

Matthew M. Boley (8536)  
Steven C. Strong (6340)  
**COHNE KINGHORN, P.C.**  
111 E. Broadway, 11<sup>th</sup> Floor  
Salt Lake City, UT 84111  
Telephone: (801) 363-4300  
E-mail: [mboley@cohnekinghorn.com](mailto:mboley@cohnekinghorn.com)  
[sstrong@cohnekinghorn.com](mailto:sstrong@cohnekinghorn.com)

*Proposed attorneys for debtor-in-possession*  
MOUNTAIN CRANE SERVICE LLC

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

In re: <b>MOUNTAIN CRANE SERVICE LLC,</b> Debtor.	Bankruptcy No. No. 18-20225 Chapter 11 Honorable Joel T. Marker
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**AMENDED MOTION TO AUTHORIZE USE OF CASH COLLATERAL  
(THROUGH PERIOD ENDING APRIL 30, 2018)**

MOUNTAIN CRANE SERVICE LLC, debtor and debtor-in-possession (the “**Debtor**”) in the above-captioned bankruptcy case (the “**Case**”), through counsel, hereby submits this motion (the “**Motion**”) requesting entry of an order authorizing the Debtor to use cash collateral, both on an interim basis and on a final basis.

The Debtor’s cash collateral forecast (the “**Budget**”) for the weeks ending January 19, January 26, and February 2, 2018, and for the months ending February 28, March 31, and April 30, 2018, is attached hereto as **Exhibit A**. By its Motion, the Debtor seeks preliminary approval for the short-term use of use cash collateral in accordance with the Budget until a final hearing can be held, and then final approval for use of cash collateral in accordance with the Budget through April 30, 2018.

**I. COMPLIANCE WITH BANKRUPTCY RULE 4001 AND LOCAL RULE 4001-2**

1. The following entities claim, or may claim, an interest in the Debtor's cash collateral: Bank of Ann Arbor, located in Ann Arbor Michigan ("**Bank of Ann Arbor**") as successor lessor to Varilease Finance, Inc. ("**Varilease**").<sup>1</sup>

2. The Debtor proposes to use its cash, including cash that may constitute cash collateral, to pay the Debtor's ordinary post-petition operating expenses and certain administrative expenses (the "**Approved Expenses**") as more particularly set forth in the Budget.

3. The Debtor requests authority to use cash collateral on an interim basis pending a final hearing on this Motion.

4. The Debtor seeks entry of a final order authorizing use of cash collateral through the period ending April 30, 2018.

5. Further, subject to the terms and conditions of future budgets to be submitted to and considered by the Court by amendments to the Motion (and/or by amendments to the Budget), the Debtor hereby moves the Court to approve and authorize the use of cash collateral for additional periods beyond April 30, 2018.

6. The Motion anticipates, and the Debtor requests, that the Court schedule further hearings to consider and approve use of cash collateral for future periods, based upon budgets to be submitted in advance of such further hearings.

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<sup>1</sup> A lien search in the database maintained by the Utah Department of Commerce identifies approximately 148 UCC-1 financing statements filed against the Debtor. On information and belief, the Debtor understands that only one of these, UCC filing # 487963201648 filed March 23, 2016 by Varilease (which financing statement, upon information and belief, has been assigned to Bank of Ann Arbor), relates to a security interest in cash collateral granted by the Debtor. The remaining financing statements relate to specific items of equipment in which the Debtor granted security interests to various parties. The Debtor does not concede that Varilease or Bank of Ann Arbor (as successor to Varilease) properly perfected a security interest in the Debtor's cash collateral, but seeks approval to use cash collateral to the extent (if any) that Varilease or Bank of Ann Arbor (or any other creditor) have a valid interest in such cash collateral.

7. The Debtor does not request any “extraordinary relief” within the meaning of Local Rule 4001-2(a)(1).

8. The Debtor proposes that the order(s) approving this Motion on an interim and final basis provide the following “adequate protection” to affected creditors (collectively, the “**Adequate Protection Rights**”): Bank of Ann Arbor and any other affected creditors will receive a replacement lien upon all pre-petition and post-petition assets of the Debtor (excepting, chapter 5 claims and the proceeds of new sales) to the extent the Debtor’s use of cash collateral results in a diminution in the amount or value of the secured claim of such creditor.

9. A summary of the proposed use of cash collateral is as follows: (a) the Debtor proposes to use cash to pay the Approved Expenses, as more particularly detailed on the Budget; (b) the Debtor proposes to use cash collateral to pay expenses in the amounts specified in the Budget; and (c) the Debtor proposes to grant Bank of Ann Arbor and any other affected creditors the Adequate Protection Rights described above, including a replacement lien upon non-excluded post-petition assets of the Debtor.

10. Further, the Debtor is requesting interim relief to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

## **II. JURISDICTION AND VENUE**

11. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334.

12. This is a core proceeding under 28 U.S.C. § 157(b).

13. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

## **III. PROCEDURAL BACKGROUND**

14. The Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) on January 12, 2018 (the “**Petition Date**”) at approximately 1:50 p.m. (MST).

15. The Debtor continues to operate its business and manage its property as a debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

16. No examiner or trustee has been appointed in this Case.

#### **IV. RELEVANT FACTS**

##### **A. The Debtor's Business**

17. The Debtor is a full-service crane company located in Salt Lake City, with satellite offices and wind maintenance service locations in Montana, Nevada, Washington, Idaho, Wyoming, Iowa, Texas and Michigan. The Debtor provides a variety of services across the nation with added emphasis in the Intermountain West including plant maintenance, steel erection, pre-cast tilt ups, wind farm construction and maintenance, transformers, and bridge girders, to name a few.

18. With a fleet comprised of over 100 cranes, and hundreds of other pieces of equipment, the Debtor has the right crane for almost any project. Its estimators and engineering department can prepare drawings and lift plans to meet site requirements and help determine what crane works best. The Debtor has been awarded top safety and excellence awards year after year for its ongoing commitment to excellence.

19. The Debtor is the market leader in the intermountain west for Operations and Maintenance (O&M) and Bare Rental work. Its competitive advantage stems from the diversity of equipment offered, the expertise of its employees, and the specialty service its provides. Its 12-acre yard in Salt Lake City serves as the base of operations for its fleet of cranes, including a primary maintenance facility, truck shop, administrative offices, and engineering team. The Debtor also has dedicated supervisory and engineering staff based in Montana, Wyoming, and Texas.

20. The Debtor specializes in oil refinery turnarounds. It has cranes and full-time staff dedicated to refineries in Utah, Montana, and Wyoming. Its project management and

engineering staff provide site survey and lift-planning that dramatically increase operational efficiency and safety during turnaround work. The Debtor has been performing refinery work since 2006. The company has completed contracts with Tesoro, Chevron, Phillips 66, Sinclair, and others. It has an ongoing preferred master services agreement (MSA) with Chevron for turnaround and capital construction work, and has been the primary crane provider for Sinclair since 2013. In the spring of 2017, the Debtor was awarded the major turnaround scope for the Billings, Montana Phillips 66 refinery. It was the largest ever turnaround at that facility. The Debtor has established a branch in Billings, MT led by the same staff that executed the high-profile turnaround.

**B. The Debtor's Cash Flow**

21. The Debtor's revenues are generated primarily from crane services and crane rentals. The Debtor provides crane services on an hourly basis, where the Debtor provides the crane operator, fuel, and all expenses relating to the crane service, and also the Debtor provides "Bare Rental" of cranes where the customer provides its own operator and pays for fuel and all costs relating to the crane operation.

22. The Debtor's revenues are seasonal, with the need for its services and equipment being significantly reduced during winter months when construction, maintenance, and other outdoor activities are reduced due to weather. For example, quarterly gross revenues during 2017 were as follows: Q1 2017, \$12,331,584; Q2 2017, \$15,812,526; Q3 2017, \$14,598,698; and Q4 2017, 9,473,025.

23. The Debtor estimates that gross revenues for the first few post-petition periods will be as follows: (a) Petition Date through February 2, 2018 (initial 3-week period), \$2,350,000; (b) month ending February 28, 2018, \$2,850,000; (c) month ending March 31, 2018, \$3,750,000; and (d) month ending April 30, 2018, \$4,750,000.

### **C. Recent Purchase, and Cash Flow Problems**

24. The Debtor generally been profitable for many years on an operating basis, and was profitable on a net-income basis until 2016. Two events occurred in late 2015 and early 2016 that negatively affected the Debtor's cash flow and profitability, and those are among the primary events that caused the Debtor's need to file its Chapter 11 case to reorganize its business.

25. The first event occurred in late 2015, when the Debtor purchased approximately \$12 million of cranes and related equipment from the Salt Lake division of a large national crane company, Bigge Crane and Rigging Co. ("**Bigge**") and assumed a similarly large amount related liabilities. The Debtor anticipated that in acquiring those assets, it would realize a commensurate increase in revenues to be derived from the customers and jobs that those assets had been servicing. Unfortunately, however, the increased work and revenues did not materialize to match the increased debt and debt service expenses, and the Debtor finds itself with excess cranes and equipment that it cannot profitably utilize. One of the main purposes of the Chapter 11 case will be to liquidate the excess equipment, with the net proceeds to be paid to the corresponding secured lenders (or lessors), so that the Debtor may "right size" its fleet of cranes and related equipment and return to profitability.

26. The second event occurred in early 2016, when the Debtor purchased a used aircraft for its business for approximately \$750,000, and financed the purchase through a sale/leaseback transaction. The Debtor believes that it may have been misled regarding the value, condition and usefulness of the aircraft, and intends to investigate the circumstances surrounding the transaction during this Chapter 11 case. Varilease is the entity that provided the financing for the aircraft in the sale/leaseback transaction, and then assigned its rights under the lease to Bank of Ann Arbor. The aircraft did not function in the Debtor's business as intended,

and beginning in late 2017 the Debtor stopped making monthly payments to Bank of Ann Arbor. The aircraft has been seized by Varilease as servicer for Bank of Ann Arbor.

27. Except for the excess cranes and equipment, the Debtor's business is sound and profitable. The Debtor needs to continue to employ its staff and pay suppliers, service providers, and other operating expenses so that it can continue generating revenues and ensure that its customers continue to receive the high level of expertise and service that they expect and are accustomed to receiving from the Debtor.

28. In short, the Budget requests approval to pay Approved Expenses so that the Debtor can maintain its revenue stream and continue to generate cash to pay creditors. The expenses are justified to retain the level of infrastructure and personnel necessary to reasonably maximize the Debtor's profitability.

29. Creditors who may have or may asset an interest in cash collateral are protected, as shown in the Budget, because the Debtor's net cash flow is projected to be positive for each of the weekly and monthly periods reflected in the Budget. It is worth noting that February is typically the Debtor's slowest month for revenues, but the projected net cash flow even for that month is positive, and the cumulative net cash flow projected to be generated from Petition Date through April 30, 2018 is projected to be \$614,742.

30. In order to maintain active business operations and maximize the Debtor's potential profitability, the Debtor must pay the operating expenses listed on the Budget. Failure to pay such expenses would severely impair the Debtor's ability to continue generating revenues.

31. Absent payment of the Approved Expenses, the Debtor may not be able to fulfill its commitments to customers, which could result in a loss of potential revenue.

## **V. RELIEF REQUESTED**

32. The Debtor asks the Court to enter an Order authorizing the Debtor (a) to pay the Approved Expenses, as more particularly detailed on the Budget attached hereto as Exhibit A,

(b) to use cash collateral to pay expenses in the amounts specified in the Budget, and (c) granting Bank of Ann Arbor and any other affected parties the Adequate Protection Rights described above. The Debtor request such relief on both an interim basis and on a final basis. The Debtor further requests permission to exceed the amounts budgeted for individual line items on the Budget by no more than ten percent (10%), and to carry forward any budget savings in prior periods to permit greater expenditures in later periods.

33. Pursuant to Federal Rule of Civil Procedure 4001(b)(2), the Debtor requests a preliminary hearing on this Motion as soon as practicable, and further request entry of an interim order authorizing the use of cash collateral as necessary to avoid immediate and irreparable harm to the estate pending a final hearing on this Motion.

34. Proposed forms of order authorizing the preliminary and final use of cash collateral in accordance with the Budget are attached as **Exhibit B** and **Exhibit C**, respectively.

35. The Debtor further requests that the Court schedule one or more future hearings, to be held a reasonable time in advance of the expiration of any order permitting use of cash collateral, to consider the Debtor's continued use of cash collateral.

## **VI. BASES FOR RELIEF REQUESTED**

36. To the extent the Debtor's cash is the collateral of Bank of Ann Arbor and/or any other person, the Debtor seeks authority to use the cash for the operation of its business in the ordinary course as authorized by §§ 363(a), 1107 and 1108 of the Bankruptcy Code.

37. As applicable, the Debtor seeks authority to use cash collateral through and including April 30, 2018, and for future periods. A proposed budget is attached hereto as **Exhibit A**.

38. Section 363(c)(2)(B) of the Bankruptcy Code enables this Court to authorize the use of cash collateral. The Court is required, however, to "prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e).



Adequate protection is a concept “which is to be decided flexibly on the proverbial ‘case-by-case’ basis.” MBank Dallas, N.A. v. O’Connor (In re O’Connor), 808 F.2d 1393, 1396-97 (10th Cir. 1987).

39. A creditor secured by cash collateral is only entitled to adequate protection to the extent of any post-petition diminution in the value of the collateral. See In re Club Assocs., 107 B.R. 385, 394 (Bankr. N.D. Ga. 1989) (“adequate protection payments are intended to replace the value of the collateral lost during the pendency of the case”); United Savings Ass’n of Texas v. Timbers of Inwood Forest Assocs., 484 U.S. 365, 372 (1988) (same).

40. Adequate protection, if it is necessary, may take many available forms, including (1) cash payments, (2) additional or replacement liens, and (3) allowance of an administrative expense or other relief. See 11 U.S.C. § 361; Travelers Ins. Co. v. American Agcredit Corp. (In re Blehm Land & Cattle Co.), 859 F.2d 137, 139 (10th Cir. 1988) (explaining that the three methods of adequate protection delineated in § 361 are “nonexclusive”).

41. The Debtor proposes to grant the Adequate Protection Rights to Bank of Ann Arbor and any other person holding a lien upon the Debtor’s cash, by providing a replacement lien upon all pre-petition and post-petition assets of the Debtor (excepting chapter 5 claims) to the extent the Debtor’s use of cash collateral results in a diminution in the amount or value of the secured claim of such creditor.

42. The Adequate Protection Rights reasonably and adequately protect affected creditors against potential harm they might incur in connection with use of cash collateral. Among other things, affected creditors will be adequately protected, at least in part, by the revenues and income that the Debtor’s post-petition operations will generate for so long as the Debtor continues to operate.

43. In short, the Debtor's ordinary business operations have and will result in new and additional cash. As the Debtor expends cash to operate its business, the cash collateral that is expended naturally will be replaced by new cash.

## VII. CONCLUSION

WHEREFORE, the Debtor respectfully prays that the Court enter an order authorizing the Debtor to use cash collateral, both on an interim basis and on a final basis. Proposed forms of order authorizing the Debtor's interim and final use of cash collateral in accordance with the Budget are attached hereto as **Exhibit B.** and **Exhibit C,** respectively. The Debtor further requests such other and further relief as is just and proper under these circumstances.

DATED this 12<sup>th</sup> day of January 2018.

**COHNE KINGHORN, P.C.**

*/s/ Steven C. Strong*

Matthew M. Boley

Steven C. Strong

*Proposed attorneys for debtor-in-possession*

MOUNTAIN CRANE SERVICE LLC

**EXHIBIT A**

**(Budget)**

Mountain Crane Services, LLC

Cash Collateral Forecast

Forecast Period:	1	2	3	4	5	6	
Period-Ending:	Week Ending: 1/19/2018	Week Ending: 1/26/2018	Week Ending: 2/2/2018	Month Ending: 2/28/2018	Month Ending: 3/31/2018	Month Ending: 4/30/2017	Total
<b>Estimated Beginning Cash Balance</b>	\$ 578,473	\$ 730,347	\$ 746,882	\$ 828,016	\$ 884,026	\$ 931,909	\$ 578,473
<b>Estimated Cash Receipts:</b>							
Collections	800,000	750,000	800,000	2,850,000	3,750,000	4,750,000	13,700,000 [I]
<b>Total Estimated Cash Receipts</b>	<b>800,000</b>	<b>750,000</b>	<b>800,000</b>	<b>2,850,000</b>	<b>3,750,000</b>	<b>4,750,000</b>	<b>13,700,000</b>
<b>Estimated Cash Disbursements:</b>							
Labor	217,500	210,250	232,000	870,000	1,160,000	1,522,500	4,212,250 [A]
Travel	375	363	400	1,500	2,000	2,625	7,263 [A]
Subcontractor	12,150	11,745	12,960	48,600	64,800	85,050	235,305 [A]
Equipment: Bare Rental	58,125	56,188	62,000	232,500	310,000	406,875	1,125,688 [A]
Fuel	21,525	20,808	22,960	86,100	114,800	150,675	416,868 [A]
Materials & Supplies	17,625	17,038	18,800	70,500	94,000	123,375	341,338 [A]
Tools	2,025	1,958	2,160	8,100	10,800	14,175	39,218 [A]
Rigging	5,175	5,003	5,520	20,700	27,600	36,225	100,223 [A]
Transport	63,750	61,625	68,000	255,000	340,000	446,250	1,234,625 [A]
Equipment Repairs and Maintenance	22,275	21,533	23,760	89,100	118,800	155,925	431,393 [A]
Parts	9,675	9,353	10,320	38,700	51,600	67,725	187,373 [A]
Tires	4,800	4,640	5,120	19,200	25,600	33,600	92,960 [A]
Pilot Car Services	375	363	400	1,500	2,000	2,625	7,263 [A]
Tool Rental	1,800	1,740	1,920	7,200	9,600	12,600	34,860 [A]
Other	2,925	2,828	3,120	11,700	15,600	20,475	56,648 [A]
Rent	9,000	5,000	-	14,000	14,000	14,000	56,000 [B]
Advertising	-	1,000	-	1,000	1,000	1,000	4,000 [B]
Credit Card Processing Fees	750	725	800	3,000	4,000	5,250	14,525 [A]
Dues & Subscriptions	1,125	1,088	1,200	4,500	6,000	7,875	21,788 [A]
Health Care	-	-	-	37,000	37,000	37,000	111,000 [C]
Insurance	-	-	-	100,000	100,000	100,000	300,000 [D]
Internet	1,000	-	-	1,000	1,000	1,000	4,000 [B]
Licenses & Permits	9,375	9,063	10,000	37,500	50,000	65,625	181,563 [A]
Travel & Entertainment	1,875	1,813	2,000	7,500	10,000	13,125	36,313 [A]
Penalties & Fines	563	544	600	2,250	3,000	3,938	10,894 [A]
Postage & Delivery	525	508	560	2,100	2,800	3,675	10,168 [A]
Printing	188	181	200	750	1,000	1,313	3,631 [A]
Repairs & Maintenance - Yard	1,575	1,523	1,680	6,300	8,400	11,025	30,503 [A]
Taxes	2,250	2,175	2,400	9,000	12,000	15,750	43,575 [A]
Telephone	9,000	-	-	9,000	9,000	9,000	36,000 [B]
Utilities	15,000	-	-	15,000	15,000	15,000	60,000 [B]
Training	253	244	269	1,011	1,347	1,768	4,893 [A]
Truck Expense	-	25,000	-	35,000	35,000	35,000	130,000 [B]
Office Supplies	1,219	1,179	1,300	4,877	6,502	8,534	23,612 [A]
Uniform Expense	1,575	1,523	1,680	6,300	8,400	11,025	30,503 [A]
Payroll Expenses OH	115,000	115,000	110,000	410,000	410,000	410,000	1,570,000 [E]
Safety & Compliance	3,975	3,843	4,240	15,900	21,200	27,825	76,983 [A]
Bank & Finance Charges	1,050	1,015	1,120	4,200	5,600	7,350	20,335 [A]
Discount Fees	1,425	1,378	1,520	5,700	7,600	9,975	27,598 [A]
Bad Debt Write Off	375	363	400	1,500	2,000	2,625	7,263 [A]
Miscellaneous	3,750	3,625	4,000	15,000	20,000	26,250	72,625 [A]
Debtor's Counsel	-	-	25,000	25,000	25,000	25,000	100,000 [F]
Accountant to the Debtor	-	-	20,000	10,000	7,500	7,500	45,000 [G]
Creditors Committee	-	-	15,000	15,000	15,000	15,000	60,000 [G]
Debt Service Payments	27,178	131,250	45,456	234,203	515,567	515,567	1,469,221 [H]
<b>Total Estimated Cash Disbursements</b>	<b>648,125</b>	<b>733,465</b>	<b>718,866</b>	<b>2,793,990</b>	<b>3,702,117</b>	<b>4,488,695</b>	<b>13,085,258</b>
<b>Net Cash Flow</b>	<b>151,875</b>	<b>16,535</b>	<b>81,134</b>	<b>56,010</b>	<b>47,883</b>	<b>261,305</b>	<b>614,742</b>
<b>Estimated Ending Cash Balance</b>	<b>\$ 730,347</b>	<b>\$ 746,882</b>	<b>\$ 828,016</b>	<b>\$ 884,026</b>	<b>\$ 931,909</b>	<b>\$ 1,193,214</b>	<b>\$ 1,193,214</b>

Footnotes:

- [A] Calculated as a percentage of estimated Crane Service Revenue, percentages are calculated using last 5 years of financial information.
- [B] Fixed costs based on historical financial data and adjusted for Mountain Crane's cost reduction efforts.
- [C] Based on a reduced full time employee count.
- [D] Reduced cash requirement due to prepayment of umbrella insurance premiums.
- [E] Based on reduced full time employee count. Estimate includes payroll taxes for OH employees.
- [F] Provided by outside accounting advisory team.
- [G] Provided by outside legal advisory team.
- [H] Calculated as interest payments on notes being serviced.
- [I] Based on historical collection averages, through February.
- [J] Payments in March and April are based on projected debt service payments (principle and interest) going forward.

**EXHIBIT B**

**(Proposed Form of Interim Order)**

*Prepared and Submitted by:*

Matthew M. Boley (8536)  
Steven C. Strong (6340)  
**COHNE KINGHORN, P.C.**  
111 E. Broadway, 11<sup>th</sup> Floor  
Salt Lake City, UT 84111  
Telephone: (801) 363-4300  
E-mail: [mboley@cohnekinghorn.com](mailto:mboley@cohnekinghorn.com)  
[sstrong@cohnekinghorn.com](mailto:sstrong@cohnekinghorn.com)

*Proposed attorneys for debtor-in-possession*  
MOUNTAIN CRANE SERVICE LLC

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

In re: <b>MOUNTAIN CRANE SERVICE LLC,</b> Debtor.	Bankruptcy No. No. 18-20225 Chapter 11 Honorable Joel T. Marker
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**PRELIMINARY ORDER AUTHORIZING THE USE OF CASH COLLATERAL**

This matter came before the Court on January 16, 2018 a.m. for a preliminary hearing on the motion for authority to use cash collateral (the “**Motion**”) filed by debtor and debtor-in-possession MOUNTAIN CRANE SERVICE LLC (the “**Debtor**”). Appearances of counsel and of other parties-in-interest were made on the record at the hearing.

Based on the evidence received by the Court and/or adduced at the preliminary hearing on the Motion, considering the representations and statements of counsel, and the Court having made findings of fact and conclusions of law on the record of the hearing, which findings and conclusions are incorporated into this Order by reference, the Court hereby

**FINDS AND CONCLUDES** as follows:

- A. the Court has jurisdiction under 28 U.S.C. §§ 157 and 1334;
- B. this is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (M) and (O);
- C. no examiner or trustee has been appointed in this case;
- D. notice of the Motion, and of the preliminary hearing thereon, was and is, given the circumstances, adequate and proper within the meaning of 11 U.S.C. § 102(1) and Federal Rule of Bankruptcy Procedure 4001(b);
- E. the expenses identified on the budget attached hereto as **Exhibit “A”** are actual and necessary costs and expenses of preserving the Debtor’s chapter 11 bankruptcy estate;
- F. Bank of Ann Arbor claims an interest in the Debtor’s cash collateral;
- G. to the extent that Bank of Ann Arbor has an interest in the Debtor’s cash and/or other assets of the Debtor which will result in cash proceeds (collectively, the “**Cash Collateral**”), then Bank of Ann Arbor is adequately protected by the replacement liens and other adequate protection rights granted hereunder; and
- H. the Court stated additional findings of fact and conclusions of law on the record during the hearings on the Motion, which findings and conclusions are incorporated herein by reference.

WHEREFORE, based upon the Motion, the foregoing findings and conclusions and other matters of record, and good cause appearing, it hereby is

**ORDERED** that:

- 1. The Motion is GRANTED on a preliminary basis, as more particularly described below.
- 2. The Debtor is authorized to use and spend Cash Collateral to pay expenses as consistent with and identified on the budget attached hereto as **Exhibit “A”** (the “**Budget**”) to the extent of the amounts reflected on the Budget for the period from January 12, 2018 through

April 30, 2018. The Debtor may exceed the amounts budgeted for individual line items on the Budget by up to ten percent (10%). Further, savings in prior periods may be carried forward to permit greater expenditures in later periods.

3. Further, to the extent the Debtor obtains the express written consent of Bank of Ann Arbor, the Debtor may use and spend Cash Collateral beyond or in addition to the amounts reflected in the Budget to pay any additional costs or expenses that arise in the ordinary course of the Debtor's business.

4. Bank of Ann Arbor and any other affected creditors (the "**Affected Creditors**") shall receive, and shall be afforded, the following rights and treatment as "adequate protection" for the Debtor's use of cash collateral (collectively, the "**Adequate Protection Rights**"):

a. To the extent the Debtor uses cash that constitutes "cash collateral" of Bank of Ann Arbor within the meaning of 11 U.S.C. § 363, and then to the extent such use of cash results in a diminution, in the aggregate, in the amount of the collateral of the Affected Creditors as the same existed the date that use of cash collateral was authorized, as adequate protection for the Debtor's use of the same, the Affected Creditors hereby are granted a properly perfected security interest and replacement lien (the "**Replacement Lien**") in all pre-petition and post-petition assets of the Debtor (excepting chapter 5 claims and the proceeds of new sales revenue) to the extent of such diminution.

b. The Replacement Lien granted hereunder shall attach and become valid, binding, continuing, enforceable, fully-perfected and non-avoidable by operation of law as of the Petition Date without any further action by the Debtor, Bank of Ann Arbor, or any other person, and without the necessity of execution by the Debtor, or the filing or recordation, of any financing statements, security agreements, mortgages, deeds of trust, or other documents.



5. Nothing in this Order shall be deemed to determine the extent, validity, or priority of the alleged claims or liens of Bank of Ann Arbor.

6. The authority granted by this Order shall expire on \_\_\_\_\_, 2018, at the hour of 11:59 p.m. (Mountain Time).

7. The Court shall hold a final hearing on \_\_\_\_\_, 2018, at \_\_\_\_\_, regarding the Debtor's authority to use cash collateral through April 30, 2018.

8. At least two business days in advance of the final hearing, the Debtor shall submit to the Court, to the United States Trustee, and Bank of Ann Arbor a report of actual receipts and disbursements versus the amounts reflected in the Budget.

9. This Order shall constitute adequate and appropriate notice of the final hearing on use of cash collateral, as scheduled hereunder. The Debtor shall not be required to serve additional notice upon parties-in-interest.

10. This order is effective as of January 16, 2018, when the Court's verbal ruling was announced in open court at the conclusion of the hearing on the Motion.

----- END OF ORDER -----

**EXHIBIT C**

**(Proposed Form of Final Order)**

*Prepared and Submitted by:*

Matthew M. Boley (8536)  
Steven C. Strong (6340)  
**COHNE KINGHORN, P.C.**  
111 E. Broadway, 11<sup>th</sup> Floor  
Salt Lake City, UT 84111  
Telephone: (801) 363-4300  
E-mail: [mboley@cohnekinghorn.com](mailto:mboley@cohnekinghorn.com)  
[sstrong@cohnekinghorn.com](mailto:sstrong@cohnekinghorn.com)

*Proposed attorneys for debtor-in-possession*  
MOUNTAIN CRANE SERVICE LLC

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

In re: <b>MOUNTAIN CRANE SERVICE LLC,</b> Debtor.	Bankruptcy No. No. 18-20225 Chapter 11 Honorable Joel T. Marker
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**FINAL ORDER AUTHORIZING THE USE OF CASH COLLATERAL**

This matter came before the Court on \_\_\_\_\_, 2018 for a final hearing on the motion for authority to use cash collateral (the “**Motion**”) filed by debtor and debtor-in-possession MOUNTAIN CRANE SERVICE LLC (the “**Debtor**”). Appearances of counsel and of other parties-in-interest were made on the record at the hearing.

Based on the evidence received by the Court and/or adduced at the preliminary hearing on the Motion, considering the representations and statements of counsel, and the Court having

made findings of fact and conclusions of law on the record of the hearing, which findings and conclusions are incorporated into this Order by reference, the Court hereby

**FINDS AND CONCLUDES** as follows:

- I. the Court has jurisdiction under 28 U.S.C. §§ 157 and 1334;
- J. this is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (M) and (O);
- K. no examiner or trustee has been appointed in this case;
- L. notice of the Motion, and of the preliminary hearing thereon, was and is, given the circumstances, adequate and proper within the meaning of 11 U.S.C. § 102(1) and Federal Rule of Bankruptcy Procedure 4001(b);
- M. the expenses identified on the budget attached hereto as **Exhibit “A”** are actual and necessary costs and expenses of preserving the Debtor’s chapter 11 bankruptcy estate;
- N. Bank of Ann Arbor claims an interest in the Debtor’s cash collateral;
- O. to the extent that Bank of Ann Arbor has an interest in the Debtor’s cash and/or other assets of the Debtor which will result in cash proceeds (collectively, the “**Cash Collateral**”), then Bank of Ann Arbor is adequately protected by the replacement liens and other adequate protection rights granted hereunder; and
- P. the Court stated additional findings of fact and conclusions of law on the record during the hearings on the Motion, which findings and conclusions are incorporated herein by reference.

WHEREFORE, based upon the Motion, the foregoing findings and conclusions and other matters of record, and good cause appearing, it hereby is

**ORDERED** that:

- 11. The Motion is GRANTED on a preliminary basis, as more particularly described below.

12. The Debtor is authorized to use and spend Cash Collateral to pay expenses as consistent with and identified on the budget attached hereto as **Exhibit “A”** (the “**Budget**”), and the Debtor may exceed the amounts budgeted for individual line items on the Budget by up to ten percent (10%) and savings in prior periods may be carried forward to permit greater expenditures in later periods.

13. Further, to the extent the Debtor obtains the express written consent of Bank of Ann Arbor, the Debtor may use and spend Cash Collateral beyond or in addition to the amounts reflected in the Budget to pay any additional costs or expenses that arise in the ordinary course of the Debtor’s business.

14. Bank of Ann Arbor and any other affected creditors (the “**Affected Creditors**”) shall receive, and shall be afforded, the following rights and treatment as “adequate protection” for the Debtor’s use of cash collateral (collectively, the “**Adequate Protection Rights**”):

a. To the extent the Debtor uses cash that constitutes “cash collateral” of Bank of Ann Arbor within the meaning of 11 U.S.C. § 363, and then to the extent such use of cash results in a diminution, in the aggregate, in the amount of the collateral of the Affected Creditors as the same existed the date that use of cash collateral was authorized, as adequate protection for the Debtor’s use of the same, the Affected Creditors hereby are granted a properly perfected security interest and replacement lien (the “**Replacement Lien**”) in all pre-petition and post-petition assets of the Debtor (excepting chapter 5 claims and the proceeds of new sales revenue) to the extent of such diminution.

b. The Replacement Lien granted hereunder shall attach and become valid, binding, continuing, enforceable, fully-perfected and non-avoidable by operation of law as of the Petition Date without any further action by the Debtor, Bank of Ann Arbor, or any other person, and without the necessity of execution by the Debtor, or the filing or

recordation, of any financing statements, security agreements, mortgages, deeds of trust, or other documents.

15. Nothing in this Order shall be deemed to determine the extent, validity, or priority of the alleged claims or liens of Bank of Ann Arbor.

16. The authority granted by this Order shall expire on April 30, 2018, at the hour of 11:59 p.m. (Mountain Time).

17. The Court shall hold a further hearing on [date and time] regarding the Debtor's authority to continue using cash collateral after April 30, 2018.

18. At least two business days in advance of the next scheduled cash collateral hearing referenced above, the Debtor shall submit to the Court, to the United States Trustee, and Bank of Ann Arbor a report of actual receipts and disbursements versus the amounts reflected in the Budget.

19. This Order shall constitute adequate and appropriate notice of the final hearing on use of cash collateral, as scheduled hereunder. The Debtor shall not be required to serve additional notice upon parties-in-interest.

20. This order is effective as of \_\_\_\_\_, 2018, when the Court's verbal ruling was announced in open court at the conclusion of the hearing on the Motion.

----- END OF ORDER -----