a repayment priority over all other administrative claims. The borrowed funds were used to pay various expenses of the bankruptcy estate, such as professional fees, insurance premiums, quarterly fees owing to the Office of the United States Trustee, and certain other expenses as authorized by the Court. On March 20, 2019, the Court authorized the Trustee to borrow up to an additional \$400,000 from the stakeholders, to be used to pay administrative expenses and expenses associated with the proposed development of the Property.

Those who participated in the second loan were also granted certain preferences and priorities in regard to the selection of their condominium units and the right to obtain a further discount against the purchase price. Those who participated in the first loan were given the option of increasing their loan commitments and rolling their loans into the second loan to obtain the enhanced preferences and priorities. The following chart shows the status of the loans and the amount borrowed from each stakeholder:

FIRST DIP LOAN

Lender	Amount
DGPN Investments	Rolled into second loan
Edgewater Resources	55,000
Richard Umbach	Rolled into second loan
MMB, LLC	50,000
Josh Kirley	Rolled into second loan
	105,000

SECOND DIP LOAN

Lender	Amount.
DGPN Investments	50,000
Richard Umbach	65,000
Josh Kirley	110,000
Paul and Christine Landauer	150,000
Scott and Vicki Shamion	75,000
Marsha Pruitt	25,000
	475,000

X. Use of Funds Outside the Ordinary Course of Business.

By order dated August 1, 2019, the Trustee obtained authorization to pay certain expenses incurred by Edgewater in regard to its efforts to obtain funding for the development of the Property. Specifically, the Trustee was authorized to pay \$10,000 in fees to both Northern Range Capital Corp., an investment banker, and Sterling Commercial Capital (“**Sterling**”), a purported lender. He was also authorized to pay \$50,000 to Sterling to fund due diligence expenses, such as appraisal fees, title fees, and environmental consulting fees. After paying those amounts, Sterling failed to perform and the \$50,000 earmarked for due diligence expenses was returned to the Trustee.

By order dated March 20, 2019, the Trustee obtained further authorization to expend up to \$125,000 to reimburse Edgewater for fees and expenses incurred in connection with the development project, including engineering, architectural, construction contract preparation, entitlement consulting, environmental matters and travel. Because of the conditions placed upon the expenditure of the funds, the Trustee has, to date, disbursed only \$45,000 to Edgewater and does not anticipate disbursing any more.

XI. Claims Analysis

Upon motion by the Trustee, the Court set a claims bar date as October 1, 2018. Numerous claims were filed, which the Trustee has now reviewed and compared to the Debtor's records and its filed schedules. Subject to the Trustee's ongoing review, he has identified the following claims that are subject to objection:

- Seven proofs of claim totaling approximately **\$1,039,022.86** were filed by investors who purchased limited partnership units in Debtor but later obtained judgments, arbitration awards, or agreements from the Debtor to repay the investments. Because these claims arose from the purchase of a security, they are subject to subordination to the level of equity under 11 U.S.C. § 510(b).
- At least one proof of claim, in the amount of **\$220,554.00**, was mistakenly filed in this case although it reflects an obligation owing by Johnsburg Crossing, LP ("**Johnsburg**"). Johnsburg is another ioVest managed entity. When the Johnsburg Crossing project failed, ioVest provided its investors with promissory notes that were to be repaid

from its distributions from Debtor. The Trustee has identified no other claims that reflect obligations owing by Johnsborg.

- Two proofs of claim were filed by ioVest, in the amounts of **\$2,490,433.00** and **\$1,596,456.00** respectively. The Trustee objected to both proofs of claim and, on April 23, 2019, they were disallowed by the Court.
- Various other proofs of claim, subject to the claimants providing evidence, or in some cases more detailed evidence, of the nature of the claims or the amounts owed.

XII. Analysis of Potential Litigation Claims.

Debtor's files are replete with allegations of misconduct and wrongdoing on the part of Debtor's insiders, as is the record in this case. Based upon his review of Debtor's files, the deposition of Paul Goguen, which took place on January 15, 2019, numerous communications with Debtor's stakeholders, and asset investigations conducted in November of 2019, the Trustee has decided not to pursue any litigation claims against Debtor's insiders. This is based on four considerations: (1) The numerous and recurring problems with the development of the Property appear to have been more the result of ineptitude or bad luck (such as launching the project on the eve of the worldwide recession of 2008) than of tortious misconduct; (2) the insiders do not appear to have assets of sufficient value to justify the cost of pursuing the claims; (3) there is no known insurance that would provide a source of recovery and, thus, finding counsel to pursue claims on a contingent fee basis is unlikely; and (4) many of the claims identified by stakeholders, such as fraud, misrepresentation, negligent

misrepresentation, and the like, are individual claims belonging to the stakeholders rather than the bankruptcy estate.

As to the second consideration, the Trustee obtained asset searches for Paul Goguen and Vincent Minniti, but not for Chick Baruffi or David Gronski. That is because Mr. Baruffi filed a “no-asset” chapter 7 bankruptcy in 2017, and Mr. Gronski filed a “no-asset” chapter 7 bankruptcy in 2012. A “no-asset” bankruptcy is one in which the sworn schedules indicate that no assets are available for distribution to creditors.

The Trustee also reviewed Debtor’s bank statements, general ledger, and other financial documents with an eye towards identifying avoidable transfers. This included reviewing all payments made by Debtor during the 90 days before the bankruptcy was filed and all payments to insiders during the one-year period before the bankruptcy was filed, as potential preferential transfers. The Trustee also reviewed all payments made during the four-year period before the bankruptcy was filed as potential fraudulent transfers. Other than certain payments to insiders, which the Trustee has decided not to pursue for the reasons set forth above, the Trustee identified no claims worth pursuing.

XIII. Strategy for Exiting Bankruptcy

The Trustee is currently pursuing a two-track strategy for exiting bankruptcy: First, he is coordinating with stakeholders Ron Schults (of Edgewater) and Geoffrey de Sibert on a plan of reorganization that would involve the development of the Property; and, second, he is pursuing the sale of the Property in its current undeveloped state. According to projections provided by Mr. de Sibert, the first option would result in full payment of all creditor

claims with interest and a full return of all equity investments. The second option would result in a significant return to creditors but no return to limited partners.

A. The Plan Track.

Based upon written agreements between Edgewater Belize Investors (“**EBI**”), a subsidiary of Edgewater, and two entities (the “**SF Entities**”) controlled by a Swedish entity known as SF Marina, the Trustee and the Official Committee of Unsecured Creditors drafted a plan of reorganization which, in its present form, can be summarized as follows:

1. The SF Entities will make a mezzanine equity contribution to the project in the amount of \$30,000,000 in cash and a like-kind contribution of approximately \$12,000,000, in the form of marina-related products. Repayment will be secured, directly or indirectly, by the Property. There are several conditions to the funding, and multiple additional agreements will be required.
2. The bankruptcy estate will contribute the Property to one or more special purpose Belizean entities, in return for which it will receive up-front funding to pay the following: (a) the post-petition loans described above, to the extent that the individual lenders do not elect to be paid through the delivery of condominium units; (b) all other allowed administrative expenses; (c) the stamp duty for the transfer of title to the Property; (d) the existing liens and back taxes owing on the Property; (e) an initial distribution to the unsecured creditors.

3. Within approximately five-years, it is anticipated that all of Debtor's unsecured creditors will be paid in full and its limited partners will have received a significant return on their investments.

The Trustee and the Committee cannot proceed with the plan of reorganization until a series of additional agreements between EBI and the SF Entities are finalized, reviewed by counsel, and any necessary amendments are negotiated and incorporated in the agreements. In addition, a number of new entities will need to be formed. Those tasks are presently lagging behind the originally anticipated timeline. However, the plan and disclosure statement are far enough along that they can be finalized quickly when those tasks are completed to the satisfaction of the Trustee and the Committee.

B. The Sale Track.

On February 28, 2020, the Trustee filed his application to employ Cushman as his real estate broker, for the purpose of marketing and selling the Property. The terms of the proposed engagement are summarized as follows:

- The term is one year;
- The asking price is \$15 million;
- All terms of sale are subject to approval by the Trustee;
- Cushman will extensively and aggressively market the Property at its own expense, with the following exceptions:
 - The estate will reimburse Mr. Viggers' airfare and hotel accommodations for an initial tour of the Property;
 - The estate will provide Cushman with a \$25,000 deposit to be used for marketing and technology expenses; and,

- The foregoing amounts will be deducted from any commission ultimately paid to Cushman.
- In the event of a sale, Cushman will receive a commission equal to 4% of the sales price, contingent upon the sale actually closing;
- If the buyer is not represented by a broker, the commission will be reduced to 3%;
- There is a one-year “tail” period;
- If a plan is confirmed within six months and the underlying financing is provided by SF or a related entity, Cushman will receive a fee of \$50,000 in lieu of its commission; and
- If a plan is confirmed under any other circumstances, Cushman will receive a fee of \$100,000 in lieu of its commission.

XIV. Conclusion.

The Trustee is awaiting developments in regard to the proposed financing to be provided by the SF Entities and is coordinating with Cushman on the marketing of the project. Given the recent economic downturn and travel restrictions precipitated by the COVID 19 pandemic, it is likely that the marketing will be delayed for at least 60 days, and perhaps longer. In the meantime, the Trustee will attempt to minimize further administrative expenses of the estate.

/s/ S. Cary Forrester
S. Cary Forrester
Chapter 11 Trustee