

**FORRESTER & WORTH, PLLC**  
3636 NORTH CENTRAL AVENUE, STE. 700  
PHOENIX, ARIZONA 85012  
TELEPHONE (602) 271-4250  
FACSIMILE (602) 271-4300  
S. CARY FORRESTER (006342)  
BYRON H. FORRESTER (033877)  
[SCF@FORRESTERANDWORTH.COM](mailto:SCF@FORRESTERANDWORTH.COM)  
[BHF@FORRESTERANDWORTH.COM](mailto:BHF@FORRESTERANDWORTH.COM)

COUNSEL FOR CHAPTER 11 TRUSTEE

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA**

In re:

**ARA MACAO HOLDINGS, L.P.,**

Debtor.

Chapter 11

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

**MOTION FOR ORDER  
AUTHORIZING BORROWING  
WITH PRIORITY OVER OTHER  
ADMINISTRATIVE EXPENSES**

S. Cary Forrester, as Chapter 11 Trustee for the estate of Ara Macao Holdings, L.P. (“Trustee”) hereby moves the Court, pursuant to 11 U.S.C. §§ 105 and 364, Rules 4001(c) and 9014 of the Federal Rules of Bankruptcy Procedure, and Rules 4001-4 and 9013-1 of the Local Rules of Bankruptcy Procedure, for the entry of an order authorizing the Trustee to incur indebtedness with priority over all other administrative expense priority claims. This motion is more fully set forth and supported in the accompanying Memorandum of Points and Authorities.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**Background.**

1. The court has jurisdiction over this matter pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. On April 6, 2018, six petitioning creditors filed an involuntary petition against Debtor under Chapter 11 of the United States Bankruptcy Code;
3. On the same day, the petitioning creditors filed a motion for the immediate appointment of a Chapter 11 trustee [DE 8];
4. On May 7, 2018, Debtor filed its motion to convert the case to a voluntary proceeding under Chapter 11 [DE 63];
5. On May 8, 2018, the Court entered its order converting the case to a voluntary proceeding under Chapter 11 [DE 68];
6. On June 12, 2018, the Court entered its order appointing a Chapter 11 trustee [DE 106];
7. On June 21, 2018, the Court entered its order approving the United States Trustee's appointment of Grant Lyon as Chapter 11 trustee [DE 112];
8. On July 2, 2018, the Official Committee of Unsecured Creditors filed a motion for election of trustee [DE 126]; and
9. On August 2, 2018, the United States Trustee held an election, at which time S. Cary Forrester was elected as Chapter 11 trustee, as reflected in the *Report and Certification of Election of Trustee* filed by the United States Trustee on August 6, 2018 [DE 196].

**The Loan.**

10. Trustee has determined that the estate has no cash or liquid assets.
11. Trustee will require funds to pay for the services of various professionals to assist in the reorganization of Debtor's affairs. Such professionals include, or may include, general bankruptcy counsel, special counsel to advise on matters of Belizean law, corporate and regulatory counsel, tax professionals, appraisers, consultants, and the like. Trustee will also be required to pay various out-of-pocket expenses, including the quarterly fees owing to the Office of the United States Trustee.

12. Trustee is seeking to borrow up to \$300,000 from the existing stakeholders. The funds will be used to help defray the administrative expenses of the estate. Three parties-in-interest have already committed to advance a total of \$150,000, and more are expected to join before this matter comes on for hearing. Trustee will disclose the identities of the lenders once all remaining loan commitments have been received.

13. The terms of the proposed loan, as set forth in the form of Promissory Note attached hereto as Exhibit "A" and the Loan Commitment attached hereto as Exhibit "B", are as follows:

- a. **Interest Rate:** 8% for the first 60 days after each advance, then increasing to 12%;
- b. **Maturity:** The earlier of (i) the funding of a subsequent and larger loan facility; (ii) the effective date of a confirmed plan of reorganization; (iii) September 30, 2019; or (iv) the conversion of this case to a proceeding under Chapter 7 of the United States Bankruptcy Code;
- c. **Status:** Super administrative priority pursuant to 11 U.S.C. § 364(c)(1);
- d. **Loan Fee:** 2% of the principal amount advanced, payable at maturity;
- e. **Drawdown:** Upon two business days' notice at any time on or after September 4, 2018; and
- f. **Evidence of Indebtedness:** The loan will be evidenced by promissory notes, substantially in the form attached hereto as Exhibit "A", which will be issued to each lender for the amount of its advance.

**Relief Requested.**

Trustee seeks authorization, pursuant to § 364(c)(1), to borrow up to \$300,000 from the existing stakeholders, with such borrowing to be accorded priority over all other administrative priority expenses incurred in this Chapter 11 case and in any subsequent Chapter 7 case into which this case may be converted. The administrative expenses that the borrowing would have priority over include, without limitation, those specified in §§ 503(b), 507(a) and 507(b) of the Bankruptcy Code. Borrowing authorization is warranted under § 364(c)(1) because the Trustee requires the funds in order to pursue Debtor's reorganization, and because he is unable to obtain them on better terms, such as by granting lenders a simple administrative expense priority.<sup>1</sup>

Trustee also seeks findings that: (a) the lenders have acted in good faith and are entitled to the protections afforded under § 364(e) of the Bankruptcy Code; and (b) adequate notice of the Motion has been provided. Trustee further seeks provisions in the borrowing order waiving any applicable stays, including those under Rules 4001(b) and (c), and providing for the order's immediate effectiveness.

Notwithstanding the lenders' proposed super-administrative-priority position with respect to the loan obligations, they have consented to the use of the loan proceeds to: (a) pay allowed claims for professional fees and expenses and the statutory fees owing to the Office of the United States Trustee, whether or not the loan has matured; and (b) pay other routine administrative expenses incurred in connection with this case, unless and until the loan has matured.

---

<sup>1</sup> While Trustee has not actively sought financing on better terms, he believes that such an effort would be futile based upon his more than 35 years of experience with Chapter 11 cases. In addition, Trustee understands that his predecessor sought to obtain DIP financing and was unable to do so on any terms short of granting a lien on all of Debtor's assets.

**WHEREFORE**, Trustee requests that the Court: (a) enter its order, substantially in the form attached hereto as Exhibit "C", granting the relief requested in this Motion; and (b) grant such other and further relief as is just and proper under the circumstances.

Dated August 21, 2018

**FORRESTER & WORTH, PLLC**

/s/ SCF (006342) \_\_\_\_\_

S. Cary Forrester

Counsel for Chapter 11 Trustee

Copy of the foregoing served by mail or e-mail August 21, 2018, to:

Alan A. Meda  
Burch & Cracchiolo PA  
702 E Osborn Rd Suite 200  
Phoenix, AZ 85014  
[ameda@bcattorneys.com](mailto:ameda@bcattorneys.com)

Patrick A. Clisham  
Scott B. Cohen  
Engelman Berger PC  
3636 N Central Ave #700  
Phoenix, AZ 85012  
[pac@eblawyers.com](mailto:pac@eblawyers.com)  
[sbc@eblawyers.com](mailto:sbc@eblawyers.com)

William J. Factor  
Sara E Lorber  
Law Office of William J Factor, Ltd.  
105 W Madison St., Suite 1500  
Chicago, IL 60602  
[slorber@wfactorlaw.com](mailto:slorber@wfactorlaw.com)  
[wfactor@wfactorlaw.com](mailto:wfactor@wfactorlaw.com)

Christopher J Pattock  
Renee Sandler Shamblin  
Office of the U.S. Trustee  
230 N First Ave., #204  
Phoenix, AZ 85003-1706  
[christopher.j.pattock@usdoj.gov](mailto:christopher.j.pattock@usdoj.gov)  
[renee.s.shamblin@usdoj.gov](mailto:renee.s.shamblin@usdoj.gov)

James E. Cross  
The Cross Law Firm, P.L.C.  
1850 N Central Ave., Suite 1150  
Phoenix, AZ 85004  
[jcross@crosslawaz.com](mailto:jcross@crosslawaz.com)

Michael W. Carmel  
Law Offices of Michael W. Carmel, Ltd.  
80 E Columbus Avenue  
Phoenix AZ 85012-2334  
[Michael@mcarmellaw.com](mailto:Michael@mcarmellaw.com)

/s/ Matthew D. Burns  
Matthew D. Burns

**EXHIBIT “A”**

## PROMISSORY NOTE

\$50,000

Phoenix, Arizona

Date: September \_\_, 2018

For value received, S. Cary Forrester, in his capacity as Chapter 11 Trustee for the bankruptcy estate of Ara Macao Holdings, L.P. (“**Maker**”), debtor in Case No. 3:18-bk-03615-PS (the “**Bankruptcy Case**”), presently pending in the United States Bankruptcy Court for the District of Arizona (the “**Court**”) promises to pay to the order of \_\_\_\_\_ (“**Holder**”), the principal sum of \$50,000, or so much thereof as may be advanced to Maker from time to time, with interest (a) for the first sixty (60) days from the date of each advance at 8% per annum, and thereafter at the rate of 12% per annum until paid.

The unpaid principal balance, all accrued and unpaid interest, and any other amounts payable hereunder shall be due and payable on the sooner of: (1) The effective date of a plan of reorganization confirmed in the Bankruptcy Case; (2) the funding of a subsequent and larger loan to Maker; (3) the conversion of the Bankruptcy Case to a proceeding under Chapter 7 of the United States Bankruptcy Code; or (4) September 30, 2019.

Interest shall accrue daily on the outstanding principal balance and shall be calculated on the basis of a 360-day calendar year.

A loan fee in the amount of 2% of the aggregate principal amount advanced shall be payable upon maturity.

All payments of principal and interest on this Promissory Note are payable in lawful money of the United States of America to Holder at such place as Holder may designate in writing from time to time.

Notwithstanding anything herein to the contrary, payments made hereunder shall be credited to the account of Maker in the following order: First to accrued interest and then to principal.

Maker shall have the right to prepay this Note, in full or in part, at any time without premium or penalty.

Upon failing to make payment as provided herein on or before the date due or in the event of any default under the terms of the Security Agreement or any other document or instrument now or hereafter securing this Note, the principal balance and all accrued and unpaid interest shall, at the option of the holder and in addition to exercising any rights or remedies available at law or in equity, become immediately due and payable.

Maker and all endorsers, guarantors, sureties and accommodation parties hereof (if any) and all other persons liable or to become liable for all or any part of the indebtedness evidenced hereby, jointly and severally, waive diligence, presentment, protest and demand, and also notice of protest, of demand, of nonpayment, of dishonor, of maturity and all other notices or demands of any kind and also recourse to suretyship defenses generally.

The endorsers, guarantors, sureties and accommodation parties hereof (if any) and all persons liable or to become liable for all or any part of the indebtedness evidenced hereby, jointly and severally, hereby consent to any and all renewals, extensions or modifications of the terms hereof, including time for payment, and further agree that any such renewal, extension or modification of the terms hereof, or the release or substitution of any security for the indebtedness evidenced hereby or any other indulgences shall not affect the liability of any of such parties for the indebtedness evidenced hereby. Any such renewals, extensions, or modifications may be made without notice to any of such parties.

Maker and all endorsers, guarantors, sureties and accommodation parties hereof (if any) and all other persons liable or to become liable for all or any part of the indebtedness evidenced hereby, agree, jointly and severally, to pay all costs of collection, including reasonable attorneys' fees, and all costs of suit, in case the unpaid principal sum of this Note, or any payment of interest or principal is not paid when due, whether suit be brought or not.

Maker agrees to pay a rate of interest which is the rate provided for in this Note. Notwithstanding any provision herein or in any instrument now or hereafter securing this Note, the total liability for payments of interest and in the nature of interest shall not exceed the limits imposed by the usury laws of the State of Arizona. If Holder receives as interest an amount that would exceed such limits, such amount that would be excessive interest shall be applied to the reduction of the unpaid principal balance and not to the payment of interest, and if a surplus remains after full payment of principal and lawful interest, the surplus shall be remitted to Maker by Holder, and Maker hereby agrees to accept such remittance.

Time is of the essence in the performance of all obligations hereunder and under the terms of any other document or instrument now or hereafter securing this Note.

The rights and remedies of Holder as provided in this Note shall be cumulative and concurrent, and may be pursued singly, successively or together against Maker, any guarantor and any other funds, property or security held by Holder for the payment hereof, or otherwise, at the sole discretion of Holder. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release of such rights and remedies or of the right to exercise them at any later time.

To the extent Maker makes any payment to Holder which is subsequently invalidated, declared to be preferential, set aside or required, for any of the foregoing reasons or for any other reason, to be repaid or paid over to a custodian, trustee, receiver or any other party under any bankruptcy or insolvency laws, common law or in equity, then to the extent of such payment or repayment, the obligation or part thereof intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made.

Whenever used herein, the words "Maker" and "Holder" shall be deemed to include their respective heirs, personal representatives, successors and assigns, as applicable.

This Note shall be governed by and construed in accordance with the laws of the State of Arizona, except to the extent preempted by federal bankruptcy law.

IN WITNESS WHEREOF, the undersigned has executed this Promissory Note as of the day and year first above written.

**ARA MACAO HOLDINGS, L.P.**

---

By: S. Cary Forrester  
Its Chapter 11 Trustee

**EXHIBIT “B”**

## Loan Commitment

Each of the individuals and entities identified below (collectively the “Lenders” and each a “Lender”) agrees to loan money to S. Cary Forrester, in his capacity as Chapter 11 Trustee of the bankruptcy estate of Ara Macao Holdings, L.P. (the “Trustee”), in the amounts and subject to the terms set forth below:

**1. Lenders/Amounts:**

	\$50,000
	50,000
	50,000
<b>Total</b>	\$150,000

2. **Interest Rate:** 8% for the first 60 days after each advance, then increasing to 12% until paid;
3. **Maturity:** The earlier of (i) the funding of a subsequent and larger loan facility; (ii) the effective date of a confirmed plan of reorganization; (iii) September 30, 2019; or (iv) conversion of the bankruptcy case of Ara Macao Holdings, L.P. to a proceeding under Chapter 7 of the United States Bankruptcy Code;
4. **Status:** Super-administrative-priority pursuant to 11 U.S.C. § 364(c)(1);
5. **Loan Fee:** 2% of the principal amount advanced, payable at maturity;
6. **Drawdown:** Upon two business days’ notice at any time on or after September 4, 2018;
7. **Evidence of Indebtedness:** The loan will be evidenced by promissory notes, which will be issued to each Lender for the amount of its advance. A form promissory note is attached hereto as Exhibit “A;”
8. **Consent to Certain Payments:** Notwithstanding the Lenders’ super-administrative-priority position, the Trustee may use the loan proceeds to pay allowed Chapter 11 claims for amounts owing to

professional persons employed by the bankruptcy estate and for statutory fees owing to the Office of the United States Trustee, regardless of whether or not the loan has matured. The Trustee may use the loan proceeds to pay other costs of administration incurred in connection with the Chapter 11 case unless and until the Promissory Notes have matured, whether by acceleration upon default or otherwise; and,

- 9. **No Impairment of Payment Terms.** The time and manner of payment of the Promissory Note shall not be altered or impaired by any plan of reorganization that may be confirmed or by any other order entered in the Ara Macao Holdings, L.P. bankruptcy case.

Dated this \_\_ day of August, 2018.

LENDER: \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

**EXHIBIT “C”**

**FORRESTER & WORTH, PLLC**  
3636 NORTH CENTRAL AVENUE, STE. 700  
PHOENIX, ARIZONA 85012  
TELEPHONE (602) 271-4250  
FACSIMILE (602) 271-4300  
S. CARY FORRESTER (006342)  
BYRON H. FORRESTER (033877)  
[SCF@FORRESTERANDWORTH.COM](mailto:SCF@FORRESTERANDWORTH.COM)  
[BHF@FORRESTERANDWORTH.COM](mailto:BHF@FORRESTERANDWORTH.COM)

COUNSEL FOR CHAPTER 11 TRUSTEE

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA**

In re:

**ARA MACAO HOLDINGS, L.P.,**

Debtor.

Chapter 11

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

**ORDER AUTHORIZING POST-  
PETITION BORROWING WITH  
PRIORITY OVER OTHER  
ADMINISTRATIVE EXPENSES**

This matter having come before the court on September \_\_, 2018, for hearing on the motion (the "**Motion**") of Chapter 11 Trustee S. Cary Forrester (the "**Trustee**") seeking authority to incur indebtedness to the lenders specified in the Motion (the "**Lenders**") with super-administrative-priority status. The Court finds as follows:

- (i) It has jurisdiction over this matter pursuant to 28 U.S.C. § 157(b);
- (ii) Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409;
- (iii) This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A);

(iv) The relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors, and other parties-in-interest;

(v) A compelling need exists for the Trustee to obtain funds to pay the administrative expenses of the estate and otherwise pursue the reorganization of Debtor's affairs;

(vi) The Trustee is unable to obtain unsecured credit allowable under Bankruptcy Code § 503(b)(1) as a simple administrative expense;

(vii) Good and sufficient cause has been shown for the entry of this order;

(viii) Adequate and proper notice of the Motion has been given and no further notice is necessary under the circumstances;

(ix) The Lenders have acted in good faith and are entitled to the protections afforded under § 364(e) of the Bankruptcy Code and,

(x) Good and sufficient cause exists for granting the relief requested in the Motion as set forth herein.

**ACCORDINGLY, IT IS HEREBY ORDERED AS FOLLOWS:**

(1) Authorizing the Trustee to incur indebtedness to the Lenders pursuant to the terms, and subject to the conditions, set forth in the form of Promissory Note and the Loan Commitment attached as Exhibits "A" and "B" to the Motion;

(2) All of the Trustee's obligations to the Lenders (the "**Obligations**") under each Promissory Note will be accorded priority, pursuant to § 364(c)(1) of

the Bankruptcy Code, over all administrative and other priority expenses incurred in the Chapter 11 case, including, without limitation, expenses of the kind specified in §§ 503(b), 507(a) and 507(b) of the Bankruptcy Code;

(3) Notwithstanding the Lenders' super-administrative-priority position with respect to the Obligations, the Trustee may use the loan proceeds to pay: (a) allowed Chapter 11 claims for amounts owing to professional persons employed by the bankruptcy estate; and (b) statutory fees owing to the Office of the United States Trustee, before and after each Promissory Note matures;

(4) The Lenders consent to the payment of other costs of administration incurred in connection with the Chapter 11 case and to the use of the proceeds of their post-petition financing for such purposes, provided that such consent shall automatically terminate upon the maturity of the Promissory Notes, whether by acceleration upon default or otherwise;

(5) The time and manner of payment of the Obligations shall not be altered or impaired by any plan of reorganization that may be confirmed or by any other order entered in this case. The Debtor shall file a written notice of each advance by the Limited Partnership and shall serve copies thereof on the United States Trustee and the Official Committee of Unsecured Creditors;

(6) Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024 or any other Bankruptcy Rule, this Order shall be immediately effective and enforceable upon its entry, and there shall be no stay of execution or effectiveness of this Order;

(7) The time and manner of payment of the Promissory Notes shall not be altered or impaired by any plan of reorganization that may be confirmed or by any other order entered in this case; and,

(8) The provisions of this Order shall be binding upon the Trustee, the Debtor, all parties in interest, and their successors in interest, including, without limitation, any Chapter 7 trustee appointed upon the conversion of this case to a proceeding under Chapter 7 of the Bankruptcy Code.