

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF COLORADO**

In re:)	
)	Chapter 15
POSEIDON CONCEPTS CORP.,)	Case No. 13-15893 HRT
)	
Debtor in foreign proceeding.)	<i>(Jointly Administered)</i>

**ORDER GRANTING POSTPETITION FINANCING ON AN INTERIM BASIS AND
SETTING A FINAL HEARING FOR POSTPETITION FINANCING**

Upon the Emergency Motion for Order Authorizing Interim and Final Postpetition Financing filed by the Monitor^{1 2} and dated April 22, 2013 (the “Finance Motion”), seeking, among other things:

(A) authorization for the PC Debtors to obtain postpetition financing from Century Services LP (“Century”) up to and including the principal amount of C\$6,000,000 with the actual principal amount being loaned subject to the terms and conditions of the Commitment Letter, attached and incorporated herein as **Exhibit 1**, and pursuant to 11 U.S.C. §§ 364(d),³ 1519(a) and 1521(a) of the Bankruptcy Code and FED. R. BANKR. P. 4001(c) and further subject to the terms and conditions set forth in this Interim Order, and all related guaranty, security, and other agreements, documents, notes, and instruments, together with all exhibits, schedules, annexes and appendices thereto, delivered pursuant hereto or thereto, or in connection herewith or

¹ PricewaterhouseCoopers Inc. (“PWC”) is the court-appointed monitor (the “Monitor”) and authorized foreign representative of Poseidon Concepts Corp., Poseidon Concepts Ltd., Poseidon Concepts Limited Partnership, and Poseidon Concepts Inc. (collectively referred to hereinafter as the “PC Debtors”) in the proceeding pending in the Court of Queen’s Bench of Alberta, Canada (the “Canadian Proceeding”) under the Companies’ Creditors Arrangement Act (the “CCAA”).

² All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Emergency Motion for Order Authorizing Interim and Final Postpetition Financing filed by the Monitor.

³ Unless otherwise specified, all future statutory references in the text are to Title 11 of the United States Code.

therewith (collectively, with the Commitment Letter, the “Loan Documents”);

(B) authorization of certain postpetition financing agreements with Century in order to assist the PC Debtors with certain restructuring obligations in accordance with the terms of the Commitment Letter;

(C) the granting to Century of security including, but not limited to: (a) a General Security Agreement of Borrower, registered in second position against all assets, including real estate, equipment, accounts, receivable, inventories; (b) a Demand Collateral Mortgage in second position against certain commercial property located in Edson, Alberta; and (c) a priority agreement or postponement from holders of the certain first liens effectively providing Century with a first priority lien over substantially all assets of the PC Debtors and guarantors, subject only to certain administration and directors’ charges referenced in the CCAA Order; and

(D) pursuant to FED. R. BANKR. P. 4001(c), that an interim hearing (the “Interim Hearing”) be held before the Court on an emergency basis to consider entry of this Order, and further requesting that a final hearing (the “Final Hearing”) be held before this Court as soon as is practicable thereafter to consider entry of a final order (the “Final Order”) authorizing the postpetition financing contemplated by the Commitment Letter and to establish notice procedures in connection therewith, pursuant to notice and other provisions set forth in the Motion.

The Interim Hearing having been commenced by this Court on Thursday, April 25, 2013 and upon the record at the Interim Hearing and after due deliberation and consideration and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. Jurisdiction. This Court has jurisdiction of this matter pursuant to 28 U.S.C.

§§ 1334(a) and (b) and 157(a) and (b)(1). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(D) and (P) of the Bankruptcy Code.

2. Notice. The Monitor has provided notice of the interim hearing via CM/ECF or by e-mail to: (a) the United States Trustee for the District of Colorado; (b) any party requesting notice; and (c) upon other known lien holders, and Monitor filed a Certificate of Service evidencing such notice. Under the circumstances, the notice given by the Finance Motion of the Interim Hearing constitutes due and sufficient notice thereof pursuant to FED. R. BANKR. P. 2002 and 4001(c).

3. Necessity For the Postpetition Financing

(a) Good cause has been shown for the entry of this Interim Order.

(b) The PC Debtors have an immediate need to obtain the postpetition financing as provided by Century in order to facilitate, among other things: (a) the PC Debtors' working capital requirements and other general corporate purposes and capital expenditures; (b) the management and preservation of the PC Debtors' assets; and (c) the maintenance of the going concern value of the PC Debtors' entities and related assets. The PC Debtors are convinced that, without immediate access to a postpetition financing facility, the PC Debtors will lack sufficient liquidity to preserve and maintain the going concern value.

(c) The PC Debtors do not currently have nor have they been able to obtain any other available sources of funds other than the proposed facility within which to maintain their business operations.

(d) The interests of the Lending Syndicate in the property of the PC Debtors' estate are adequately protected.

(e) The PC Debtors' ability to operate their businesses and maximize the value of assets for the benefit of creditors, including Century, is dependent on their ability to obtain the funds made available by Century under the financing.

(f) The terms of the postpetition financing are fair and reasonable, reflect the PC Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

(g) The PC Debtors and Century have engaged in good faith and extensive arm's length negotiations which have resulted in an agreement embodied in the Commitment Letter and this Interim Order.

(h) The postpetition financing and all of the PC Debtors' indebtedness and other obligations to Century arising under, in respect of or in connection with the Loan Documents, including, without limitation all loans made to the PC Debtors pursuant to the Commitment Letter and any obligations of the Guarantors in respect of such loans and other amounts and claims arising under the Loan Documents. shall be deemed to have been extended by Century in good faith, as that term is used in § 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by § 364(e), and Century shall be entitled to the full protections of § 364(e) in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(i) The Monitor has requested entry of this Interim Order pursuant to FED. R. BANKR. P. 4001(c)(2). Absent entry of this Order, the PC Debtors' estates will be immediately and irreparably harmed. Consummation of the postpetition financing in accordance with this Interim Order and the Loan Documents is therefore in the best interests of the PC Debtors' estates.

4. The Order and Amended and Restated CCAA Order.

On April 9, 2013, the Canadian Court entered on the record its CCAA Initial Order (the “CCAA Order”). The terms of the CCAA Order are hereby adopted and incorporated into this Interim Order. A copy of the CCAA Order is attached to this Interim Order as **Exhibit 2**.

5. Authorization to Incur Postpetition Financing.

(a) The Finance Motion is granted on an interim basis and the PC Debtors are hereby authorized to seek postpetition financing under the Loan Documents. Any objections to the Finance Motion with respect to entry of this Interim Order that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby denied and overruled.

(b) The PC Debtors are hereby authorized to and empowered to obtain and borrow monies on an interim basis, not to exceed C\$6,000,000 unless permitted by further order of the Court, of which not more than the principal of C\$3,000,000 may be borrowed by the PC Debtors without the approval of the Lending Syndicate,⁴ all in accordance with the terms of this Interim Order, the CCAA Order and the Loan Documents. Such funds shall be used for purposes permitted or prescribed under the Loan Documents, this Interim Order and the CCAA Order. The anticipated use of the borrowed funds is described in the Budget, which is attached to and incorporated into this Interim Order as **Exhibit 3**.

(c) In furtherance of the foregoing, and without further approval of this Court, the PC Debtors are expressly authorized and directed to do and perform all acts, to make,

⁴ The “Lending Syndicate” consists of the PC Debtors’ lead secured creditor, The Toronto-Dominion Bank, and the participating bank lenders: HSBC Bank Canada, National Bank of Canada, and The Bank of Nova Scotia.

execute and deliver all instruments and documents as may be required by Century in connection with the Commitment Letter (including, without limitation, the execution or recordation of security agreements, control agreements, mortgages and financing statements) and to pay all fees that may be reasonably required or necessary for performance of the postpetition financing, including, without limitation:

(i) the execution, delivery and performance of the Loan Documents;

(ii) the execution and delivery of one or more amendments to the Commitment Letter or the other Loan Documents as the PC Debtors and Century may agree except for (i) any increase in the commitments, (ii) any increase in the applicable interest rates on the loans, (iii) any modification of the maturity of the loans or the grant of security interest or liens in assets of the PC Debtors contrary to the express terms of this Interim Order;

(iii) the fees and reasonable costs and expenses as may be due from time to time, including, without limitation, reasonable fees and disbursements of the professional retained by Century (and which fees and expenses shall be payable without any requirement for monthly, interim or final fee applications to this Court); and

(iv) performance of all other acts required under or in connection with the Loan Documents.

(d) Upon execution and delivery of the Loan Documents, the Loan Documents shall constitute valid and binding obligations of the PC Debtors, enforceable against the PC Debtors in accordance with the terms of the Loan Documents, this Interim Order, and § 364(e) of the Bankruptcy Code. All provisions in the Loan Documents are

binding and enforceable in full even if not expressly referenced in this Interim Order. No obligation, payment, transfer or grant of security under the Loan Documents or this Interim Order shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or under any applicable law (including without limitation, under section 502(d) of the Bankruptcy Code), or subject to any defense, reduction, setoff or counterclaim.

6. Liens. As security for the obligations set forth in the Loan Documents, deemed effective and perfected as of the date this Interim Order is entered and without the necessity of the execution, recordation or filings by the PC Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or possession or control of applicable assets, the following security interests and liens are hereby granted to Century (the “Collateral”):

- First Lien on All Assets. For all of the obligations set forth in the Loan Documents, Century is granted pursuant to § 364(d) of the Bankruptcy Code and the Lending Syndicate’s subordination agreement, a first priority charge over all assets of the PC Debtors identified in the Commitment Letter, **Exhibit 1**, subject only to the Administration Charge (to the maximum amount of C\$1,000,000) and the Directors & Officers’ Charge (to the maximum amount of C\$1,000,000).

7. Use of Proceeds.

(a) From and after the Petition Date, the PC Debtors shall use the proceeds of the loans obtained under the Loan Documents in accordance with and subject to the conditions set forth in the CCAA Order, this Interim Order, the Loan Documents and the Budget.

(b) Nothing in this Interim Order shall be construed to require Century to make advances or extensions of credit or other financial accommodations to permit the PC Debtors to make any payments, except to the extent expressly provided for in this Interim Order and the Loan Documents.

(c) Any proceeds of the sale, lease or other disposition of the Collateral shall be used in accordance with the provisions of the CCAA Order, this Interim Order and the Loan Documents. To the extent they are applied to reduce obligations owed by the PC Debtors, they shall be applied in payment of the PC Debtors' obligations under, and in the manner provided in, the Loan Documents, and the PC Debtors are deemed to have irrevocably waived any right to direct the manner of application of any payments to Century or any other receipts by Century of proceeds of any of the Collateral, other than as expressly set forth in this Interim Order and the Loan Documents.

(d) The PC Debtors are authorized and directed to maintain their cash management system in a manner consistent with prior practice and the Loan Documents. All inter-company transfers shall be recorded in the PC Debtors' books and records in the ordinary course of business, shall be available for review by the Monitor, and shall be subject to such priorities of repayment as are prescribed under Section 507 of the Bankruptcy Code.

8. Perfection of Liens.

(a) This Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the Liens, without the necessity of filing or recording any financing statement or other instrument or document which may otherwise be required under the law of any jurisdiction or the taking of any other action to validate or

perfect such liens or security interests in the collateral or to entitle Century to the priorities granted herein. Century is hereby authorized without further order of this Court, but is not required, to file or record financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession or control of collateral, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not Century in its sole discretion, chooses to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession or control of collateral, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination, at the time and on the day of entry of this Interim Order. Upon the request of Century, the PC Debtors, without any further consent of any party or further order of this Court, are authorized to take, execute and deliver such instruments and agreements (including, without limitation, delivery of control agreements and possessory collateral) to enable Century to further validate, perfect, preserve and enforce the Liens.

(b) A certified copy of this Interim Order may, in the discretion of Century, be filed with or recorded in the filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Interim Order for filing and recording.

(c) Effective upon the entry of a Final Order, any provision of any lease or other license, contract or other agreement that requires: (i) the consent or approval of one

or more landlords or other parties; or (ii) the payment of any fees or obligations to any governmental entity, in order for Century to pledge, grant, sell, assign, or otherwise transfer any such leasehold interest, or other postpetition collateral related thereto, shall be deemed to have no force and effect with respect to the Liens in such leasehold or other interest.

9. Preservation of Rights Granted Under the Interim Order.

(a) No claim or lien having a priority superior to or *pari passu* with those granted by this Interim Order to Century shall be granted or allowed while any portion of the commitments or obligations set forth in the Loan Documents remains outstanding. The PC Debtors shall not seek to: (i) in any way prime or otherwise adversely affect the Liens granted under this Interim Order by offering a subsequent lender or a party in interest a superior or *pari passu* lien or claim pursuant to § 364(c), 364(d), or section 507(b) of the Bankruptcy Code or otherwise, (ii) in any way grant junior encumbrances on the collateral, or (iii) otherwise encumber otherwise unencumbered assets or estate property.

(b) Unless all the obligations have been paid in full, the PC Debtors shall not seek, and it shall constitute an Event of Default if the PC Debtors seek, or if there are entered, any modifications or extensions of this Interim Order without the prior written consent of Century.

(c) If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification, or vacation shall not affect: (i) the validity of any of the obligations incurred prior to the actual receipt of written notice of the effective date of such reversal, stay, modification or vacation, or (ii) the

validity or enforceability of any lien or priority authorized or created hereby or pursuant to the Loan Documents. Notwithstanding any such reversal, stay, modification, or vacation, any use of the postpetition financing by the PC Debtors prior to the actual receipt of written notice of the effective date of such reversal, stay, modification, or vacation shall be governed in all respects by the original provisions of this Interim Order, and Century shall be entitled to all the rights, remedies, privileges and benefits granted by § 364(e) of the Bankruptcy Code, this Interim Order, and pursuant to the Loan Documents.

Nothing contained herein shall in any way prejudice the rights of Century to pursue and recover any fees, expenses, interest or costs contemplated by the Loan Documents or this Interim Order.

10. Insurance Policies. Effective as of entry of this Interim Order, Century, as applicable, shall be, and shall be deemed to be, without any further action or notice, named as additional insureds on each liability insurance policy relating to the Collateral, and shall be named as loss payees on each property and casualty insurance policy maintained by the PC Debtors that in any way relates to the Collateral.

11. No Marshaling. In no event shall Century be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the Collateral.

12. Limits on Century’s Liability. Nothing in this Interim Order or in any of the Loan Documents or any other documents related to the financing transactions authorized hereby shall in any way be construed or interpreted to impose or allow the imposition upon Century of any liability for any claims arising from the prepetition or postpetition activities by the PC Debtors in the operation of their businesses, or in connection with their restructuring efforts. Century shall

not, in any way or manner, be liable or responsible for (i) the safekeeping of the collateral not in its possession, (ii) any loss or damage to collateral not in its possession or control occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person, and all risk of loss, damage or destruction of the collateral shall be borne by the PC Debtors.

13. No Waivers by Century. Notwithstanding anything to the contrary herein, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair any of the rights of Century under the Bankruptcy Code or under non-bankruptcy law.

14. Successor and Assigns. The Loan Documents and the provisions of this Interim Order shall be binding upon Century and the PC Debtors and each of their respective successors and assigns. In determining whether to make any loan under the Loan Documents or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the Loan Documents, Century shall not be deemed to be in control of the operations of the PC Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the PC Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 *et seq.*, as amended, or any similar federal or state statute).

15. Findings Binding. The findings contained in this Interim Order shall be binding upon all parties in interest.

16. Immediate Effectiveness. Notwithstanding FED. R. BANKR. P. 6004(h), 6006(d), 7062, or 9014 or any other applicable Bankruptcy Rule, or Rule 62(a) of the Federal Rules of

Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry, and there shall be no stay of execution or effectiveness of this Interim Order.

17. Conflicts. In the event of any conflict between or among the express terms or provisions of any of the CCAA Order, this Interim Order, the Loan Documents or the Finance Motion, the terms and provisions of the CCAA Order shall govern.

18. Retention of Jurisdiction. The Court shall retain jurisdiction to hear and determine all matters arising from this Interim Order and its implementation.

19. Headings. Paragraph headings used herein are solely for a convenience and shall convey no substantive import.

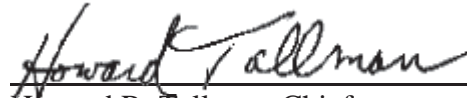
20. Notice. The PC Debtors have filed a Statement Pursuant to Bankruptcy Rule 1007(a)(4) (the "Rule 1007(a)(4) Statement") with each of the Chapter 15 petitions. *See Docket Entry No. 4.* Service of a Notice of the Final Hearing and this Interim Order shall be served on all creditors set forth in the Rule 1007(a)(4) Statement, as amended from time to time.

21. Final Hearing. The Final Hearing is scheduled for Friday, May 17, 2013, at 9:00 a.m., before this Court. The PC Debtors shall promptly mail copies of this Interim Order to the parties having been given notice of the Interim Hearing, and to any other party that has filed a request for notices with this Court. Any party in interest objecting to the relief sought at the Final Hearing who has not objected to entry of any order on the Finance Motion prior to the Interim Hearing shall serve and file written objections which objections shall be served upon the following persons, in each case to allow actual receipt no later than May 13, 2013, at 12:00 noon Mountain Daylight Time: (a) the Office of the United States Trustee, 999 18th Street, Suite 1551, Denver, CO 80202; (b) Brent R. Cohen, 1200 17th Street, Suite 3000,

Denver, CO 80202-5855; (c) all parties who have entered an appearance and requested notice herein at the addresses specified.

Dated this 1st day of May, 2013.

BY THE COURT:



Howard R. Tallman, Chief
United States Bankruptcy Judge