

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

| | | |
|---|---|--|
| In re: |) | Chapter 11 |
| |) | |
| RC SOONER HOLDINGS, LLC, <u>et al.</u> , ¹ |) | Case No. 10-10528 (BLS) |
| |) | |
| Debtors. |) | (Jointly Administered) |
| |) | |
| |) | Objection Deadline: March 11, 2010 at 4:00 p.m. (ET) |
| |) | Hearing Date March 18, 2010 at 10:30 a.m. (ET) |

**NOTICE OF MOTION FOR ADMINISTRATIVE ORDER UNDER 11 U.S.C. §§ 105(a)
AND 331 ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION AND
REIMBURSEMENT OF EXPENSES FOR PROFESSIONALS**

PLEASE TAKE NOTICE that on February 22, 2010, each of the above-captioned Debtors and Debtors in Possession (collectively, the "Debtors") filed the Motion for Administrative Order Under 11 U.S.C. §§105(a) and 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals (the "Motion") [Docket No. 11] with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). A copy of the Motion is attached hereto as Exhibit A.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be in writing, filed with the Clerk of the Bankruptcy Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, and served upon the undersigned proposed counsel for the

¹ The Debtors and the last four digits of their taxpayer identification numbers are: RC Sooner Holdings, LLC (7904); RC Brixton Square Owner, LLC (8002); RC Cedar Crest Owner, LLC (7914); RC Fulton Plaza Owner, LLC (8011); RC Magnolia Owner, LLC (7998); RC Pomeroy Park Owner, LLC (7939); RC Salida Owner, LLC (7947); RC Savannah South Owner, LLC (7983); RC Southern Hills Owner, LLC (7958); Brixton Square Apartments, LLC (1844); CC Apartments, LLC (1798); Fulton Plaza Apartments, LLC (4344); Magnolia Manor Apartments, LLC (4486); Pomeroy Park Apartments, LLC (1649); Salida Apartments, LLC (1915); Savannah South Apartments, LLC (8586); and Southern Hills Villa Apartments, LLC (1721). The business address for each of the Debtors where notices should be sent is 1515 Broadway, 11th Floor, New York, New York 10036-8901.

Debtors and Debtors in Possession on or before **March 11, 2010 at 4:00 p.m. (Eastern Standard Time)**.

PLEASE TAKE FURTHER NOTICE that if an objection is timely filed, served and received and such objection is not otherwise timely resolved, a hearing to consider such objection and the Motion will be held before The Honorable Brendan L. Shannon at the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 6th Floor, Courtroom No. 1, Wilmington, DE 19801 on **March 18, 2010 at 10:30 a.m. (Eastern Standard Time)**.

IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: February 25, 2010
Wilmington, Delaware

Respectfully Submitted,

BALLARD SPAHR LLP

By: /s/ Christopher S. Chow

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Proposed Counsel for the Debtors and Debtors in
Possession

EXHIBIT A

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

| | | |
|---|---|------------------------|
| In re: |) | Chapter 11 |
| |) | |
| RC SOONER HOLDINGS, LLC, et al., ¹ |) | Case No. 10-10528() |
| |) | |
| Debtors. |) | (Jointly Administered) |
| |) | |
| |) | Objection Deadline: |
| |) | Hearing Date: |

**MOTION FOR ADMINISTRATIVE ORDER UNDER 11 U.S.C. §§ 105(a) AND 331
ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION AND
REIMBURSEMENT OF EXPENSES FOR PROFESSIONALS**

RC Sooner Holdings, LLC (“RC Sooner” or “Company”), and its affiliated debtors and debtors in possession (collectively, the “Debtors”), hereby move this Court for entry of an administrative order establishing procedures for interim compensation and reimbursement of expenses for professionals (the “Motion”). In support of this Motion, the Debtors respectfully represent as follows:

Jurisdiction

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A) and (O).
2. Venue of these chapter 11 cases and this Motion are proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ The Debtors and the last four digits of their taxpayer identification numbers are: RC Sooner Holdings, LLC (7904); RC Brixton Square Owner, LLC (8002); RC Cedar Crest Owner, LLC (7914); RC Fulton Plaza Owner, LLC (8011); RC Magnolia Owner, LLC (7998); RC Pomeroy Park Owner, LLC (7939); RC Salida Owner, LLC (7947); RC Savannah South Owner, LLC (7983); RC Southern Hills Owner, LLC (7958); Brixton Square Apartments, LLC (1844); CC Apartments, LLC (1798); Fulton Plaza Apartments, LLC (4344); Magnolia Manor Apartments, LLC (4486); Pomeroy Park Apartments, LLC (1649); Salida Apartments, LLC (1915); Savannah South Apartments, LLC (8586); and Southern Hills Villa Apartments, LLC (1721). The business address for each of the Debtors where notices should be sent is 1515 Broadway, 11th Floor, New York, New York 10036-8901.

3. The statutory bases for the relief requested herein are 11 U.S.C. §§ 105(a) and 331 and Local Rule 2016-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules").

Background

4. On or about February 22, 2010 (the "Petition Date"), each of the Debtors filed their respective voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors thereafter have continued to manage their business and properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. The Debtors own, operate and maintain a portfolio of 796 multi-family residential units divided among eight (8) separate apartment complexes (collectively, the "Apartments") for lease in Tulsa, Oklahoma. RC Sooner is the direct parent of eight (8) Oklahoma limited liability companies (collectively, the "RC LLCs"², and together with RC Sooner, the "Purchasers") that were formed in October 2009 for the purpose of acquiring 100% of the membership interests of eight (8) existing Oklahoma limited liability companies that own the Apartments (collectively, the "Apartment LLCs"³). The purchase price of the acquisition included the assumption of approximately \$27 million in outstanding loans and mortgages (the

² The RC LLCs consist of the following co-debtor subsidiaries of RC Sooner: RC Brixton Square Owner, LLC; RC Cedar Crest Owner, LLC; RC Fulton Plaza Owner, LLC; RC Magnolia Owner, LLC; RC Pomeroy Park Owner, LLC; RC Salida Owner, LLC; RC Savannah South Owner, LLC and RC Southern Hills Owner, LLC. RC Sooner is also the direct parent of non-filing entity RC Old South Owner, LLC, whose real estate assets are not subject to loans held by the Federal National Mortgage Association.

³ The Apartment LLCs consist of the following co-debtor indirect subsidiaries of RC Sooner: Brixton Square Apartments, LLC; CC Apartments, LLC; Fulton Plaza Apartments, LLC; Magnolia Manor Apartments, LLC; Pomeroy Park Apartments, LLC; Salida Apartments, LLC; Savannah South Apartments, LLC and Southern Hills Villa Apartments, LLC. RC Sooner is also the ultimate parent of non-filing entity Old South Apartments, LLC, whose loan is not held by the Federal National Mortgage Association.

"Loans and Mortgages") currently held by the Federal National Mortgage Association ("Fannie Mae").

6. Unbeknownst to the Purchasers, however, the sellers of the Apartment LLCs and their brokers had engaged in a pattern of intentional misconduct and fraudulent misrepresentation from the very outset of negotiations for the sale of the Apartments and the Apartment LLCs, which misrepresentations included the failure to inform the Purchasers that the Loans and Mortgages had been in default since approximately September 2, 2009, and remained in default as of the closing on or about October 29, 2009.

7. Fannie Mae was not informed of the Purchasers' purchase of the Apartment LLCs until late January, 2010, and the Company was not made aware of the existence of the defaults under the Loans and Mortgages until that same time, the sellers having actively concealed such facts from both Fannie Mae and the Company as recently as the final week of January, 2010.

8. Upon learning of the purchase of the Apartment LLCs, Fannie Mae declared a non-monetary default on account of the transfer of the Loans and Mortgages to the Company without Fannie Mae's consent. Fannie Mae subsequently initiated state court actions in Oklahoma against the Apartment LLCs and certain of the sellers petitioning for foreclosure and the appointment of a receiver against all the Apartments. Hearings for the appointment of a receiver with respect to the Apartment LLCs have been scheduled for February 23, 2010.

9. Due to the imminent threat of Fannie Mae's state court actions, the Debtors commenced these cases on the Petition Date in order to provide sufficient time for them to, among other things, pursue claims against the sellers and their brokers and negotiate a resolution of the Loan and Mortgage defaults with Fannie Mae, all of which efforts will enable

the Debtors to preserve and maximize the value of their business for the benefit of their creditors and other interested parties.

10. Additional factual background regarding the Debtors, including their current and historical business operations and the events precipitating these chapter 11 filings, is set forth in detail in the Affidavit of Daniel Gordon in Support of Chapter 11 Petitions and First Day Pleadings, and is incorporated herein by reference.

11. No trustee, examiner, or committee has been appointed in any of the Debtors' cases:

Relief Requested

12. Pursuant to sections 105(a) and 331 of the Bankruptcy Code, the Debtors request that the Court establish procedures for compensating and reimbursing Court-approved, retained professionals on a monthly basis similar to those recently established in other chapter 11 cases in this District. Such an order will streamline the professional compensation process and enable the Court and all other parties to monitor more effectively the professional fees incurred in these chapter 11 cases. Further, it will avoid forcing the professionals to finance these bankruptcy cases while awaiting final approval of their fees and expenses.

13. Briefly stated, the requested procedures would permit each retained professional subject to these procedures to present to the Debtors, the United States Trustee, counsel to the Debtors' prepetition lender, counsel to any official committee of unsecured creditors appointed by the United States Trustee (the "Committee") to serve in these chapter 11 cases, and certain other interested parties, an application for interim approval and allowance of fees for services rendered and expenses incurred by each retained professional during the immediately preceding month.

14. Specifically, the Debtors propose that, except as otherwise provided in an order of the Court authorizing the retention of a particular professional, the professionals retained pursuant to an order of the Court in these cases (collectively, the "Professionals") be permitted to seek interim payment of compensation and reimbursement of expenses in accordance with the following procedures (collectively, the "Compensation Procedures"):

a. No earlier than the 25th day of each calendar month, each Professional seeking interim compensation shall file an application (the "Monthly Fee Application") with the Court pursuant to section 331 of the Bankruptcy Code for interim approval and allowance of compensation for services rendered and reimbursement of expenses incurred during the immediately preceding month (the "Compensation Period").

b. Each Monthly Fee Application shall comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), applicable Third Circuit law and the Local Rules of this Court and shall be served upon the following parties (the "Notice Parties"):

- (i) RC Sooner Holdings, LLC, et al., 1515 Broadway, FL 11, New York, NY 10036-8901 Attention: Daniel Gordon;
- (ii) counsel for the Debtors, Ballard Spahr LLP, 919 N. Market Street, 12th Floor, Wilmington, DE 19801, Attention: Tobey M. Daluz, Esquire and Christopher S. Chow, Esquire;
- (iii) counsel for Fannie Mae, the Debtors' prepetition lender, _____;
- (iv) counsel to any official committee of unsecured creditors, if appointed by the United States Trustee; and
- (v) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801-3519, Attention: Patrick Tinker, Esquire.

c. Each Notice Party shall have twenty (20) days after service of a Monthly Fee Application to object to such application (the "Objection Deadline"). Upon the expiration of the Objection Deadline, each Professional may file a certificate of no objection or a certificate of partial objection with the Court, whichever is applicable, after which the Debtors are authorized to pay each Professional an amount (the "Actual Monthly Payment") equal to the lesser of (i) 80 percent of the fees and 100 percent of the expenses requested in the Monthly Fee Application (the "Maximum Payment") or (ii) 80 percent of the fees and 100 percent of the expenses not subject to an objection.

d. If any Notice Party objects to a Professional's Monthly Fee Application, it must file a written objection with the Court and serve it on the Professional and each of the Notice Parties so that it is received on or before the Objection Deadline. Thereafter, the objecting party and the Professional may attempt to resolve the objection on a consensual basis. If the parties are unable to reach a resolution of the objection within 20 days after service of the objection, then the Professional may either (i) file a response to the objection with the Court, together with a request for payment of the difference, if any, between the Maximum Payment and the Actual Monthly Payment made to the affected Professional (the "Incremental Amount"); or (ii) forego payment of the Incremental Amount until the next quarterly or final fee application hearing, at which time the Court will consider and dispose of the objection, if requested by the parties.

e. Beginning with the period ending on May 31, 2010, and at three month intervals or such other intervals convenient to the Court ("Quarterly Period"), each Professional shall file with the Court and serve upon the Notice Parties, pursuant to section 331 of the Bankruptcy Code, an interim application for allowance of compensation and

reimbursement of expenses, of the amounts sought in the Monthly Fee Applications filed during such period (the "Quarterly Fee Application"). The Quarterly Fee Application must include a summary of the Monthly Fee Applications that are the subject of the request and any other information requested by the Court or required by the Local Rules. A Quarterly Fee Application must be filed and served within 30 days of the conclusion of the Quarterly Period. The first Quarterly Fee Application should cover the time between the commencement of these cases through and including May 31, 2010. Any Professional who fails to file a Quarterly Fee Application when due will be ineligible to receive further interim payments of fees or expenses under the compensation procedures until such time as the Quarterly Fee Application is submitted.

f. The Debtors shall request that the Court schedule a hearing on the Quarterly Fee Applications at least once every three (3) months or at such other intervals as the Court deems appropriate.

g. The pendency of an objection to payment of compensation or reimbursement of expenses will not disqualify a Professional from future payment of compensation or reimbursement of expenses, unless the Court orders otherwise.

h. Neither the payment of nor the failure to pay, in whole or in part, monthly compensation and reimbursement of expenses, nor the filing of or failure to file an objection, will bind any party in interest or the Court with respect to the allowance of quarterly or final applications for compensation and reimbursement of expenses of Professionals.

i. All fees and expenses paid to Professionals are subject to disgorgement until final allowance by the Court.

15. The procedures requested in this Motion will relieve the burden on the Court imposed by alternative interim compensation procedures that require monthly court orders, while preserving all rights of objection, enabling the parties to closely monitor costs of administration, and enabling Professionals to maintain a level cash flow.

Authority for the Requested Relief

16. Section 331 of the Bankruptcy Code provides, in relevant part, as follows:

A trustee, an examiner, a debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title. . . .

11 U.S.C. § 331.

17. Section 105(a) of the Bankruptcy Code provides in relevant part, as follows:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title . . . shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules

11 U.S.C. § 105(a).

18. Procedures comparable to those proposed in this Motion have been established in other chapter 11 cases in this District.⁴ Such an order will permit the Court, the

⁴ See, e.g., *In re Pacific Energy Resources LTD*, Case No. 09-10785 (KJC) (Bankr. D.Del. April 8, 2009); *In re G.I. Joe's Holding Corporation and G.I. Joe's Inc.*, Case No. 09-10713 (KG) (Bankr. D.Del. April 2, 2009); *In re Building Materials Holding Corporation*, Case No. 09-12074 (KJC) (Bankr. D.Del. July 14, 2009); *In re Magna Entertainment Corp.*, Case No. 09-10720 (MFW) (March 25, 2009); *In re SemCrude, L.P.*, Case No. 08-11525 (BLS) (Bankr. D.Del. August 18, 2008).

Office of the United States Trustee, and all other interested parties to monitor the fees incurred more effectively. Further, such procedures are needed to avoid having professionals fund the reorganization case. *See, e.g., In re Mariner Post-Acute Network, Inc.*, 257 B.R. 723, 727-28 (Bankr. D.Del. 2000) (court established procedures for monthly interim compensation). More frequent payment of professionals is appropriate in large cases, where the professionals are investing large quantities of time and thus payment only once every 120 days may impose an "intolerable burden on them and may place them at a significant disadvantage to the professionals retained by the creditors." *Id.* In addition, a monthly payment schedule can better allow the Debtors to manage their cash flow and can avoid the necessity of paying a large pre-petition retainer. *Id.* at 728. The Debtors submit that the procedures sought herein are appropriate considering the above concerns.

WHEREFORE, the Debtors respectfully request that this Court enter an order approving interim compensation procedures on the terms and conditions set forth above, and granting such other and further relief as the Court deems just and proper.

Dated: February 22, 2010
Wilmington, Delaware

Respectfully Submitted,

BALLARD SPAHR LLP

By: /s/ Christopher S. Chow

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Proposed Counsel for the Debtors and Debtors in Possession

⁵ Admitted in Maryland. Admission to Delaware pending. A motion seeking *pro hac vice* admission in this case will be filed.

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

| | | |
|---|---|-------------------------------|
| In re: |) | Chapter 11 |
| |) | |
| RC SOONER HOLDINGS, LLC, <u>et al.</u> ¹ |) | Case No. 10- <u>10528</u> () |
| |) | |
| Debtors. |) | (Jointly Administered) |
| |) | |
| |) | Related Docket No. _____ |

**ORDER UNDER 11 U.S.C. §§ 105(a) AND 331 ESTABLISHING
PROCEDURES FOR INTERIM COMPENSATION AND
REIMBURSEMENT OF EXPENSES FOR PROFESSIONALS**

Upon consideration of the motion (the "Motion")² of RC Sooner Holdings, LLC and the above-captioned debtors and debtors in possession (collectively, the "Debtors"), seeking entry of an order establishing procedures for interim compensation and reimbursement of expenses for professionals, and upon consideration of the Affidavit of Daniel Gordon in Support of Chapter 11 Petitions and First Day Pleadings; it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors and other parties in interest; it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (O); it appearing that venue of these chapter 11 cases and the Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; due and adequate

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² Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to them in the motion.

notice of the Motion having been given under the circumstances; and after due deliberation and cause appearing therefor; it is hereby

ORDERED that the Motion is GRANTED; and it is further

ORDERED that, except as may otherwise be provided in Court orders authorizing the retention of specific professionals, all Professionals (as defined in the Motion) may seek interim compensation and reimbursement of expenses in accordance with following procedures:

a. No earlier than the 25th day of each calendar month, each Professional seeking interim compensation shall file an application (the "Monthly Fee Application") with the Court pursuant to section 331 of the Bankruptcy Code for interim approval and allowance of compensation for services rendered and reimbursement of expenses incurred during the immediately preceding month (the "Compensation Period").

b. Each Monthly Fee Application shall comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), applicable Third Circuit law and the Local Rules of this Court and shall be served upon the "Notice Parties" set forth in the Motion.

c. Each Notice Party shall have twenty (20) days after service of a Monthly Fee Application to object to such application (the "Objection Deadline"). Upon the expiration of the Objection Deadline, each Professional may file a certificate of no objection or a certificate of partial objection with the Court, whichever is applicable, after which the Debtors are authorized to pay each Professional an amount (the "Actual Monthly Payment") equal to the lesser of (i) 80 percent of the fees and 100 percent of the expenses requested in the Monthly Fee Application (the "Maximum Payment") or (ii) 80 percent of the fees and 100 percent of the expenses not subject to an objection.

d. If any Notice Party objects to a Professional's Monthly Fee Application, it must file a written objection with the Court and serve it on the Professional and each of the Notice Parties so that it is received on or before the Objection Deadline. Thereafter, the objecting party and the Professional may attempt to resolve the objection on a consensual basis. If the parties are unable to reach a resolution of the objection within 20 days after service of the objection, then the Professional may either (i) file a response to the objection with the Court, together with a request for payment of the difference, if any, between the Maximum Payment and the Actual Monthly Payment made to the affected Professional (the "Incremental Amount"); or (ii) forego payment of the Incremental Amount until the next quarterly or final fee application hearing, at which time the Court will consider and dispose of the objection, if requested by the parties.

e. Beginning with the period ending on May 31, 2010, and at three month intervals or such other intervals convenient to the Court ("Quarterly Period"), each Professional shall file with the Court and serve upon the Notice Parties, pursuant to section 331 of the Bankruptcy Code, an interim application for allowance of compensation and reimbursement of expenses, of the amounts sought in the Monthly Fee Applications filed during such period (the "Quarterly Fee Application"). The Quarterly Fee Application must include a summary of the Monthly Fee Applications that are the subject of the request and any other information requested by the Court or required by the Local Rules. A Quarterly Fee Application must be filed and served within 30 days of the conclusion of the Quarterly Period. The first Quarterly Fee Application should cover the time between the commencement of these cases through and including May 31, 2010. Any Professional who fails to file a Quarterly Fee Application when due will be ineligible to receive further interim

payments of fees or expenses under the compensation procedures until such time as the Quarterly Fee Application is submitted.

f. The Debtors shall request that the Court schedule a hearing on the Quarterly Fee Applications at least once every three (3) months or at such other intervals as the Court deems appropriate.

g. The pendency of an objection to payment of compensation or reimbursement of expenses will not disqualify a Professional from future payment of compensation or reimbursement of expenses, unless the Court orders otherwise.

h. Neither the payment of nor the failure to pay, in whole or in part, monthly compensation and reimbursement of expenses, nor the filing of or failure to file an objection, will bind any party in interest or the Court with respect to the allowance of quarterly or final applications for compensation and reimbursement of expenses of Professionals.

i. All fees and expenses paid to Professionals are subject to disgorgement until final allowance by the Court.

IT IS FURTHER ORDERED that the Debtors shall send a notice of hearing with respect to the Fee Applications, if a hearing is set, to the Notice Parties, as designated above, and all parties who have filed a notice of appearance with the Clerk of this Court and requested such notice.

IT IS FURTHER ORDERED that the Debtors shall include all payments to Professionals on their monthly operating reports, detailed so as to state the amount paid to each of the Professionals.

IT IS FURTHER ORDERED that all time periods set forth in this Order shall be calculated in accordance with Rule 9006(a) of the Federal Rules of Bankruptcy Procedure.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated:

UNITED STATES BANKRUPTCY JUDGE