

**UNITED STATES BANKRUPTCY COURT**

**MIDDLE DISTRICT OF TENNESSEE**

<b>IN RE:</b>	)	
	)	
<b>SANTA FE HOLDING COMPANY, INC.</b>	)	<b>Case No. 09-07856</b>
	)	
<b>SANTA FE CATTLE COMPANY, INC.</b>	)	<b>Case No. 09-07857</b>
	)	
<b>NRG, LLC</b>	)	<b>Case No. 09-07858</b>
	)	
<b>TENNESSEE SANTA FE, LLC</b>	)	<b>Case No. 09-07859</b>
	)	
<b>SANTA FE OF ALABAMA, LLC</b>	)	<b>Case No. 09-07860</b>
	)	
<b>SOUTHERN RESTAURANT GROUP OF FRANKLIN, LLC</b>	)	<b>Case No. 09-07861</b>
	)	
<b>SANTA FE OF TUSCALOOSA, ALABAMA, LLC</b>	)	<b>Case No. 09-07862</b>
	)	
<b>SANTA FE OF GADSDEN, ALABAMA, LLC</b>	)	<b>Case No. 09-07863</b>
	)	
<b>SANTA FE OF TROY, ALABAMA, LLC</b>	)	<b>Case No. 09-07864</b>
	)	
<b>SANTA FE OF ROME, GEORGIA, LLC</b>	)	<b>Case No. 09-07865</b>
	)	
<b>SANTA FE OF SHELBYVILLE, INDIANA, LLC</b>	)	<b>Case No. 09-07866</b>
	)	
<b>SANTA FE OF COLUMBUS, MISSISSIPPI, LLC</b>	)	<b>Case No. 09-07867</b>
	)	
<b>SANTA FE OF ARDMORE, OKLAHOMA, LLC</b>	)	<b>Case No. 09-07868</b>
	)	
<b>SANTA FE OF BROKEN ARROW, OKLAHOMA, LLC</b>	)	<b>Case No. 09-07869</b>
	)	
<b>SANTA FE CATTLE COMPANY, INC.</b>	)	<b>Case No. 09-07870</b>

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(Tennessee corporation)	)	
SANTA FE OF MCCOMB, MISSISSIPPI, LLC	)	Case No. 09-07871
	)	
SANTA FE OF ENTERPRISE, ALABAMA, LLC	)	Case No. 09-07872
	)	
SANTA FE OF ALBERTVILLE, ALABAMA, LLC	)	Case No. 09-07873
	)	
SANTA FE OF ADA, OKLAHOMA, LLC	)	Case No. 09-07874
	)	
SANTA FE OF OWENS CROSSROADS, ALABAMA, LLC	)	Case No. 09-07875
	)	
SANTA FE OF BIXBY, OKLAHOMA, LLC	)	Case No. 09-07876
	)	
SANTA FE OF LAWTON, OKLAHOMA, LLC	)	Case No. 09-07877
	)	
SANTA FE OF GLENPOOL, OKLAHOMA, LLC	)	Case No. 09-07878
	)	
	)	Chapter 11
Debtors	)	
	)	Judge George Paine
	)	
	)	Joint Administration
	)	Requested

**EMERGENCY MOTION OF THE DEBTORS (A) FOR INTERIM AND FINAL AUTHORIZATION TO OBTAIN POST-PETITION FINANCING AND INCUR POST-PETITION INDEBTEDNESS, (B) GRANT SENIOR LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS PURSUANT TO §§105, 363 AND 364 OF THE BANKRUPTCY CODE, (C) PERMITTING THE USE OF THE CASH COLLATERAL, AND (D) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001**

Santa Fe Holding Company, Inc., a Delaware corporation, and certain of its affiliates, as debtors and debtors in possession (collectively, the “Debtors”), by and through their undersigned attorneys, hereby request the entry of an emergency interim

order (the “Emergency Interim Order”) and a final order (the “Final Order”); together with the Emergency Interim Order, the “Orders”) pursuant to §§105(a), 363 and 364 of the Bankruptcy Code and Fed. R. Bank. P. 2002, 4001(c) and 9014 authorizing the Debtors to use cash collateral, as that term is defined in 11 U.S.C. § 363 (the “Cash Collateral”) and incur post-petition financing as set forth herein (the “Financing Motion” or the “Motion”). In support of the Motion, the Debtors respectfully represent as follows:

**CONCISE STATEMENT OF RELIEF REQUESTED PURSUANT TO RULE 4001(c)**

1. Debtors seek authority to enter into debtor-in-possession financing (the “DIP Loan”) in the amount of up to \$4,000,000.00 with DBMC Investments, L.L.C. (“Lender” or the “DIP Lender”). Debtors own and operate 27 restaurants under the trade name “Santa Fe Cattle Co. Steaks. Ribs. Fajitas.” Santa Fe Cattle Company restaurants are located in the states of Georgia, Tennessee, Mississippi, Oklahoma, Alabama, Kentucky and Indiana. In addition, there is one franchisee-owned and operated Santa Fe Cattle Company restaurant in the state of Louisiana.

2. The Debtors presently employ approximately 2300 full and part-time employees. The Debtors’ monthly payroll (including benefits) is almost \$2 million. In 2008, the Debtors gross revenue was approximately \$55 million, and in 2009, the Debtors estimate gross revenue to be approximately \$60 million.

3. The Debtors, like most companies in the restaurant and hospitality industry, have been impacted by the economic downturn and present economic environment. Several of the Debtors’ restaurants were generating negative cash flows from operations and were recently closed. These cases were filed, in part, to address the

liabilities arising from those restaurant closings and to provide an opportunity to renegotiate or possibly reject leases on certain other unprofitable restaurants. The Debtors will also seek additional capital investment under a plan of reorganization. One of the reasons for Debtors' filing is to insure that they get access immediately to the funds to be able to timely pay their payroll obligations which are due on Monday, July 20, 2009, and for additional working capital.

4. As detailed further below, the Debtors owe approximately \$15 million in secured debt to various lessors and secured creditors. Upon information and belief, these creditors claim liens on substantially all of the assets of the Debtors. The Debtors will incur negative cash flow before they reach a "break-even" point. In order to sustain their operations pending confirmation of a plan of reorganization, it is necessary for the Debtors to borrow funds to supplement their existing revenues to pay ongoing operational expenses and the costs of administration of the Debtors. If Debtors do not receive an immediate injection of cash by Monday, July 20, 2009, Debtors will be unable to fund payroll and will have no choice but to cease operations.

5. Lender is not a pre-petition lender to any Debtor. Lender is a limited liability company formed by individuals who are shareholders of Holding Co, and/or lessors or lessees of Debtors, who are willing to advance funds to the Debtors on the terms and conditions set forth in the proposed order and the Term Sheet (defined below) in order to provide funds to the Debtors to assist in their restructuring efforts and prevent an immediate shutdown to the detriment of all stakeholders. Debtors are unable to obtain funds in any other fashion.

6. The terms of the DIP Loan are straightforward:<sup>1</sup>
- a) Borrowers: Santa Fe Holding Company, Inc., and the other Debtors, as debtors in possession;
  - b) DIP Lender: DBMC Investments, L.L.C.;
  - c) The DIP Loan / Availability: principal amount of \$1.2 million upon emergency financing approval, and additional advances of up to \$2,800,000.00 following final approval (subject to the conditions set forth in the Term Sheet);
  - d) Purpose: Short-term working capital;
  - e) Financial Terms: Prior to default, all advances shall bear interest at a rate per annum equal to 13.5%. Accrued interest shall be due and payable monthly, payable in kind. The default rate adds an additional 4%;
  - f) Fees: Debtors shall reimburse Lender for all reasonable legal, accounting, appraisal and other fees and expenses incurred by Lender in connection with the DIP Loan, as further set forth in the Term Sheet;
  - g) Maturity: The DIP Loan shall have a maturity date of 130 days after the filing of the bankruptcy petition (such date, the “**Maturity Date**”), and no amortization during that time of interest or principal. The Maturity Date corresponds to the time Debtors anticipate for their reorganization efforts in connection with filing a plan in the first 10 days of this case. All of the obligations under the DIP Loan shall be immediately due and payable upon the earlier of the Maturity Date or the date upon which a default occurs;
  - h) Documentation: simple documentation consisting of the Emergency Interim Order and an attached Term Sheet, rather than a separate credit agreement;

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<sup>1</sup> The following description of the terms of the DIP Financing is intended solely to provide the Court and interested parties with a brief overview of the significant terms thereof. For a complete description of the terms and conditions of the DIP Financing, reference should be made to the proposed DIP Order and the Term Sheet attached thereto (collectively, the “DIP Documents”). This summary is qualified in its entirety by reference to the DIP Documents. In the event of any conflict or inconsistency between the provisions of this Motion and the DIP Documents, the DIP Documents shall control in all respects.

- i) Carve-Out: payment of Debtor's professional fees in the amount set out in the Budget, with an additional Carve-Out of up to \$100,000 following a default;
- j) Collateral: all assets of the Debtors other than most avoidance actions;
- k) Priority and Liens: a first-priority priming lien in all of the Debtors' assets, except for unavoidable liens and interests of equipment lessors in equipment, as to which Lender shall be given a second priority lien. The lien does not extend to avoidance actions, except for the encumbered property as to which any liens may be avoided. Recoveries of cash transfers as preferences or fraudulent transfers are not included in the liens. All borrowings, reimbursement obligations and all other obligations of the Debtors arising in connection with the DIP Loan shall at all times:
  - 1. Pursuant to § 364(c)(1) of the Bankruptcy Code, be entitled to super priority claim status, subject to the Carve-Out;
  - 2. Pursuant to § 364(c)(2) of the Bankruptcy Code, be secured by a perfected first priority lien on all unencumbered property of the Debtors. Unencumbered property shall exclude Debtors' claims and causes of action under §§ 502(d), 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code, but shall subject to entry of the Final Order include any proceeds thereof, subject to the Carve-Out;
  - 3. Pursuant to § 364(c)(3) of the Bankruptcy Code, be secured by a perfected junior lien on all pre- and post-petition property of the Debtors that is subject to valid, perfected and unavoidable liens in existence immediately prior to the Petition Date or to valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by § 546(b) of the Bankruptcy Code, subject to the Carve-Out; and
  - 4. Pursuant to § 364(d)(1) of the Bankruptcy Code, be secured by a first priority senior priming security interest in and lien upon all pre- and post-petition property of the Debtors that is subject to the existing liens presently securing the obligations owed to the Pre-Petition Lenders, subject to the Carve-Out. Such security interests and liens shall be senior in all respects to the interests in such property of the Pre-Petition Lenders arising from current and future liens of the

Pre-Petition Lenders (but subject to unavoidable liens or interests of (i) equipment lessors in equipment, and (ii) lenders secured by a first priority lien on Debtors' equipment in the Debtors' restaurants, against all of which Lender will have a second lien).

- l) Perfection: The lien shall be automatically perfected pursuant to Court order without the need for filings under the Uniform Commercial Code, real estate law, or otherwise;
- m) Covenants: usual for transactions of this kind;
- n) Funding Conditions: Usual for transactions of this kind including, but not limited to: (a) in connection with each advance, agreement between Debtors and Lender to a Budget; (b) entry of an unstayed court order approving the DIP Loan at each stage, (c) in connection with entry of the Final Order approving the DIP Loan, Debtors shall execute a promissory note (the "Note") in the amount of up to \$4,000,000.00 in a form reasonably acceptable to Lender, evidencing their obligations hereunder; (e) the Lender shall be satisfied that no material adverse change has occurred since the last advance; (f) upon the Lender's request, perfection and recordation documentation with respect to the liens in the assets of the Debtors; (g) payment of all fees and expenses of the Lender, including its legal fees and expenses, to the extent then due; (h) to the extent requested by Lender, officer's certificates along with organizational documents of the Debtors, and closing date certificates that representations and warranties are true and correct, and no defaults or events of default exists; (i) no change in control in the super-preferred voting stock of Danny York, except that such stock is required to be placed into a voting trust in favor of Lucius Burch (j) there is no material pending or threatened litigation or other proceeding other than the Petition (as defined hereinafter); and (k) receipt of such other documents, information and reports as the Lender may reasonably request or require to effect the transactions related to the DIP Loan. The parties recognize that Lender shall have no obligation to fund the DIP beyond the amount of \$1.2 million unless Lender, in its sole discretion, determines to make additional advances.;
- o) Events of Default: Usual for transactions of this kind, including but not limited to: (a) conversion to Chapter 7, or appointment of a trustee, or examiner with expanded powers, (b) a material adverse change in the Debtors' financial condition, (c) adverse actions by Debtors against Lender, (d) failure to repay the DIP Loan upon

termination, maturity, or default, (e) any Debtor has made any material misstatement or misrepresentation in connection with the DIP Loan, any draw request, or any of the post-petition monthly reports forwarded to Lender pursuant to this Order; (f) Debtors are out of compliance with any line item of the Budget by more than ten percent (10%) without consent of Lender; (g) the approval of a sale of all or substantially all of the assets of any Debtor pursuant to Section 363 of the Bankruptcy Code, unless Lender is paid in full by the sale proceeds; (h) the submission of a motion by any Debtor seeking additional financing of any sort without the express written consent of Lender which does not provide for payment of Lender in full; (i) the removal of or reduction in authority of Craig Silvey, the hiring or a turnaround manager or CRO to replace or aid Mr. Silvey who is not acceptable to Lender in its sole discretion, or the failure to hire such turnaround manager or CRO following any voluntary resignation or voluntary reduction in duties of Mr. Silvey; (j) the approval of a sale of all or substantially all of the assets of any Debtor pursuant to Section 363 of the Bankruptcy Code, unless Lender is paid in full by the sale proceeds; (k) termination or loss of the Debtors' rights of exclusivity under § 1121 of the Bankruptcy Code to file and obtain acceptances of a plan of reorganization; (l) the failure of the Debtors to file a plan of reorganization within 30 days of the Petition Date, to obtain approval of a Disclosure Statement within 75 days of the Petition Date, to obtain a confirmation order to a plan of reorganization within 120 days of the Petition Date, and to effectuate a plan of reorganization within 131 days of the Petition Date.; or (m) a change in control of a majority of Debtors' board of directors, or of Debtor's management, or more than 50% of Holding Co's outstanding common stock (except through a plan auction), to which Lender has not consented.

- p) Release: Debtors agree to release Lender and its affiliates from any and all claims, whether known or unknown, upon entry of the Final Order.
- q) Other Provisions: The Emergency Interim Order and the attached Term Sheet provide for such other terms as are customary for transactions of this kind, all as more fully set forth therein.
- r) Adequate Protection: The Pre-Petition Lenders will receive the following as adequate protection for its interest in the Pre-Petition Collateral, including Cash Collateral (as defined in the Emergency Interim Order): replacement liens on all postpetition properties of the same type or kind as are covered by its prepetition liens and security interests for the purpose of securing the Pre-Petition Lenders against

any decline in the value thereof resulting from the secured postpetition credit extended to the Debtors by the Lender pursuant to the Emergency Interim Order. Said replacement liens are subject and subordinate only to (i) the security interests and liens granted to the Lender pursuant to the Emergency Interim Order and the attached Term Sheet and (ii) the Carve-Out.

7. Debtors have the right to cure any defaults and the opportunity to return to Court for additional relief in the case of any default. In the event that the Debtors do not cure a default, the stay automatically lifts in favor of Lender unless Debtors obtain a Court order continuing the stay.

8. Consistent with DIP agreements of this type, the DIP Loan provides for a waiver of any surcharge rights under Section 506(c), which would likely not apply in any event as Lender is not the holder of a pre-petition secured “claim” as claim is defined under the Code. Debtors also agree to indemnify Lender against any claims (other than Lender’s gross negligence or willful misconduct), and, upon entry of a final order, for the release of Lender and its affiliates from any claims of the estate.

#### **JURISDICTION AND VENUE**

9. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of Debtor's chapter 11 case and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is Bankruptcy Code §§ 105, 361, 362, 363(c), 364(c)(1)-(3) and 364(d), in addition to Bankruptcy Rules 2002, 4001 and 9014.

## BACKGROUND<sup>2</sup>

10. On this date (the “Petition Date”), the Debtors each filed for relief under chapter 11 of the Bankruptcy Code. The Debtors intend to continue to operate their businesses and manage their properties as debtors in possession, pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

11. On the Petition Date, the Debtors requested that the Court enter an order directing the Debtors’ chapter 11 cases be jointly administered and consolidated for procedural purposes only.

12. This Court is referred to the *Debtors’ Motion for Order Under Fed. R. Bankr. P. 1015(b) Directing Joint Administration of Chapter 11 Cases* (“Joint Administration Motion”) for a detailed discussion of the factual background and circumstances surrounding the Debtors’ commencement of these chapter 11 cases. Capitalized terms not defined herein are as defined in the Joint Administration Motion.

13. The corporate structure of the Debtors is as follows: Santa Fe Holding, a Nevada corporation, is the parent company and 100% owner of Santa Fe Cattle Co., a Delaware corporation. Santa Fe Cattle Co. owns 100% of the membership interests and stock in the remaining Debtors. NRG, TN Santa Fe and Southern Restaurant are Tennessee limited liability companies, and SF Cattle is a Tennessee corporation. SF Alabama, SF Tuscaloosa, SF Gadsden, SF Troy, SF Enterprise, SF Albertville and SF Owens Crossroads are Alabama limited liability companies. SF Rome is a Georgia

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<sup>2</sup> Due to the exigencies of the circumstances, the Debtors have not had time to fully investigate the obligations owed to and security positions of their existing lenders and creditors; accordingly, none of the Debtors’ statements as to their beliefs in the Motion regarding creditors other than the DIP Lender are binding on the Debtors and are all subject to further explanation and investigation at the appropriate times.

limited liability company. SF Shelbyville is an Indiana limited liability company. SF Columbus and SF McComb are Mississippi limited liability companies. SF Ardmore, SF Broken Arrow, SF Ada, SF Bixby, SF Lawton and SF Glenpool are Oklahoma limited liability companies.

14. Santa Fe Holding has authorized and issued common stock and preferred stock. A small portion of Santa Fe Holding's common stock is traded over the counter on the "Pink Sheets".

15. Santa Fe Holding's and Santa Fe Cattle Co.'s principal place of business is in Brentwood, Tennessee. Santa Fe Cattle Co. is the operations entity in the Santa Fe corporate structure and, directly or through wholly-owned entities (each a debtor in this Chapter 11 proceeding), presently operates 27 restaurants under the trade name "Santa Fe Cattle Co. Steaks. Ribs. Fajitas."

16. The Debtors' capital structure consists chiefly of: a secured first lien convertible debenture, a secured second lien convertible debenture, restaurant equipment notes or leases, unsecured trade obligations, and the common and preferred stock.

17. Santa Fe Holding entered into that certain "Securities Purchase Agreement" dated April 30, 2008 with BridgePointe Master Fund, Ltd. ("BridgePointe") MicroCapital Fund, Ltd. and MicroCapital Fund, LP (collectively "MicroCapital"), and Cape One Financial, LP ("Cape One") (collectively the "First Lien Lenders"). Pursuant to the Securities Purchase Agreement, each of the parties received a "10% Senior Secured Convertible Debenture due November 1, 2010" ("Senior Debenture"), convertible for common stock of Santa Fe Holding and secured by substantially all of the Debtors'

assets. The initial principal amount of the Senior Debenture was \$4,000,000, with BridgePointe holding \$2,000,000.00, MicroCapital holding \$1,750,000 and Cape One holding \$250,000. The administrative agent for the First Lien Lenders is Roswell Capital Partners, LLC. The Senior Debenture required payment of interest and principal on a quarterly basis. To date, the Debtors have timely made these quarterly payments and are not in payment default. Certain Debtors also entered into a “Subsidiary Guarantee” wherein they guaranteed the indebtedness under the Senior Debenture. These funds were used for working capital and to fund the Debtors’ expansion of its restaurant chain to new markets in the Southeast and Oklahoma. As of the Petition Date, the remaining principal balance to the First Lien Lenders is approximately \$3,100,000.

18. In December 2008 and January 2009, Santa Fe Holding entered into that certain “Securities Purchase Agreement” with Dynamic Decision Strategic Opportunities (“Dynamic Decision”) and Debt Opportunity Fund, LLLP (“Debt Opportunity”) (collectively the “Second Lien Lenders”). Pursuant to the Securities Purchase Agreement, the Second Lien Lenders received a Senior Subordinated Convertible Note, convertible for common stock of Santa Fe Holding, secured by a subordinated lien on substantially all of the Debtor’s assets. The initial principal amount of the secured obligations to the Second Lien Lenders was \$3,000,000.00 with Dynamic Decision holding the principal amount of \$1,000,000 and Debt Opportunity holding \$2,000,000. Under the Senior Subordinated Convertible Note, no payments were due to the Second Lien Lenders for three years, or until December 2011. The collateral agent for the Second Lien Lenders is VICIS Capital Master Fund. The Second Lien Lenders entered

into a “Subordination Agreement” with the First Lien Lenders. Certain Debtors also entered into a “Subsidiary Guarantee” wherein they guaranteed the indebtedness under the Senior Debenture. These funds were also used for working capital and to fund the Debtors’ expansion of its restaurant chain to new markets in the Southeast and in Oklahoma. As of the Petition Date, the remaining secured obligation to the Second Lien Lenders is approximately \$3,000,000.

19. The Debtors owe approximately \$8 million in other debt to various lessors on restaurant equipment for the individual stores. The principal lenders/lessors on the equipment are Spirit Financial Acquisitions, LLC and Marlin Financial & Leasing Corp (as agent for lessors). As of the Petition Date, the average monthly rent due on the equipment is approximately \$169,000.00.

20. The Santa Fe Cattle Co. restaurants are operated on real property consisting of the buildings and all leasehold improvements that are leased to the Debtors from various landlords. The average monthly rent due under the real property leases is approximately \$540,000.00.

21. The Debtors estimate that, exclusive of the secured debt and equipment and real estate lease obligations, the general unsecured obligations upon filing are approximately \$6.2 million.

22. As noted above, the Debtors owe approximately \$15 million in secured debt to various lessors and secured creditors. Upon information and belief, these creditors claim a lien on substantially all of the assets of the Debtors.

23. As noted above, the Debtors will incur negative cash flow before they

reach a “break-even” point as part of their restructuring efforts. In order to sustain their operations pending confirmation of a plan of reorganization, it is necessary for the Debtors to borrow funds to supplement their existing revenues to pay ongoing operational expenses and the costs of administration of the Debtors.

### **THE PROPOSED DIP FINANCING**

24. Following extensive negotiations, DBMC Investments, L.L.C.<sup>3</sup> has agreed to the terms of a facility for the Debtors to obtain post-petition financing (the “DIP Financing”) up to an aggregate principal amount not to exceed \$ 4,000,000.

25. The Debtors have an immediate and indisputable need for DIP Financing to operate their businesses in chapter 11. Because the Debtors’ existing cash on hand and projected operating revenues will not be sufficient to fund payment of their operating expenses and administrative expenses pending the completion of their restructuring process, it is imperative that the Debtors obtain post-petition financing at the outset of this case. Otherwise, the Debtors will be forced to terminate their business operations and liquidate, to the substantial detriment of the estates and all stakeholders.

26. The Debtors have an immediate need to obtain the DIP Financing and use cash which may constitute Cash Collateral to, among other things, permit the orderly continuation of the operation of their businesses, maintain business relationships with vendors, suppliers and customers, to make payroll and satisfy other working capital and operational needs. The access to sufficient working capital and liquidity through the use of Cash Collateral and the incurrence of new indebtedness for borrowed money is vital to

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<sup>3</sup> The shareholders who own the Lender are non-insiders and consist of Shane B. Morrison, Lucius Burch III, Brad Clark and James Davison. Mr. Burch is also a guarantor of certain of Santa Fe’s obligations.

the preservation and maintenance of the going concern values of the Debtors and to a successful reorganization or sale of Debtors' assets.

27. The Debtors are unable to obtain post-petition financing in the form of unsecured credit allowable as an administrative expense under § 503(b)(1) of the Bankruptcy Code, unsecured credit allowable under §§ 364(a) and (b) of the Bankruptcy Code, or credit secured by liens on the Debtors' assets junior to the liens of the Pre-Petition Lenders, as contemplated by § 364(c) of the Bankruptcy Code.

28. The Debtors therefore determined, in the exercise of their sound business judgment, that the proposal for the DIP Financing provided by the DIP Lender is the most favorable under the circumstances and addresses the Debtors' working capital needs. The Debtors do not believe they could obtain proposals for post-petition financing on terms and conditions more favorable to the Debtors' estates than those offered by the DIP Lender pursuant to the DIP Credit Agreement (as defined below).

29. Before determining to enter into the DIP Financing upon the terms of the DIP Credit Agreement, the Debtors and the DIP Lender conducted lengthy, arm's-length, and good faith negotiations.

30. The DIP Lender is willing to make the DIP Financing available to the Debtors upon the terms and conditions set forth in the DIP Credit Agreement, the Interim Order and the Final Order.

31. Documentation of the Debtor-in-Possession Loan consists of the proposed order to be entered by the Court, and a term sheet attached thereto setting out the terms of the Agreement (the "DIP Documents"). By this Motion, Debtor requests entry of an

order granting the relief as set forth in the proposed Interim Order, attached hereto as Exhibit “1.”

## **BASIS FOR RELIEF**

### **A. Approval of Financing**

32. As described above, it is essential to the continued operation of the Debtors’ business and the success of Debtors’ chapter 11 cases that the Debtors immediately obtain access to sufficient post-petition financing. The preservation of estate assets, the Debtors’ continuing viability and their ability to reorganize depend heavily upon the expeditious approval of the DIP Financing and the related actions requested herein.

33. If a debtor is unable to obtain unsecured credit allowable as an administrative expense under § 503(b)(1) of the Bankruptcy Code, then the Court, after notice and a hearing, may authorize a debtor to obtain credit or incur debt:

- (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;
- (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
- (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

34. In the event a debtor is unable to obtain credit under the provisions of §364(c) of the Bankruptcy Code, a debtor may obtain credit secured by a senior or equal lien on property of the estate that is already subject to a lien, commonly called a “priming

lien.” 11 U.S.C. § 364(d). Such relief may be granted so long as there is adequate protection of the interests of the holder of the lien on the property on which the senior lien is proposed to be granted.

35. The Debtors have pursued various potential avenues of post-petition financing, but have been unable to procure the required funds in the form of unsecured credit or unsecured debt with an administrative priority. In addition, the Debtors have been unable to procure the required funds solely under § 364(c) of the Bankruptcy Code. The Debtors negotiated the DIP Financing at arm’s length and pursuant to the Debtors’ business judgment. The terms and provisions of the DIP Financing are fair and reasonable under the circumstances and reflect the most favorable terms upon which Debtor could obtain post-petition financing.

36. Moreover, the Pre-Petition Lenders are adequately protected, as described in detail herein.

37. The terms and conditions of the DIP Credit Agreement are fair and reasonable and were negotiated by the parties in good faith and at an arm’s length. Accordingly, the DIP Lender should be accorded the benefits of § 364(e) of the Bankruptcy Code in respect of the DIP Financing.

38. The DIP Financing will enable the Debtors to, among other things, (a) maintain the continuity of their operations, (b) maximize the value of their businesses and properties for the benefit of the Debtors’ estates and creditors, and (c) give the Debtors’ vendors, suppliers, and customers the necessary confidence to continue ongoing relationships with the Debtors, which is essential to the successful reorganization or sale

of Debtors' businesses.

**B. Use of Cash Collateral**

39. Section 363(c)(2) of the Bankruptcy Code provides that a debtor “may not use, sell, or lease cash collateral...unless (A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.” 11 U.S.C. § 363(c). Section 363(e) of the Bankruptcy Code provides that upon request of an entity that has an interest in property to be used by a debtor, the court shall prohibit or condition such use as is necessary to provide adequate protection of such interest. 11 U.S.C. § 363(e).

40. A debtor has the burden to establish that the holder of a lien to be subordinated, or whose cash collateral will be used, has adequate protection. 11 U.S.C. § 363(p)(1). Adequate protection must be determined on a case-by-case basis, permitting a debtor maximum flexibility in structuring its adequate protection proposal. *See Id.*; *In re Martin*, 761 F.2d 472, 474 (8th Cir. 1985); *In re George Ruggerie Chrysler-Plymouth, Inc.*, 727 F.2d 1017, 1019 (11th Cir. 1984). Nonetheless, “[a] debtor, attempting to reorganize a business under chapter 11, clearly has a compelling need to use ‘cash collateral’ in its effort to rebuild.” *George Ruggerie*, 727 F.2d at 1019.

41. The Debtors require access to their cash and any proceeds of existing inventory to operate their businesses and preserve their value as a going concern. It is possible, however, that those essential items constitute part of the Pre-Petition Collateral.

42. The proposed Interim Order, if approved, will provide the Debtors with the ability to use cash which may consist of Cash Collateral while providing the Pre-

Petition Lender with adequate protection, as contemplated by §§363(c)(2)(A) and 363(e) of the Bankruptcy Code, to the extent that the cash used constitutes Cash Collateral. The Debtors do not believe that any secured lenders have a perfected lien on their cash; however, the request to use cash which may constitute Cash Collateral and to provide adequate protection for any such perfected lien is being filed out of an abundance of caution.

43. Under section 361 of the Bankruptcy Code, adequate protection may be provided by granting a lienholder an additional or replacement lien to the extent that the usage of the cash collateral results in a decrease in the value of such entity's interest in such property. As discussed above, the proposed Interim Order provides for replacement liens to protect the Pre-Petition Lenders against any diminution in value of their interest in cash which may constitute Cash Collateral. The replacement liens shall be subject and subordinate only to the security interests and liens granted to the DIP Lender and the Carve-Out.

### **C. Adequate Protection**

44. Adequate protection is easily established here because the proposed DIP Loan will preserve the Debtors' going concern value and benefit all of the Debtors' creditors, including the secured creditors, by making possible the Debtors' continued operations and enhancing the opportunity for their successful reorganization.

45. The proposed priming facility will augment and preserve the value of the prepetition secured creditors' collateral. Absent continuing expenditures by the Debtors for necessary operations on an emergency basis, the assets which comprise the

prepetition collateral would be essentially valueless. If the Debtors are unable to obtain debtor-in-possession financing, their operations will immediately fall apart. Specifically, the Debtors' employees will not be paid, which will result in a mass exodus of those employees from the premises, the Debtors will not have access to purchase food, beverage and other supplies, and will be unable to serve diners; the Debtors' inventory of perishable goods will spoil and become worthless, the Debtors' restaurants will be forced to close, and the Debtors' leases of real estate and equipment will be terminated. If the Debtors' operations are forced to cease, there will be no value to the enterprise and virtually no value to the collateral of the secured creditors. However, if the expenditures are paid and the Debtors' operations continue without disruption, then the going concern value of the Debtors will be preserved, which constitutes adequate protection of the secured creditors.

46. It is well established that adequate protection exists by virtue of augmentation (or preservation) of the value of a secured creditor's collateral of the type proposed here. *See eg. In re Pine Lake Village Apartment Co.*, 19 B.R. 819, 826 (Bankr. S.D.N.Y. 1982) (creditor was adequately protected where debtor used cash collateral to maintain and preserve the value of the collateral); *In re Sky Valley, Inc.*, 100 B.R. 107, 114 (Bankr. N.D.Ga. 1988) ("an increase in the value of the collateral generated by the improvements resulting from the superpriority financing could constitute adequate protection"); *In re Aqua Assocs.*, 123 B.R. 192, 198-99 (Bankr. E.D.Pa. 1991) (approving priming loan because loan proceeds would be used to enhance the value of the secured creditor's collateral); *In re Ralar Distributors, Inc.*, 166 B.R. 3, 6 (Bankr. D.Mass. 1994),

*disagreed with on other grounds, In re Winthrop Old Farm Nurseries, Inc.*, 50 F.3d 72 (1st Cir. 1995) (“[a]ctivities of a debtor can enhance collateral value and thereby provide adequate protection”); *In re T.H.B. Corp.*, 85 B.R. 192, 195 (Bankr. D.Mass. 1988) (finding adequate protection where proceeds of accounts receivables were being used to generate new inventory and accounts, thus resulting in stability in collateral value).

47. For example, in *In re Stein*, 19 B.R. 458, 460 (Bankr. E.D.Pa. 1982), the court allowed the debtor’s use of cash collateral even though the prepetition creditor was undersecured and had no equity cushion in place because it found that the debtor’s use of the cash collateral was necessary to its continued operations and that “the [creditors’s] secured position can only be enhanced by the continued operation of the [debtor’s business].” *See also In re Ledgemere Land Corp.*, 125 B.R. 58, 62 (Bankr. D.Mass. 1991), *disagreed with on other grounds, In re Winthrop Old Farm Nurseries, Inc.*, 50 F.3d 72 (1st Cir. 1995) (cash collateral usage authorized where debtor’s construction and marketing efforts adequately protected creditor’s interest in collateral through realization of fair market rather than liquidation value).

48. Here, the DIP Loan will preserve and indeed augment the value of the prepetition secured creditors’ interest in their collateral, by both preserving the existing asset base and by allowing the Debtors to continue their operations, which will necessarily enhance the current value of the Debtors’ business. The DIP Loan is not “value dilutive” at all, but rather will augment the present value of the prepetition secured creditors’ collateral and the estate.

49. In contrast, the impact on the prepetition secured creditors’ collateral if the

DIP Loan is not approved will be devastating. If the DIP Loan is not approved, the Debtors will not be able to continue operating the restaurants. In that case, the Debtors would be forced to cease operations within days and would ultimately liquidate. Unquestionably, the value of the prepetition secured creditors' collateral in this scenario would be vastly less than the value of their collateral in a going concern scenario with the DIP Loan in place.

50. Based upon the foregoing, the Debtors submit that the prepetition secured creditors are adequately protected by the DIP Loan itself and that they would suffer enormous erosion in the value of their interests in collateral if the DIP Loan is not promptly approved.

**D. Interim Approval Should Be Granted**

51. Rules 4001(b) and 4001(c) of the Federal Rules of Bankruptcy Procedure provide that a final hearing (the "Final Hearing") on a motion to use cash collateral pursuant to § 363 and to obtain credit pursuant to § 364 may not be commenced earlier than fifteen (15) days after the service of such motion. Upon request, however, the court may conduct a preliminary expedited hearing on the motion and authorize the use of cash collateral and the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

52. Pursuant to Rule 4001(b) and 4001(c), the Debtors requests that the Court conduct an expedited preliminary hearing on the Motion (the "Interim Hearing") and grant the relief requested in the proposed Interim Order in order to (a) maintain the Debtors' ongoing operations and (b) avoid the immediate and irreparable harm and

prejudice to Debtors' estates and all parties in interest that would otherwise ensue.

53. The Debtors have an urgent and immediate need for cash to continue to operate. The Debtors will be immediately and irreparably harmed absent authorization from the Court to use cash which may constitute Cash Collateral and obtain secured credit as requested on an interim basis pending a Final Hearing on the Motion. In the short-term, if the Debtors are unable to continue their business operations, any chance of reorganization will evaporate and the reorganization value of the Debtors will disappear, to the immediate detriment of the creditors, employees and all stakeholders of the Debtors, and to the detriment of all parties in interest.

#### **REQUEST FOR FINAL HEARING**

54. The Debtors also request that the Court schedule the final hearing on this Motion, with objections, if any, to the Final Order being due in writing on or before the date that is at least five (5) business days prior to the Final Hearing.

#### **NOTICE AND PRIOR MOTIONS**

55. Notice of this Motion has been given to: (i) the United States Trustee; (ii) the First Lien and Second Lien Lenders through their respective counsel; (iii) the 20 largest unsecured creditors on a consolidated basis of the Debtors until any official committee for unsecured creditor is formed; (iv) all parties who request notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure; (v) the Tennessee Attorney General; (vi) the Internal Revenue Service; (vii) the proposed DIP Lenders; (viii) counsel to the proposed DIP Lenders; and (ix) all parties entitled to notice under Rule 2002(j) of the Federal Rules of Bankruptcy Procedure. In light of the nature of the relief requested,

the Debtors submit that no further notice is required.

**WHEREFORE**, the Debtors respectfully request that the Court enter an order substantially similar to the order attached hereto as Exhibit "1" and grant such further relief as this Court may deem just and proper.

Respectfully submitted,

*/s/ William H. Patrick, III*

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Tristan Manthey, La. Bar No. 24539

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**Proposed Local Counsel for Santa Fe  
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Named Affiliates**

## NOTICE ANNEX 1

Pursuant to 11 U.S.C. § 342, the following sets forth the name, addresses and last four digits of the tax identification number for each of the referenced Debtors:

<u>DEBTORS AND ADDRESSES</u>	<u>CASE NO.</u>	<u>TAX I.D. NO.</u>
Santa Fe Holding Company, Inc. 7109 Bakers Bridge Road Brentwood, TN 37027	09-07856	xx-xxx1456
Santa Fe Cattle Company, Inc. 7109 Bakers Bridge Road Brentwood, TN 37027	09-07857	xx-xxx6634
NRG, LLC 7109 Bakers Bridge Road Brentwood, TN 37027	09-07858	xx-xxx2289
Tennessee Santa Fe, LLC 7109 Bakers Bridge Road Brentwood, TN 37027	09-07859	xx-xxx3135
Santa Fe of Alabama 7109 Bakers Bridge Road Brentwood, TN 37027	09-07860	xx-xxx7550
Southern Restaurant Group of Franklin, LLC 7109 Bakers Bridge Road Brentwood, TN 37027	09-07861	xx-xxx3024
Santa Fe of Tuscaloosa, Alabama, LLC 7109 Bakers Bridge Road Brentwood, TN 37027	09-07862	xx-xxx4895
Santa Fe of Gadsden, Alabama, LLC 7109 Bakers Bridge Road Brentwood, TN 37027	09-07863	xx-xxx3351
Santa Fe of Troy, Alabama, LLC 7109 Bakers Bridge Road Brentwood, TN 37027	09-07864	xx-xxx4876
Santa Fe of Rome, Georgia, LLC	09-07865	xx-xxx8165

3334.18761.170657.3

7109 Bakers Bridge Road  
Brentwood, TN 37027

Santa Fe of Shelbyville, Indiana, LLC 09-07866 xx-xxx7059  
7109 Bakers Bridge Road  
Brentwood, TN 37027

Santa Fe of Columbus, Mississippi, LLC 09-07867 xx-xxx2952  
7109 Bakers Bridge Road  
Brentwood, TN 37027

Santa Fe of Ardmore, Oklahoma, LLC 09-07868 xx-xxx7785  
7109 Bakers Bridge Road  
Brentwood, TN 37027

Santa Fe of Broken Arrow, Oklahoma, LLC 09-07869 xx-xxx5325  
7109 Bakers Bridge Road  
Brentwood, TN 37027

Santa Fe Cattle Company, Inc. (Tennessee Corporation) 09-07870 xx-xxx8680  
7109 Bakers Bridge Road  
Brentwood, TN 37027

Santa Fe of McComb, Mississippi, LLC 09-07871 xx-xxx2859  
7109 Bakers Bridge Road  
Brentwood, TN 37027

Santa Fe of Enterprise, Alabama, LLC 09-07872 xx-xxx9153  
7109 Bakers Bridge Road  
Brentwood, TN 37027

Santa Fe of Albertville, Alabama, LLC 09-07873 xx-xxx1202  
7109 Bakers Bridge Road  
Brentwood, TN 37027

Santa Fe of Ada, Oklahoma, LLC 09-07874 xx-xxx8241  
7109 Bakers Bridge Road  
Brentwood, TN 37027

Santa Fe of Owens Crossroads, Alabama, LLC 09-07875 xx-xxx8734  
7109 Bakers Bridge Road  
Brentwood, TN 37027

Santa Fe of Bixby, Oklahoma, LLC 09-07876 xx-xxx1267

7109 Bakers Bridge Road  
Brentwood, TN 37027

Santa Fe of Lawton, Oklahoma, LLC  
7109 Bakers Bridge Road  
Brentwood, TN 37027

09-07877      xx-xxx9202

Santa Fe of Glenpool, Oklahoma, LLC  
7109 Bakers Bridge Road  
Brentwood, TN 37027

09-07878      xx-xxx3362