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IT IS SO ORDERED.  
Signed December 12, 2013

Arthur S. Weissbrodt  
U.S. Bankruptcy

6 Attorneys for Secured Creditor  
7 WELLS FARGO BANK, N.A.

8  
9 UNITED STATES BANKRUPTCY COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION

12  
13 In re  
14 MI PUEBLO SAN JOSE, INC.,  
a California corporation,  
15 Debtor and Debtor-in-Possession.

Case No. 13-53893-ASW  
Chapter 11

**NINTH FURTHER INTERIM ORDER  
GRANTING DEBTOR'S INTERIM  
MOTION TO APPROVE USE OF CASH  
COLLATERAL AND REQUEST FOR  
SETTING OF INTERIM AND FINAL  
HEARINGS THEREON (11 U.S.C.  
§ 363(b))**

Date: December 10, 2013  
Time: 10:30 a.m.  
Place: Courtroom 3020  
280 South First Street  
San Jose, California

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23 *The Interim Motion by Debtor to Approve Use of Cash Collateral and Request for*  
24 *Setting of Interim and Final Hearings Thereon (11 U.S.C. § 363(b)) of MI PUEBLO SAN JOSE, INC.,*  
25 *the debtor and debtor-in-possession (the “Debtor”) in the above-captioned Chapter 11 case (the*  
26 *“Case”), filed therein on July 22, 2013 [Docket No. 11] (the “Motion”; and that date, the “Petition*  
27 *Date”), seeking interim and final approval for its proposed use of cash collateral of the estate and to*  
28 *grant a replacement lien as adequate protection to secured creditor WELLS FARGO BANK, N.A. (the*

JMBM  
Jeffer Mangels  
Butler & Mitchell LLP

1 “**Bank**”), came on for further hearing on December 10, 2013. The Debtor and the Bank having  
2 advised the Court that they have agreed on the form of this Order for a four-week budget period  
3 and, accordingly, do not require that hearing, and good cause appearing therefor:

4 IT IS ORDERED THAT:

5 1. Cash Collateral Defined. The term “**Cash Collateral**” means cash collateral  
6 (as defined in 11 U.S.C. § 363(a)) in which the Bank has or asserts an interest.

7 2. Deposit of Cash Collateral. The Debtor shall deposit all Cash Collateral in  
8 kind in the Debtor’s deposit account with the Bank the number of which ends with 8780 or in any of  
9 the Debtor’s other deposit accounts with the Bank designated by the Bank (all those accounts,  
10 collectively, the “**Account**”).

11 3. Use of Cash Collateral.

12 (a) Pursuant to the provisions of 11 U.S.C. § 361, 363(c), and 363(e), and  
13 subject to each of the provisions set forth in this Order, the Debtor is hereby authorized to use and  
14 disburse Cash Collateral in the amounts and for the purposes set forth on the cash collateral budget  
15 attached hereto as Exhibit 1 (the “**Current Interim Budget**”) for the period from December 16,  
16 2013, through and including January 12, 2014 (the “**Current Interim Period**”), except as follows:

17 (1) Notwithstanding any line item amounts in the Current Interim  
18 Budget or in any subsequent cash collateral budget to which this Order is made applicable by a  
19 further order of the Court (the Current Interim Budget or such a subsequent cash collateral budget  
20 then in effect, as the case may be, the “**Applicable Interim Budget**”; and such a further order, a  
21 “**Further Interim Cash Collateral Order**”) on the line entitled “PACA”, (i) payments may be  
22 made to creditors holding claims under the Perishable Agricultural Commodities Act of 1930,  
23 7 U.S.C. §§ 499a, *et seq.* (those claims, generically, “**PACA Claims**”), only in accordance with the  
24 procedures approved in the *Amended Order Granting Motion for Order (I) Granting Administrative*  
25 *Expense Status to Debtor’s Undisputed Obligations to Vendors Arising from Post-Petition Delivery*  
26 *of Goods Ordered Pre-Petition and Authorizing Debtor to Pay Such Obligations in the Ordinary*  
27 *Course of Business; (II) Authorizing Payment for Goods Received within Twenty Days of Filing and*  
28 *Establishing Administrative Claims Bar Date for Section 503(b)(9) Claims; and (III) Establishing*

1 *Procedures and to Allow Claims of Perishable Agricultural Commodities Act and Packers and*  
2 *Stockyard Claimants* entered in the Case on July 31, 2013 [Docket No. 74] (those procedures, the  
3 **“Vendor Order Procedures”**); and (ii) payments to creditors holding PACA Claims that have been  
4 allowed and are permitted to be paid pursuant to the Vendor Order Procedures may be made  
5 whether there is any provision in the Applicable Interim Budget for payments of PACA Claims or  
6 not; and

7 (2) Notwithstanding any line item amounts in the Applicable  
8 Interim Budget on the line entitled “503(b)(9)”, (i) payments may be made to creditors holding  
9 claims under 11 U.S.C. § 503(b)(9) (those claims, generically, **“503(b)(9) Claims”**) only in  
10 accordance with the Vendor Order Procedures; and (ii) payments to creditors holding 503(b)(9)  
11 Claims that have been allowed and are permitted to be paid pursuant to the Vendor Order  
12 Procedures may be made only (A) if and, subject to Section 3(b) below, to the extent that there is a  
13 line item amount provision in the line of the Applicable Interim Budget entitled “503(b)(9)” for  
14 those payments in the weekly period (weekly periods run from a Monday through the following  
15 Sunday) in which the same are to be paid; and (B) if those payments can be made pursuant to the  
16 *Order Granting Motion To Authorize Borrowing and Incurring of Junior Secured Debt (11 U.S.C.*  
17 *§ 364(c)(3))* entered in the Case on November 14, 2013 [Docket No. 409]) (the **“Chavez Loan**  
18 **Borrowing Order”**), all (i) unless (A) (1) as to Cash Collateral, otherwise agreed to by the Bank in  
19 writing; and (2) as to the Chavez Loan Borrowing Order, otherwise agreed to by JUVENAL CHAVEZ  
20 in writing; or (B) approved by an order of the Court; and (ii) subject to a reservation by each  
21 creditor holding a 503(b)(9) Claim of its right to argue that it is entitled to be paid on account of its  
22 503(b)(9) Claim notwithstanding the insufficiency or absence of line items amounts for claims  
23 under that section set out in the Applicable Interim Budget where line item amounts were provided  
24 for 503(b)(9) Claims in the First Interim Budget (as defined in the *Interim Order by Debtor To*  
25 *Approve Use of Cash Collateral and Request for Setting of Interim and Final Hearings Thereon*  
26 (11 U.S.C. § 363(b)) [sic] entered in the Case on July 26, 2013 [Docket No. 46]) (the **“First**  
27 **Interim Cash Collateral Order”**).

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1 (b) The Debtor's use of Cash Collateral is expressly limited to the  
2 respective amounts in the line item categories in each weekly period of the Applicable Interim  
3 Budget, except that—

4 (1) Expenses for a particular line item category may exceed, in  
5 each weekly period, the amount for that line item for that subject weekly period specified in that  
6 Applicable Interim Budget by an amount that does not exceed the following (the result of the  
7 following calculation being the “**Variance**” for that line item category in that subject weekly  
8 period): (i) (A) 5% of (B) the aggregate of the amounts for that line item in that subject weekly  
9 period and the next three weekly periods of that Applicable Interim Budget (provided that if, for any  
10 subject weekly period, there are fewer than three following weekly periods in that Applicable  
11 Interim Budget, (1) if there is a subsequent cash collateral budget that will become the Applicable  
12 Interim Budget at the end of the period covered by the Applicable Interim Budget then in effect, the  
13 amounts for the weekly periods of that subsequent cash collateral budget are to be used as needed  
14 for calculating that aggregate; and (2), if there is no such subsequent cash collateral budget, the  
15 amount for the last weekly period of the Applicable Interim Budget then in effect is deemed for  
16 purposes of these calculations as being repeated for each successive weekly period for calculating  
17 that aggregate); less (ii) the excess, if any, of (A) the aggregate of the amounts actually expended  
18 for that line item for the four weekly periods immediately before that subject weekly period; over  
19 (B) the aggregate of the amounts for that line item specified in the Applicable Interim Budget or any  
20 prior cash collateral budget approved by this Order or a prior an order of the Court, as the case may  
21 be, for the same four periods specified in clause (A); plus (iii) the excess, if any, of (A) the amount  
22 of clause (ii)(B); over (B) the amount of clause (ii)(A); provided that the Variance for a line item  
23 category in a subject weekly period will not be less than zero; and

24 (2) In addition to the variance for each line item category in each  
25 weekly period during the Current Interim Period or in any period covered by a subsequent  
26 Applicable Interim Budget then in effect (the Current Interim Period or the period covered by a  
27 subsequent Applicable Interim Budget then in effect, as the case may be, the “**Applicable Interim**  
28 **Period**”) permitted pursuant to Section 3(b)(1) above, permitted expenses for all line item

1 categories in each weekly period may exceed, in the aggregate, \$25,000 for that weekly period (for  
2 the avoidance of doubt, the unused portion of this lump-sum additional variance amount will not  
3 cumulate across weekly periods),  
4 all the foregoing unless otherwise agreed to by the Bank in writing or approved by an order of the  
5 Court.

6 (c) As adequate protection for the Debtor's use of Cash Collateral during  
7 the Current Budget Period and all other Applicable Interim Periods, but only if the Debtor remains  
8 authorized to use Cash Collateral pursuant to the terms of this Order on such dates, the Debtor shall  
9 pay to the Bank the following adequate protection payments:

10 (1) On December 30, 2013, the amount equal to the sum of (i) the  
11 monthly payment of principal and interest at the non-default rate that will be due and owing by the  
12 Debtor to the Bank pursuant to the *Term Note* dated May 15, 2012, in the original principal amount  
13 of \$12,500,00.00, made by the Debtor to the order of the Bank (the "**Term Note**"), on that payment  
14 date; (ii) the monthly payment of interest at the non-default rate that will be due and owing by the  
15 Debtor to the Bank pursuant the *Revolving Reducing Note* dated May 15, 2012, in the original  
16 principal amount of \$12,500,000.00, made by the Debtor to the order of the Bank (the "**Revolving**  
17 **Reducing Note**"), on that payment date; and (iii) the monthly payment required to be paid by the  
18 Debtor to the Bank pursuant to the swap documents executed by the Debtor in favor of the Bank for  
19 Trade No. 9285392 (collectively, the "**Swap Documents**"), on that payment date (collectively, the  
20 "**Current Adequate Protection Payment**"); and

21 (2) On the dates and in the amounts specified therein, any further  
22 adequate protection payments required to be made pursuant to any Further Interim Cash Collateral  
23 Order (the Current Adequate Protection Payment and all such further adequate protection payments,  
24 collectively, the "**Adequate Protection Payments**").

25 (d) The Bank is authorized to debit the Account on the due date of any  
26 Adequate Protection Payment for that payment.

27 (e) Nothing contained in this Order may prejudice or limit in any way  
28 (i) the Bank's right to recover interest at the default rate, late charges, or any other amounts it

1 claims may be due under the Term Note, the Revolving Reducing Note, the Swap Documents, or  
2 the other loan documents made by the Debtor in connection therewith (collectively, the “**Loan**  
3 **Documents**”); or (ii) the Debtor’s right to claim that those amounts are not owed to the Bank or  
4 otherwise to limit or reduce the amounts the Bank claims are owing.

5 4. Replacement Lien.

6 (a) As adequate protection for the Debtor’s use of Cash Collateral for the  
7 various periods from the commencement of the Case on the Petition Date through the day before the  
8 start of the Current Interim Period covered thereby, the Bank has been granted a valid, non-  
9 avoidable, and fully perfected replacement lien (the “**Replacement Lien**”) in the Replacement  
10 Collateral (defined below) to secure any diminution in value of any of the Pre-Petition Collateral  
11 (defined below) pursuant to the following prior cash collateral orders (collectively, the “**Prior Cash**  
12 **Collateral Orders**”):

13 (1) The First Interim Cash Collateral Order;

14 (2) The *Further Interim Order Granting Debtor’s Interim Motion*  
15 *To Approve Use of Cash Collateral and Request for Setting of Interim and Final Hearings Thereon*  
16 *(11 U.S.C. § 363(b))* entered in the Case on September 4, 2013 [Docket No. 218];

17 (3) The *Third Further Interim Order Granting Debtor’s Interim*  
18 *Motion To Approve Use of Cash Collateral and Request for Setting of Interim and Final Hearings*  
19 *Thereon (11 U.S.C. § 363(b))* entered in the Case on September 13, 2013 [Docket No. 254];

20 (4) The *Fourth Further Interim Order Granting Debtor’s Interim*  
21 *Motion to Approve Use of Cash Collateral and Request for Setting of Interim and Final Hearings*  
22 *Thereon (11 U.S.C. § 363(b))* entered in the Case on October 4, 2013 [Docket No. 297];

23 (5) The *Fifth Further Interim Order Granting Debtor’s Interim*  
24 *Motion to Approve Use of Cash Collateral and Request for Setting of Interim and Final Hearings*  
25 *Thereon (11 U.S.C. § 363(b))* entered in the Case on October 11, 2013 [Docket Nos. 322 and 323];

26 (6) The *Sixth Further Interim Order Granting Debtor’s Interim*  
27 *Motion to Approve Use of Cash Collateral and Request for Setting of Interim and Final Hearings*  
28 *Thereon (11 U.S.C. § 363(b))* entered in the Case on October 24, 2013 [Docket Nos. 347 and 348];

1 (7) The *Seventh Further Interim Order Granting Debtor's Interim*  
2 *Motion to Approve Use of Cash Collateral and Request for Setting of Interim and Final Hearings*  
3 *Thereon* (11 U.S.C. § 363(b)) entered in the Case on November 8, 2013 [Docket Nos. 382 and 383];  
4 and

5 (8) The *Eighth Further Interim Order Granting Debtor's Interim*  
6 *Motion to Approve Use of Cash Collateral and Request for Setting of Interim and Final Hearings*  
7 *Thereon* (11 U.S.C. § 363(b)) entered in the Case on November 22, 2013 [Docket Nos. 437 and  
8 438].

9 (b) The term **“Pre-Petition Collateral”** means, collectively, the  
10 Collateral as that term is cumulatively defined in the *Continuing Security Agreement—Rights to*  
11 *Payment* and the *Security Agreement—Equipment* both dated as of March 15, 2012, made by the  
12 Debtor in favor of the Bank, that existed prior to the Petition Date. The term **“Replacement**  
13 **Collateral”** means, collectively, all property of the same type as the Pre-Petition Collateral acquired  
14 by the Debtor on or after the Petition Date.

15 (c) As adequate protection for the Debtor's use of Cash Collateral for  
16 each Applicable Interim Period, the Replacement Lien is continued to secure any diminution in  
17 value of any of the Pre-Petition Collateral, whether occurring before or after the commencement of  
18 the Current Interim Period.

19 (d) The Replacement Lien will continue to have the same scope, validity,  
20 perfection, relative priority, and enforceability as the Bank's pre-Petition Date security interests in  
21 the Pre-Petition Collateral. The Replacement Lien will continue to be subordinate to the Carve Out  
22 (as defined in various of the Prior Cash Collateral Orders) and to the allowed and approved fees and  
23 expenses of a trustee, if any, appointed in any superseding Chapter 7 case and his or her  
24 professionals. The Replacement Lien will continue to be valid, enforceable, and fully perfected, and  
25 no filing or recordation or any other act in accordance with any other applicable local, state, or  
26 federal law is necessary to create or perfect, or continue or continue the perfection of, that lien. The  
27 Bank may, however, in its sole discretion, file such financing statements, notices of lien or security  
28 interest, or similar instruments as it chooses. If the Bank chooses, in its sole discretion, to file any of

1 those financing statements, notices of lien or security interest, or similar instruments, all those  
2 documents are deemed to have been filed or recorded on the Petition Date whether so filed or  
3 recorded on that date or not, and the automatic stay of 11 U.S.C. § 362 is deemed vacated and  
4 modified to permit the filing of any of the foregoing. At the request of the Bank, the Debtor shall  
5 cooperate with the Bank in effectuating any of those filings. Notwithstanding the foregoing, the  
6 Replacement Lien granted by this Order is valid only to the extent that the Bank's pre-Petition Date  
7 security interests are valid and are not avoided under the Bankruptcy Code (Title 11 of the United  
8 States Code) or any other applicable law.

9           5.     Payment of Allowed Professional Amounts under Prior Cash Collateral  
10 Orders. Subject to the provisions the Prior Cash Collateral Orders governing the Carve Out and the  
11 order or orders of the Court allowing and permitting payment of Allowed Professional Amounts (as  
12 defined in various of the Prior Cash Collateral Orders) on an interim or final basis, the Debtor is  
13 authorized to use and disburse Cash Collateral, whether an Event of Default (defined below) has  
14 occurred or not, to pay Allowed Professional Amounts incurred during the various periods from the  
15 commencement of the Case on the Petition Date through November 24, 2013 (whether billed during  
16 those periods or thereafter) as and to the extent permitted by the Prior Cash Collateral Orders.

17           6.     Accountings, Reporting, and Other Deliverables.

18           (a)     Commencing on Wednesday, December 18, 2013, and continuing on  
19 every Wednesday thereafter during each Applicable Interim Period, the Debtor shall send to the  
20 Bank, the Committee, and their respective counsel, at the electronic mail addresses set forth in  
21 Section 6(f) below, each in Excel form, for the weekly period ending on the preceding Sunday, the  
22 following:

23                   (1)     A report of (i) the Debtor's actual revenues and disbursements  
24 in the form of the Applicable Interim Budget then in effect; and (ii) the percentage actual-to-budget  
25 variance for each category of the Applicable Interim Budget or the preceding Applicable Interim  
26 Budget, as the case may be, that covered that weekly period, in the form of the Applicable Interim  
27 Budget that covered that weekly period;

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1 (2) The supporting information used to prepare that actual  
2 revenues and disbursements report;

3 (3) The Debtor's rolling 13-week cash flow forecast for that  
4 weekly period and the next 12 fiscal weeks updated for that weekly period's activity; and

5 (4) The supporting information used to prepare that forecast.

6 (b) On or before the 21<sup>st</sup> day after the end of each of the Debtor's four  
7 week fiscal periods that approximately coincide with calendar months for purposes of making the  
8 following reports, statements, and accountings to the UNITED STATES TRUSTEE (each of those 21<sup>st</sup>  
9 days, a "**Four Week Fiscal Period Reporting Deadline**"), the Debtor shall send to the Bank, the  
10 Committee, and their respective counsel, at the electronic mail addresses set forth in Section 6(f)  
11 below, copies of all reports, statements, and accountings delivered by the Debtor to the UNITED  
12 STATES TRUSTEE as required under the *Local Rules of Practice of the Bankruptcy Court for the*  
13 *Northern District of California*, including the real property questionnaire, interim statements, and  
14 operating reports required thereby. If the Debtor fails to prepare and file the statements, reports, or  
15 accountings required by the UNITED STATES TRUSTEE, the Debtor shall nevertheless send to the  
16 Bank, the Committee, and their respective counsel at those email addresses on or before each Four  
17 Week Fiscal Period Reporting Deadline its accounting of its prior four week fiscal period's income  
18 and expenses, which accounting shall include all information required in the UNITED STATES  
19 TRUSTEE's reports, statements, and accountings.

20 (c) In addition to the reports filed with the UNITED STATES TRUSTEE, on  
21 or before each Four Week Fiscal Period Reporting Deadline, the Debtor shall deliver to the Bank,  
22 the Committee, and their respective counsel, at the electronic mail addresses set forth in Section 6(f)  
23 below, copies, each in Excel form, of the following:

24 (1) A reconciliation of the Debtor's cash balance for each fiscal  
25 week of its prior four week fiscal period, including cash in bank accounts, cash in transit, cash in  
26 stores (including money service business kiosks, counters, and other operations), and outstanding  
27 checks;

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1 (2) A reconciliation on a cash basis for that four week fiscal  
2 period of the Debtor's intercompany and other related party payments, charges, and credits,  
3 including for money store business (including for any bad debt or check reimbursements), rent  
4 payments, and reimbursements for "lent" or "leased" employees;

5 (3) The Debtor's balance sheet for that four week fiscal period;

6 (4) The Debtor's income and expense statements for that four  
7 week fiscal period and on a year-to-date fiscal period basis by (i) store, distribution center,  
8 corporate offices, and maintenance department; and (ii) consolidated;

9 (5) The Debtor's accounts receivable aging report and accounts  
10 payable aging report as of the end of that four week fiscal period; and

11 (6) The Debtor's four week fiscal period inventory roll-forward  
12 report (to include inventory located in stores, in transit, and in distribution centers) as of the end of  
13 that four week fiscal period.

14 (d) To the extent that any accounting, report, or other deliverable to have  
15 been delivered by the Debtor to the Bank, the Committee, or their respective counsel pursuant to  
16 any Prior Cash Collateral Order has not been delivered as and when required by that order, the  
17 Debtor shall, on or before December 23, 2013, deliver each of those items to the ordered recipients  
18 thereof to whom they were not previously delivered in the respective forms and to the respective  
19 addresses required by that order.

20 (e) Except with respect to CHA CHA ENTERPRISES, LLC ("Cha Cha"),  
21 the Debtor shall continue to use its best efforts to obtain and deliver to the Bank landlord's  
22 acknowledgements, waivers, and consents, in recordable forms, on the Bank's standard forms  
23 thereof, except as the Bank otherwise agrees, and otherwise in form acceptable to the Bank, with  
24 respect to each leased premises where any of the Pre-Petition Collateral or the Replacement  
25 Collateral that is tangible personal property (including trade fixtures) is located permitting the Bank,  
26 directly or through agents or a receiver, to access those premises to remove some or all of that  
27 collateral therefrom, subject to repairing any damage to those premises caused thereby, if the Bank  
28 would otherwise be permitted to take possession of that collateral, and waiving any claims or liens

1 that that landlord has or may have with respect to that collateral (a “**Landlord Waiver**”). With  
2 respect to Cha Cha, to the extent that the Debtor has not, on or before the entry of this Order,  
3 obtained and delivered to the Bank Landlord Waivers with respect to each premises that the Debtor  
4 leases from Cha Cha that provide for a specific identification of trade fixtures covered thereby at  
5 that premises, the Debtor shall obtain and deliver to the Bank, on or before December 23, 2013,  
6 those Landlord Waivers. The Debtor shall promptly provide the Bank with all legal descriptions,  
7 personal property lists, and other information required by the Bank so that it can promptly complete  
8 preparation of all Landlord Waivers. With respect to its efforts to obtain Landlord Waivers from  
9 landlords other than Cha Cha, the Debtor shall (i) keep the Bank, the Committee, and their  
10 respective counsel promptly and regularly appraised in writing of the progress and status of those  
11 efforts; (ii) promptly provide them with copies of all correspondence (including emails) to or from  
12 each of those landlords or its respective counsel regarding the same; and (iii) on December 23,  
13 2013, provide them with a comprehensive written report on that progress and status as of that date,  
14 all to the electronic mail addresses set forth in Section 6(f) below.

15 (f) The email addresses for the Bank, the Committee, and their respective  
16 counsel referenced in this Order are the following: for (i) the Bank and its counsel, Currie  
17 Butzbaugh, Vice President, at [currie.butzbaugh@wellsfargo.com](mailto:currie.butzbaugh@wellsfargo.com), Robert B. Kaplan, Esq., at  
18 [rbk@jmbm.com](mailto:rbk@jmbm.com), and Nicolas De Lancie, Esq., at [nde@jmbm.com](mailto:nde@jmbm.com); and (ii) the Committee and its  
19 counsel, Eric D. Goldberg, Esq., at [egoldberg@stutman.com](mailto:egoldberg@stutman.com), and Gabriel I. Glazer, Esq., at  
20 [gglazer@stutman.com](mailto:gglazer@stutman.com).

21 7. Inspections. No later than five business days following a written request from  
22 the Bank to the Debtor, the Committee, and their respective counsel, at the electronic mail addresses  
23 set forth in Section 6(f) above for the Committee for its counsel, and the following electronic mail  
24 addresses for the Debtor and its counsel: John Zott at [john.zott@mipueblofoods.com](mailto:john.zott@mipueblofoods.com) and Robert G.  
25 Harris, Esq., at [rob@bindermalter.com](mailto:rob@bindermalter.com), the Debtor shall provide access to and make available such  
26 financial and operating information as representatives of the Bank may reasonably request from  
27 time to time and which can reasonably be made available, including all books and records relating  
28 to the Pre-Petition Collateral, which requests may be made no more frequently than twice during

1 each of the Debtor's successive four week fiscal periods. On five business days' written notice from  
2 the Bank to the Debtor, the Committee, and their respective counsel, at those electronic mail  
3 addresses, the Bank, or its appraiser, environmental inspector, or other third party inspector will be  
4 entitled to visit the Pre-Petition Collateral to inspect and appraise the Pre-Petition Collateral, and the  
5 Debtor shall cooperate in providing the Bank and that appraiser, environmental inspector, or other  
6 third party inspector full access to the Pre-Petition Collateral and shall provide the Bank with such  
7 financial information concerning the Pre-Petition Collateral as the Bank may reasonably request in a  
8 reasonable time.

9 8. Superpriority Claims. In addition to the continuation of the Replacement  
10 Lien, the Bank will continue to be entitled to an administrative expense claim under 11 U.S.C.  
11 §§ 503(b) and 507(a)(1) with a superpriority status pursuant to 11 U.S.C. § 507(b) as granted  
12 pursuant to the Prior Cash Collateral Orders to the extent that the Court determines that the Bank  
13 was not adequately protected with respect to the Debtor's use of Cash Collateral, whether occurring  
14 before or after the commencement of the Current Interim Period. Notwithstanding the foregoing,  
15 any superpriority claim granted to the Bank pursuant to this Section 8 will be subordinate in all  
16 respects to the Carve Out to the extent of any unpaid Allowed Professional Amounts (subject to the  
17 limitation on the total amount and uses thereof provided by the Prior Cash Collateral Orders).

18 9. Waiver of 11 U.S.C. § 506(c). In order to provide further adequate protection  
19 to the Bank with respect to the Debtor's use of Cash Collateral, at no time during any Applicable  
20 Interim Period during which the Debtor is authorized to use Cash Collateral pursuant to this Order  
21 or any Further Interim Cash Collateral Order may the surcharge provisions of 11 U.S.C. § 506(c) be  
22 imposed on or against the Bank, Cash Collateral, the Pre-Petition Collateral, or the Replacement  
23 Collateral. Notwithstanding the foregoing, no such waiver will exist after the Debtor ceases to be  
24 authorized to use Cash Collateral pursuant to this Order or any Further Interim Cash Collateral  
25 Order.

26 10. Termination of Use of Cash Collateral upon Occurrence of Event of Default.

27 (a) If an Event of Default occurs under this Order or any Further Interim  
28 Cash Collateral Order, the Bank may give written notice of any such default to the Debtor, the

1 Committee, and their respective counsel, at the electronic mail addresses set forth, respectively, in  
2 Sections 6(f) and 7 above (a **“Default Notice”**). Except with respect to the payment of Allowed  
3 Professional Amounts in accordance with Section 5 above, and subject to the next sentence, the  
4 Debtor’s right to use Cash Collateral will immediately cease two business days after the date of a  
5 Default Notice if the Event or Events of Default that are the subject of that Default Notice have not  
6 been cured prior to the expiration of that two business day period. Notwithstanding the occurrence  
7 of an Event of Default, the Debtor shall be permitted to schedule a hearing on a motion in the Court  
8 on not fewer than two business days’ notice to all parties-in-interest to resolve any disputes  
9 regarding whether an Event of Default has occurred or to permit the Debtor to use and disburse  
10 Cash Collateral for expenditures for up to seven calendar days pending a further interim hearing on  
11 that motion; provided that if neither the Court nor a substitute or emergency duty judge for the  
12 Court is available to hold that hearing on that notice, the Debtor’s right to use Cash Collateral will  
13 not cease until the earlier of (i) seven calendar days from the date of a Default Notice; and (ii) the  
14 holding of that hearing. The Bank and the Committee consent to the holding by the Court of an  
15 initial hearing on that motion on not fewer than two business days’ notice to permit the Debtor to  
16 use and disburse Cash Collateral for expenditures for up to seven calendar days pending a further  
17 interim hearing on that motion. The Bank reserves all rights it has under applicable law to oppose  
18 any such request made by the Debtor.

19 (b) Further, the Debtor’s authorization to use Cash Collateral pursuant to  
20 this Order will terminate immediately and automatically, without any need for the Bank to provide  
21 notice to the Debtor, upon the occurrence of any of the following: (i) entry of an order by the Court  
22 converting or dismissing the Case; (ii) entry of an order by the Court appointing a Chapter 11  
23 trustee or Chapter 7 trustee in the Case; (iii) the reversal, vacatur, stay, amendment,  
24 supplementation, or other modification of this Order without the consent of the Bank; or (iv) entry  
25 of an order granting the Bank relief from the automatic stay in effect in the Case.

26 11. Events of Default by Debtor. The occurrence of any one or more of the  
27 following events will constitute an **“Event of Default”**: (i) the Debtor fails timely to perform its  
28 obligations in accordance with the terms hereof or any Further Interim Cash Collateral Order, or

1 otherwise defaults hereunder or thereunder or breaches any provision hereof or thereof, including  
2 (A) the material use and expenditure or disbursement of any Cash Collateral except as expressly  
3 permitted hereunder; (B) the failure to provide any report, document, or information to the Bank as  
4 required hereby within three business days after demand for the same is made following the failure  
5 timely to provide the same unless (1) with respect only to the matters covered by Section 7 above,  
6 the Court orders otherwise; or (2) that document is a Landlord Waiver, other than a Landlord  
7 Waiver from Cha Cha, that the Debtor has used its best efforts to obtain; and (C) the failure to make  
8 any payment to the Bank as required hereby; or (ii) the Replacement Lien granted to the Bank to  
9 pursuant the Prior Cash Collateral Orders and continued pursuant to Section 4 above ceases to be a  
10 valid and perfected first priority lien on the Replacement Collateral.

11 12. Binding on Trustee. The terms and conditions of this Order are *res judicata*  
12 and binding upon any trustee appointed in the Case or in any case to which the Case may be  
13 converted.

14 13. Other Remedies Available to Bank, Committee, and Debtor. This Order is  
15 made with an express reservation of rights by the Bank, the Committee, and the Debtor to pursue  
16 any and all rights and remedies the Bank, the Committee, or the Debtor may have under the  
17 Bankruptcy Code, the Loan Documents (except as to the Committee), and applicable  
18 nonbankruptcy law, including, as to the Debtor, to assert a claim for professional fees as set out in  
19 the first paragraph of page six of the Debtor's *Notice of Further Interim Hearing on Motion by*  
20 *Debtor To Approve Use of Cash Collateral and Request for Setting of Interim and Final Hearings*  
21 *Thereon (11 U.S.C. §363(b))* filed in the Case on September 20, 2013 [Docket No. 264]. Nothing  
22 contained in this Order is to be deemed or construed to be a finding that the Bank is adequately  
23 protected. Moreover, except as otherwise expressly set forth in this Order, nothing contained in this  
24 Order is to be deemed or construed to limit, in any way, any of the Debtor's, the Committee's, or  
25 the Bank's legal rights or remedies in the Case or otherwise in accordance with applicable law.

26 14. Neutral Construction. The Debtor, the Committee, and the Bank have been  
27 involved in the negotiation, review, and approval of this Order, and each has had the opportunity to  
28 receive independent legal advice from attorneys of its choice with respect to the advisability of

1 seeking to have it entered. If there is any dispute or controversy regarding this Order, the Bank, the  
2 Committee, and the Debtor are to be considered to be the joint authors hereof, and no provision of  
3 this Order is to be interpreted against any of them because of that authorship.

4 15. Headings, Rules of Construction, etc. The headings set forth herein are for  
5 convenience only and are not be used to limit, define, or interpret any rights or responsibilities  
6 hereunder. General terms and phrases that are defined in 11 U.S.C § 101, such as “claim”, “entity”,  
7 “insider”, “lien”, “person”, and “security interest”, and 11 U.S.C. § 102, such as “after notice and a  
8 hearing”, have the meanings given those terms or phrases in those sections. The rules of  
9 construction set out in 11 U.S.C. § 102 apply to this Order.

10 16. Survival.

11 (a) Notwithstanding any termination of the Debtor’s authority to use  
12 Cash Collateral pursuant to this Order or any Further Interim Cash Collateral Order, all claims,  
13 priorities, and liens granted to the Bank by any Prior Cash Collateral Order, this Order, or the Loan  
14 Documents, or continued by this Order or any Further Interim Cash Collateral Order, will survive  
15 that termination and remain in full force and effect notwithstanding that termination.

16 (b) The provisions of this Order and any Further Interim Cash Collateral  
17 Order, and the actions taken pursuant hereto and thereto, will survive entry of any order in the Case  
18 (i) appointing a Chapter 11 trustee in the Case; (ii) converting the Case to a case under Chapter 7; or  
19 (iii) dismissing the Case, and the terms and provisions of this Order and any Further Interim Cash  
20 Collateral Order, and all claims, priorities, and liens granted to the Bank by any Prior Cash  
21 Collateral Order, this Order, or the Loan Documents will continue in full force and effect  
22 notwithstanding entry of any such order.

23 (c) Notwithstanding any stay, modification, reversal, or vacation of this  
24 Order or any Further Interim Cash Collateral Order, the indebtedness, obligations, and liabilities  
25 incurred by the Debtor pursuant to this Order and any Further Interim Cash Collateral Order arising  
26 prior to the later of the effective date of that stay, modification, reversal, or vacation or the Bank’s  
27 receipt of notice thereof will be governed in all respects by the original provisions of this Order and  
28 those Further Interim Cash Collateral Orders, and the Bank will be entitled to all of the rights,

1 remedies, priorities, privileges, and benefits, including any payments authorized herein and all  
2 claims, priorities, and liens granted or continued herein or therein, or by any Prior Cash Collateral  
3 Order, with respect to such indebtedness, obligations, or liabilities incurred or existing prior to that  
4 date, and with respect to the Debtor's use of Cash Collateral prior to that date. Without limiting the  
5 generality of the foregoing, if the Court or any other court hereafter modifies any of the provisions  
6 of this Order or any Further Interim Cash Collateral Order, that modification may not affect the  
7 claims, rights, remedies, liens, and priorities of the Bank granted or acknowledged pursuant to this  
8 Order or any Further Interim Cash Collateral Order with respect to the obligations and the pre-  
9 Petition Date indebtedness and any Cash Collateral that is used prior to any such modification.

10 17. Continued Effectiveness of Prior Cash Collateral Orders. The Prior Cash  
11 Collateral Orders remain in full force and effect as to the respective periods covered thereby with  
12 respect to the rights, remedies, claims, grants, waivers, reservations, limitations, subordinations, and  
13 other matters provided thereby or covered therein.

14 18. Further Hearing. A further interim hearing on the Motion will be held on  
15 January 8, 2013, at 2:30 p.m., in the Court.

16  
17 Approved as to Form:

18 BINDER & MALTER LLP

19  
20 By:                                   /s/ Robert G. Harris                                    
                                  ROBERT G. HARRIS, ESQ.

21 Attorneys for Debtor and Debtor-in-Possession  
22 MI PUEBLO SAN JOSE, INC.

23 STUTMAN, TREISTER & GLATT, PC

24  
25 By:                                   /s/ Eric D. Goldberg                                    
                                  ERIC D. GOLDBERG, ESQ.

26 Attorneys for OFFICIAL COMMITTEE OF  
27 UNSECURED CREDITORS

28 \* \* \* \* END OF ORDER \* \* \* \*



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**EXHIBIT 1**

**Current Interim Budget**

**(Fiscal Weeks Ending December 22 and 29, 2013, and January 5 and 12, 2014)**

[See Following Page]

**Mi Pueblo  
Cash Collateral Budget**

	<u>Forecast</u> Pd 13 W3	<u>Forecast</u> Pd 13 W4	<u>Forecast</u> Pd 1 W1	<u>Forecast</u> Pd 1 W2
	<b>12-22-13</b>	<b>12-29-13</b>	<b>01-05-14</b>	<b>01-12-14</b>
<b>Cash Disbursements</b>				
Merchandise Purchases	5,024,797	4,199,786	4,484,408	4,178,274
Payroll - Salaries & Taxes	-	2,825,465	-	3,162,488
Benefits (self insured & other)	115,000	115,000	275,000	115,000
Vendor Deposits	-	-	-	-
Delivery Charges	30,000	30,000	30,000	30,000
Supplies	143,233	140,798	139,341	117,377
Advertising	53,455	52,546	52,002	43,805
Workers Comp Payment (self insured)	300,000	100,000	-	100,000
Insurance	35,000	12,000	67,453	46,712
Repairs & Maintenance	51,353	264,274	49,628	39,896
Rent	71,862	1,002,250	-	-
Utilities	282,769	132,769	132,769	132,769
Property & Other Taxes	-	57,157	-	-
Sales & Use Tax	-	600,108	-	-
Professional Services	20,000	20,000	87,240	20,000
Other Expenses	162,671	159,566	90,468	129,697
Overhead G & A	-	-	-	-
Professional Restructuring Fees (see Note)	-	620,000	-	-
Claims Noticing Agent Fees	-	37,600	-	-
US Trustee Payments	-	30,000	-	-
Other Equipment Leases	519	6,738	33,975	1,212
Wells Fargo Equipment Leases	-	20,000	-	-
Wells Fargo Payments - Term Debt	-	-	192,308	-
Wells Fargo - Interest on all Loans	-	-	60,000	-
<b>Pmts under Cash Collateral Motion</b>	<b>6,290,658</b>	<b>10,426,056</b>	<b>5,694,591</b>	<b>8,117,230</b>
<b>Payments under other Motions</b>				
Utilities Deposits	-	-	-	-
PACA	155,870	-	-	-
503 (b) 9	-	-	-	-
Pre-petition Payroll & Expenses	-	-	-	-
Scholarship Fund	-	-	-	-
<b>Payments under other Motions</b>	<b>155,870</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Total Disbursements</b>	<b>6,446,528</b>	<b>10,426,056</b>	<b>5,694,591</b>	<b>8,117,230</b>
<b>Cash Receipts for the Week</b>	<b>7,761,531</b>	<b>7,627,473</b>	<b>7,579,475</b>	<b>6,404,854</b>
<b>Cash Collateral Beginning Cash Balance</b>	<b>1,989,289</b>	<b>3,304,292</b>	<b>505,709</b>	<b>2,390,593</b>
<b>Cash Collateral Ending Cash Balance</b>	<b>\$ 3,304,292</b>	<b>\$ 505,709</b>	<b>\$ 2,390,593</b>	<b>\$ 678,217</b>
<b>Founder Contribution Beginning Cash Balance</b>	<b>\$ 1,900,000</b>	<b>\$ 1,900,000</b>	<b>\$ 1,035,992</b>	<b>\$ 1,035,992</b>
<b>Disbursements</b>	<b>\$ -</b>	<b>\$ 864,008</b>	<b>\$ -</b>	<b>\$ -</b>
<b>Founder Contribution Ending Cash Balance</b>	<b>\$ 1,900,000</b>	<b>\$ 1,035,992</b>	<b>\$ 1,035,992</b>	<b>\$ 1,035,992</b>
<b>Total Ending Cash Balance</b>	<b>\$ 5,204,292</b>	<b>\$ 1,541,701</b>	<b>\$ 3,426,585</b>	<b>\$ 1,714,209</b>
Estimated Inventory Level	11,403,688	11,414,840	11,180,993	11,360,488

Note: These Professional Restructuring Fees are the aggregate of the Carve Out previously authorized under the Prior Cash Collateral Orders; they are set out here for cash flow information purposes but are not a new professionals' fees Carve Out under this Cash Collateral Budget.