Exhibit A

KUTAK ROCK LLP
DRAFT 03/08/12

DEBTOR-IN-POSSESSION
CREDIT AND SECURITY AGREEMENT

Dated as of _____ ___, 2012

Between

WATERLOO RESTAURANT VENTURES, INC.,

as Borrower,

and

GENERAL ELECTRIC CAPITAL CORPORATION,

as Lender

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DEBTOR-IN-POSSESSION CREDIT AND SECURITY AGREEMENT

This DEBTOR-IN-POSSESSION CREDIT AND SECURITY AGREEMENT (as amended, supplemented or modified from time to time, this "Agreement"), dated as of _____ ___, 2012 (the "Agreement Date"), between WATERLOO RESTAURANT VENTURES, INC., a Delaware corporation (the "Borrower"), and GENERAL ELECTRIC CAPITAL CORPORATION, a Delaware corporation (with all its successors and assigns, the "Lender").

RECITALS

WHEREAS, on March 5, 2012 (the "Petition Date"), the Borrower (a) commenced a case (the "Chapter 11 Case") under Chapter 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Texas in Dallas, Texas (the "Bankruptcy Court"), and (b) has retained possession of its assets and is authorized under the Bankruptcy Code to continue the operation of its businesses as debtor-in-possession; and

WHEREAS, the Borrower and the Lender wish to enter into an agreement to provide a senior, secured, superpriority debtor-in-possession financing facility in the amount of up to the Commitment (as defined below), to be used by the Borrower to provide liquidity for the Borrower to fund working capital for its business operations after the Petition Date in accordance with a budget agreed to by the Lender and the Borrower, a copy of which is attached hereto as Exhibit A, (the "Budget").

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS; CERTAIN TERMS

Section 1.01 Definitions. All terms defined in Article 1, 2A, 5, 8 or 9 of the UCC, as in effect on the date of this Agreement, are used herein with the meanings therein ascribed to them; such terms include "account", "account debtor", "chattel paper", "commercial tort claim", "control", "deposit account", "document", "equipment", "financial asset", "fixtures", "general intangibles", "goods", "instrument", "inventory", "investment property", "letter of credit", "letter-of-credit right", "money", "payment intangible", "proceeds", "promissory note", "securities account", "security", "security interest" and "supporting obligation". In addition, the term "deposit account" includes an account evidenced by a certificate of deposit. The words and expressions defined in the introductory paragraph, the recitals and the other Sections hereof shall have the meanings given to such words and expressions in such introductory paragraph, recitals and Sections, and the following words and expressions shall have the following meanings, in each case unless the context otherwise requires:

"Additional Term Loans" means loans (other than the Initial Term Loans) in an aggregate amount not to exceed $300,000; *provided*, however, that the Lender shall have sole and absolute discretion as to whether to advance any such Additional Term Loans to the Borrower, whether or not the conditions precedent set forth in Section 5.02 are satisfied by the Borrower.

"Additional Term Loan Commitment" means the commitment of the Lender to make or otherwise fund the Additional Term Loans in an aggregate amount not to exceed $300,000.

"Advance Period" means the period from the Agreement Date to but excluding the Advance Termination Date.

"Advance Termination Date" means the earliest to occur of (a) the Maturity Date and (b) the occurrence of an Event of Default.

"Bank Account" means (a) a deposit, custody, or other account (whether, in any case, time or demand or interest or non-interest bearing and whether maintained at a branch or office located within or outside the United States) of the Borrower, (b) all amounts from time to time credited to such account, (c) all cash, financial assets and other investment property, instruments, documents, chattel paper, general intangibles, accounts and other property from time to time credited to such account or representing investments and reinvestments of amounts from time to time credited to such account, and (d) all interest, principal payments, dividends and other distributions payable on or with respect to, and all proceeds of, (i) all property so credited or representing such investments and reinvestments and (ii) such account.

"Books" means all of the Borrower's now owned or hereafter acquired books and records (including all of its records indicating, summarizing, or evidencing its assets (including the Collateral) or liabilities, all of its records relating to its business operations or financial condition, and all of its goods or general intangibles related to such information).

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in Phoenix, Arizona are authorized or required to close.

"Carve-Out Expenses" means the following: (a) fees pursuant to 28 U.S.C. § 1930(a)(6); (b) fees payable to the clerk of the Bankruptcy Court and any agent thereof; (c) professional fees and expenses incurred by the Borrower's professionals and the professionals of the Committee (collectively, the "Professionals") in an aggregate amount not in excess of $75,000, subject to the right of the Lender and any other party-in-interest to object to the award of such fees and expenses in accordance with any applicable Bankruptcy Rule or, if applicable, order of the Bankruptcy Court relating to the approval of fees and expenses and objections thereto (the provisions of this clause (c) only, the "Professional Fee Carve-Out"); *provided*, however, that the Carve-Out Expenses shall not include, apply to, or be available for any fees or expenses incurred by any party, including the Borrower, the Committee or their professionals in connection with the investigation, initiation or prosecution of any claims, defenses or causes of action against the Lender; *provided, further*, that, in the event of any inconsistency in the definition of "Carve-Out Expenses" (however such concept may be defined) between the provisions of this Agreement and the Final Cash Collateral and Financing Order, the provisions of the Final Cash Collateral and Financing Order shall govern.

"Change of Control" means, with respect to the Borrower, at any time, the majority of the seats (other than vacant seats) on the board of directors (or similar governing body) of the Borrower cease to be occupied by Persons who either (a) were members of the board of directors of the Borrower on the Agreement Date or (b) were nominated for election by the board of

directors of the Borrower, a majority of whom were directors on the Agreement Date or whose election or nomination for election was previously approved by a majority of such directors.

"Collateral" means all of the Borrower's now owned or hereafter acquired right, title and interest in, to and under each of the following property of the Borrower, whether now owned or hereafter acquired by the Borrower (including all property of the estate of the Borrower (within the meaning of the Bankruptcy Code)):

(a) all accounts;

(b) all general intangibles (including the Intellectual Property);

(c) all inventory;

(d) all equipment;

(e) all Other Goods;

(f) all instruments;

(g) all investment property;

(h) all chattel paper;

(i) all documents;

(j) all letters of credit, letter-of-credit rights and Drawing Materials;

(k) all commercial tort claims;

(l) all Bank Accounts;

(m) all fixtures;

(o) all money;

(p) all rights (contractual and otherwise and whether constituting accounts, general intangibles or investment property or financial assets) constituting, arising under, connected with, or in any way related to, any or all Collateral;

(q) all books (including the Books), records, ledgercards, files, correspondence, computer programs, tapes, disks and related data processing software (owned by the Borrower or in which it has an interest) that at any time evidence or contain information relating to any Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon;

(r) all goods and other property, whether or not delivered, (i) the sale, lease or furnishing of which gives or purports to give rise to any account, including all merchandise returned or rejected by or repossessed from customers, or (ii) securing any accounts, including all of the Borrower's rights as an unpaid vendor or lienor, including stoppage in transit, replevin and reclamation with respect to such goods and other properties;

(s) all documents of title, policies and certificates of insurance, securities, chattel paper and other documents or instruments evidencing or pertaining to any Collateral;

(t) all supporting obligations and other liens on real or personal property, leases and other agreements and property that in any way secure or relate to any Collateral, or are acquired for the purpose of securing and enforcing any item thereof;

(u) all claims (including the right to sue or otherwise recover on such claims) (i) to items referred to in the definition of Collateral, (ii) under warranties relating to any Collateral and (iii) against third parties for (A)(1) loss, destruction, requisition, confiscation, condemnation, seizure, forfeiture or infringement of, or damage to, any Collateral, (2) payments due or to become due under leases, rentals and hires of any Collateral, (3) proceeds payable under or unearned premiums with respect to policies of insurance relating to any Collateral and (B) breach of any Contract constituting Collateral;

(v) all Real Estate; and

(w) all products and proceeds of all of the foregoing in whatever form;

provided that, if, under applicable law, the attachment of the security interest in any Contract of the Borrower would require the consent of any party thereto, other than the Borrower, or would give any such other party the right to terminate its obligations thereunder, such Contract shall (so long as such consent has not been obtained) be deemed not to be Collateral, if, and only if, such other party has notified the Borrower in writing that such other party intends to assert its rights under such Contract that result from such attachment, and the Borrower has given the Lender a copy of such notice and of such Contract; *provided further* that, in the absence of any such notice, such Contract shall continue to constitute Collateral; and *provided*, *finally*, that the first proviso shall not affect, limit, restrict or impair the grant by the Borrower of, or the attachment of the security interest in, any property with respect to which the requirement for such required consent would be ineffective under applicable law.

"Commitment" means, together, the Initial Term Loan Commitment and the Additional Term Loan Commitment.

"Committee" means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee in the Chapter 11 Case.

"Contract" means (a) any agreement (whether bi-lateral or unilateral or executory or non-executory and whether a person entitled to rights thereunder is so entitled directly or as a third-party beneficiary), including an indenture, lease or license, (b) any deed or other instrument of conveyance and (c) any certificate of incorporation, charter, bylaw, operating agreement or any other organizational document.

"CRO" means Martin Giardina, the Chief Restructuring Officer of Borrower.

"CRO Plan" means the CRO's internal plan for sale or reorganization of the Borrower's assets and business, which plan must be acceptable to the Lender in the Lender's sole discretion

"Default" means an event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"Dollars" or "$" means United States dollars.

"Drawing Materials" means all bills of lading, dock warrants, dock receipts, warehouse receipts and other documents (including those which are "documents" under Section 7-201(2), or "documents of title" under Section 1-201(15), of the UCC), drafts, certificates, agreements, and other records, required to make a drawing under a letter of credit.

"Event of Default" means any of the events set forth in Section 8.01.

"Existing Lender" means GE Capital Franchise Finance Corporation.

"Final Cash Collateral and Financing Order" means the Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c), 364(d) and 364(e) and Fed. R. Bankr. P. 4001 and 9014 (i) Authorizing Debtor to Obtain Secured Post-Petition Financing on Super-Priority Priming Lien Basis and Modifying Automatic Stay, (ii) Authorizing Debtor to Use Cash Collateral of Existing Secured Lender and (iii) Granting Adequate Protection to Existing Secured Lender (which order shall not have been vacated, stayed, reversed or (except with the express written consent of the Lender) amended, supplemented or otherwise modified).

"Final Order" means an order as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending or as to which any right to appeal, to petition for certiorari, to reargue, to rehear or to reconsider shall have been waived in writing by the Person possessing such right, or, in the event that an appeal, writ of certiorari, or reargument, rehearing or reconsideration thereof has been sought, such order shall have been affirmed by the highest court to which such order was appealed, or certiorari has been denied or from which reargument, rehearing or reconsideration was sought, and the time to take any further appeal, petition for certiorari, or move for reargument, rehearing or reconsideration shall have expired, and no such further appeal, petition for certiorari, or motion for reargument, rehearing or reconsideration shall have been filed.

"GAAP" means generally accepted accounting principles in effect from time to time in the United States, applied on a consistent basis.

"Governmental Authority" means any nation or government, any Federal, state, city, town, municipality, county, local or other political subdivision thereof or thereto and any department, commission, board, bureau, instrumentality, agency or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Indebtedness" means, without duplication, with respect to any Person, (a) all indebtedness of such Person for borrowed money; (b) all obligations of such Person for the

deferred purchase price of property or services (other than trade payables or other account payables incurred in the ordinary course of such Person's business and not past due for more than 90 days after the date such payable was due); (c) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments or upon which interest payments are customarily made; (d) all obligations and liabilities of such Person created or arising under any conditional sales or other title retention agreement with respect to Property used and/or acquired by such Person, even though the rights and remedies of the lessor, seller and/or lender thereunder are limited to repossession or sale of such Property; (e) all capitalized lease obligations of such Person; (f) all obligations and liabilities, contingent or otherwise, of such Person, in respect of letters of credit, bankers acceptances and similar facilities; (g) all contingent obligations of such Person; (h) all obligations of such Person under any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing, if the transaction giving rise to such obligation is considered indebtedness for borrowed money for tax purposes but is classified as an operating lease in accordance with GAAP; and (i) all obligations referred to in clauses (a) through (h) of this definition of another Person secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien upon property owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

"Initial Term Loans" means the loans made by the Lender to the Borrower pursuant to Section 2.01, in the aggregate amount of up to $550,000.

"Initial Term Loan Commitment" means the commitment of the Lender to make or otherwise fund the Initial Term Loans in the aggregate amount of up to $550,000.

"Intellectual Property" means all rights, priorities and privileges relating to intellectual property, now existing or hereafter adopted or acquired, including: (a) all patents, reissues and extensions thereof, patent applications, divisions, continuations and continuations-in-part, patent disclosures and inventions (whether or not patentable and whether or not reduced to practice); (b) all trademarks, service marks, trade dress, trade styles, logos, trade names, corporate names, company names, business names, fictitious business names and other source or business identifiers and Internet domain names and goodwill associated therewith; (c) all copyrightable works and mask works and all registrations, applications and renewals for any of the foregoing; (d) all trade secrets, confidential information, ideas, formulae, compositions, compounds, know-how, manufacturing and production processes and techniques, research and development information, drawings, specifications, designs, plans, blueprints, surveys, reports, manuals, operating standards, improvements, proposals, technical and computer data, financial, business and marketing plans, and customer and supplier lists and related information; (e) all other proprietary rights (including all computer software, documentation, data and databases, and all license agreements and sublicense agreements to and from third parties relating to any of the foregoing); (f) all copies and tangible embodiments of the foregoing (in whatever form or medium); (g) all damages and payments, and the right to sue and recover, for past, present and future infringements of the foregoing; and (h) all royalties and income due with respect to the foregoing.

"Interim Cash Collateral and Financing Order" means the Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364(c), 364(d) and 364(e) and Fed. R. Bankr. P. 4001 and 9014

(i) Authorizing Debtor to Obtain Secured Post-Petition Financing on Super-Priority Priming Lien Basis and Modifying Automatic Stay; (ii) Authorizing Debtor to Use Cash Collateral of Existing Secured Lender; (iii) Granting Adequate Protection to Existing Secured Lender; and (iv) Setting Time for the Final Hearing.

"Lender Legal Fees" means reasonable fees and disbursements of the Lender's legal counsel incurred in connection with this Agreement and the Chapter 11 Case.

"Lien" means any mortgage, deed of trust, pledge, lien (statutory or otherwise), security interest, lease, easement, title defect, restriction, levy, execution, seizure, attachment, charge, right of setoff, or other encumbrance or security or preferential arrangement of any nature.

"Loan" means any Initial Term Loan or Additional Term Loan, as applicable, and "Loans" means, together, the Initial Term Loans and the Additional Term Loans.

"Loan Documents" means this Agreement, the Interim Cash Collateral and Financing Order, the Notes, the Final Cash Collateral and Financing Order and all other agreements, instruments, and other documents executed and delivered pursuant hereto or thereto or otherwise evidencing or securing any Loan or other Obligation related thereto.

"Loan Fee" means 2% of the original principal amount of each Loan advanced hereunder.

"Material Adverse Change" means a material adverse change with respect to any of the following: (a) the operations, business, assets, properties or condition (financial or otherwise) of any of the Borrower, (b) the ability of any of the Borrower to perform any of its material obligations under the Loan Documents, (c) the legality, validity or enforceability of this Agreement or any other Loan Document, (d) the rights and remedies of the Lender under any Loan Document, (e) the validity, perfection or priority of a Lien in favor of the Lender on any material part of the Collateral or (f) the value of any material part of the Collateral.

"Maturity Date" means the date which is the earliest of (a) the date that is 60 days after the Agreement Date, and (b) the date on which the Loans and the other amounts outstanding hereunder shall automatically be accelerated and the outstanding Commitment automatically terminated pursuant to the terms hereof.

"Negotiable Collateral" means all of the Borrower's now owned and hereafter acquired right, title, and interest with respect to letters of credit, letter-of-credit rights, instruments, promissory notes, drafts, documents and chattel paper (including electronic chattel paper and tangible chattel paper), and any and all supporting obligations in respect thereof.

"Notes" means the promissory notes of the Borrower made payable to the order of the Lender, evidencing the Commitment or Indebtedness resulting from the making by the Lender to the Borrower of the Loans and delivered to the Lender, as such promissory notes may be amended, supplemented, restated, modified or extended from time to time, and any promissory note or notes issued in exchange or replacement therefor.

"Obligations" means (a) the obligations of the Borrower to pay, as and when due and payable (by scheduled maturity, required prepayment, acceleration, demand or otherwise), all

amounts from time to time owing by it in respect of the Loan Documents, whether for principal, interest, fees, indemnification payments, expense reimbursements or otherwise, and (b) the obligations of the Borrower to perform or observe all of its obligations from time to time existing under the Loan Documents.

"Other Goods" means all goods other than inventory and equipment.

"Permitted Indebtedness" means (a) any Indebtedness owed to the Lender under this Agreement and the other Loan Documents, (b) any Indebtedness owed to the Existing Lender under the Pre-Petition Loan Documents, (c) Indebtedness secured by Permitted Liens, (d) other unsecured debt having no greater priority than that provided in Section 503(b) of the Bankruptcy Code and (e) any Indebtedness consented to in writing by the Lender.

"Permitted Liens" means:

(a) Liens securing the Obligations and the Permitted Indebtedness of the Existing Lender;

(b) Liens for taxes, assessments and governmental charges;

(c) Liens imposed by law, such as carriers', warehousemen's, mechanics', materialmen's and other similar Liens arising in the ordinary course of business and securing obligations (other than Indebtedness for borrowed money) that are not overdue by more than ninety days or are being contested in good faith and by appropriate proceedings promptly initiated and diligently conducted, and a reserve or other appropriate provision, if any, as shall be required by GAAP, shall have been made therefor;

(d) Liens existing on the Agreement Date to the extent valid, perfected and non-avoidable and Liens existing on the Agreement Date that are perfected after the Agreement Date as permitted by Section 546(b) of the Bankruptcy Code;

(e) deposits and pledges securing (i) obligations incurred in respect of workers' compensation, unemployment insurance or other forms of governmental insurance or benefits, (ii) statutory obligations or (iii) obligations on surety or appeal bonds, but only to the extent such deposits or pledges are incurred or otherwise arise in the ordinary course of business and secure obligations not more than ninety days past due;

(f) purchase money Liens or the interests of lessors under capitalized leases to the extent that such Liens or interests secure purchase money Indebtedness (not to exceed $50,000) and so long as such Lien attaches only to the asset purchased or acquired and the proceeds thereof;

(g) Liens perfected subsequent to the Petition Date pursuant to Sections 362(b)(18) or 546(b) of the Bankruptcy Code; and

(h) any junior Liens consented to in writing by the Lender.

"Person" means an individual, corporation, limited liability company, partnership, association, joint-stock company, trust, unincorporated organization, joint venture or Governmental Authority.

"Pre-Petition Loan Documents" means the documents listed on Schedule I attached hereto and incorporated herein by reference.

"Real Estate" means all of the real property owned, leased, subleased or used by the Borrower.

"Tax" means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed.

"UCC" means the Uniform Commercial Code as in effect in the State of Arizona or in any other relevant jurisdiction from time to time.

"U.S. Trustee" means the Office of the United States Trustee for the Northern District of Texas.

Section 1.02 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

Section 1.03 Accounting Terms. Unless otherwise expressly provided herein, each accounting term used herein shall have the meaning given it under GAAP.

ARTICLE II

LOANS

Section 2.01 Initial Term Loans. Subject to the terms and conditions of this Agreement, the Lender agrees to make the Initial Term Loans from time to time to the Borrower during the Advance Period, as requested by the CRO on behalf of the Borrower in accordance

with Section 2.03, in aggregate amount (after giving effect to all Initial Term Loans advanced hereunder) not to exceed the Initial Term Loan Commitment. The Initial Term Loan Commitment shall terminate upon the expiration of the Advance Period. The amount of the Initial Term Loans repaid by the Borrower may not be reborrowed.

Section 2.02 Additional Term Loans. Subject to the terms and conditions of this Agreement, the Lender may, in the Lender's sole and absolute discretion, make the Additional Term Loans from time to time to the Borrower during the Advance Period, as requested by the CRO on behalf of the Borrower in accordance with Section 2.03, in an aggregate amount (after giving effect to all Additional Term Loans advanced hereunder) not to exceed the Additional Term Loan Commitment. The amount of the Additional Term Loans repaid by the Borrower may not be reborrowed. The Additional Term Loan Commitment shall terminate upon the expiration of the Advance Period. No Additional Term Loans shall be advanced hereunder unless and until Initial Term Loans in an aggregate amount equal to the Initial Term Loan Commitment have been advanced pursuant to Section 2.01.

Section 2.03 Borrowing Mechanics for Loans. The CRO shall give the Lender prior telephone notice (promptly confirmed in writing (a "Notice of Borrowing")), not later than 12:00 noon (Phoenix, Arizona time) on the day prior to the date of the proposed Loan. Such Notice of Borrowing shall specify (a) the principal amount of the proposed Loan, (b) the proposed borrowing date (which date must be a Business Day), and (c) the location and number (or numbers) of the account (or accounts) to which proceeds of such borrowing are to be disbursed.

Section 2.04 Evidence of Indebtedness. If requested by the Lender, the Commitment or the Loans may be evidenced by the Notes, duly executed on behalf of the Borrower and delivered to and made payable to the order of the Lender in a principal amount equal to the Commitment or the Loans, as the case may be. The Lender is hereby authorized, at its option, either (a) to endorse on a schedule attached to the Notes an appropriate notation evidencing the date and amount of each Loan evidenced thereby and the date and amount of each principal and interest payment in respect thereof, or (b) to record such Loans and such payments in its books and records. Such schedule or such books and records, as the case may be, shall, absent manifest error, constitute *prima facie* evidence of the accuracy of the information contained therein.

Section 2.05 Use of Proceeds. The proceeds of the Loans shall be used subject the Interim Cash Collateral and Financing Order and the Final Cash Collateral and Financing Order.

Section 2.06 Repayment of Loans on Maturity Date. The Borrower hereby unconditionally promises to pay to the Lender the then unpaid principal amount of each Loan, together with interest accrued thereon and all fees and expenses of the Lender then outstanding, including, but not limited to, Lender Legal Fees, on the Maturity Date.

Section 2.07 Mandatory Prepayment. Upon the occurrence of a disposition of any property out of the ordinary course of business of the Borrower, the Borrower shall immediately remit to the Lender all net proceeds from such disposition, including sale and leaseback transactions, in satisfaction of the amounts outstanding hereunder. The Borrower shall provide the Lender with written or telephonic notice of the prepayment to be made under this

Section 2.07. The amounts repaid by the Borrower in accordance with this Section 2.07 may not be reborrowed.

Section 2.08 Interest.

(a) Interest Rate. Each Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of the making of such Loan until such principal amount becomes due or is earlier repaid, at a rate per annum equal to 14% per annum; *provided* that, upon the occurrence and during the continuance of an Event of Default, each Loan shall bear interest in accordance with Section 2.08(c).

(b) Interest Payment. Interest on each Loan shall be payable on the Maturity Date.

(c) Default Interest. To the extent permitted by law, upon the occurrence and during the continuance of an Event of Default, the principal of, and all accrued and unpaid interest on, all Loans and all fees, indemnities or any other Obligations of the Borrower under this Agreement, the Notes and the other Loan Documents shall bear interest, from the date such Event of Default occurred until such Event of Default is cured or waived in writing in accordance herewith, at a rate per annum that is 4% in excess of the interest rate set forth in subsection (a) of this Section 2.08 (the "Post-Default Rate"). Interest at the Post-Default Rate shall be payable on demand.

(d) General. All interest shall be computed on the basis of a year of 365 days for the actual number of days, including the first day but excluding the last day, elapsed.

(e) Usury. Notwithstanding any provision to the contrary hereunder, if the rate of interest payable pursuant to this Agreement is limited by law, the rate payable hereunder shall be the lesser of: (i) the rate set forth in this Agreement and (ii) the maximum rate permitted by law. If interest is paid hereunder in excess of the maximum rate of interest permitted by law, any interest so paid that exceeds such maximum rate shall automatically be deemed to be a payment of principal and shall automatically be applied in reduction of the principal due under this Agreement to the extent of such excess.

ARTICLE III

SECURITY AND ADMINISTRATIVE PRIORITY

Section 3.01 Collateral; Grant of Lien and Security Interest.

(a) As security for the full and timely payment and performance of all of the Obligations, the Borrower hereby assigns, pledges, transfers and grants to the Lender, pursuant to Section 364(d) of the Bankruptcy Code, subject in all cases to the Carve-Out Expenses, a perfected security interest in and to, and Lien on, all currently existing or hereafter acquired or arising Collateral. The Liens and security interests granted to Lender hereunder shall be valid, binding, enforceable and perfected Liens and security interest in the Collateral in favor of the Lender. Such Liens and security interests and their priority shall remain in effect until the Lender's Commitment is terminated and all Obligations have been repaid in full. The

Obligations shall also be secured by the Liens held by Lender pursuant to the Prepetition Loan Documents.

(b) The priority of the Lender's Liens on and security interests in the Collateral shall be set forth in the Interim Cash Collateral and Financing Order and the Final Cash Collateral and Financing Order.

(c) In the event that any Collateral is evidenced by or consists of Negotiable Collateral, certificated securities or other instruments and if and to the extent that perfection or priority of the Lender's security interest is dependent on or enhanced by possession, the Borrower, immediately upon the request of the Lender, shall endorse and deliver physical possession of such Negotiable Collateral, certificated securities or other instruments to the Lender.

(d) The Borrower authorizes the Lender to file, transmit, or communicate, as applicable, mortgages, mortgage modifications, UCC financing statements, Intellectual Property financing statements, continuation financing statements and amendments in order to perfect the Lender's Liens on the Collateral. At any time upon the request of the Lender, the Borrower shall execute and deliver to the Lender any and all mortgages, mortgage modifications, security agreements, pledges, assignments, endorsements of certificates of title, control agreements and all other documents (the "Additional Documents") upon which the Borrower's signature may be required and that the Lender may request in its reasonable discretion, in form and substance satisfactory to the Lender, to perfect and continue perfected or better perfect the Lender's Liens on the Collateral (whether now owned or hereafter arising or acquired). Upon the occurrence and during the continuance of an Event of Default and to the maximum extent permitted by applicable law, the Borrower authorizes the Lender to execute any such Additional Documents in the Borrower's name and authorizes the Lender to file such executed Additional Documents in any appropriate filing office. In addition, on such periodic basis as the Lender shall require, the Borrower shall (i) provide the Lender with a report of all new patent disclosures and inventions, patent applications, trademarks, service marks, trade names, corporate names, company names, business names, fictitious business names and other source or business identifiers and Internet domain names, copyright applications and material copyrightable works, all forming a part of the Borrower's Intellectual Property acquired or generated by the Borrower during the prior period, and (ii) in the Borrower's commercially reasonable discretion, apply for registration or cause to be filed application for registration of the Borrower's Intellectual Property acquired or generated by the Borrower that are not already the subject of a registration with the appropriate filing office (or an application therefor diligently prosecuted) with such appropriate filing office in a manner sufficient to impart constructive notice of the Borrower's ownership thereof. The Borrower agrees that, upon acquiring any interest in a commercial tort claim, the Borrower shall, in writing, describe the details of such claim and assign an interest thereto to the Lender, and, upon acquiring any chattel paper after the date hereof (electronic, tangible or otherwise), the Borrower shall assign to the Lender a security interest in such chattel paper, or, if applicable, deliver such chattel paper to the Lender as Collateral hereunder.

(e) Notwithstanding anything herein to the contrary, all liens and security interests in the Collateral shall be subject, in all cases, to the Carve-Out Expenses; *provided* that (i) no Person entitled to Carve-Out Expenses shall be entitled, as a result of being entitled to such

Carve-Out Expenses, to sell or otherwise dispose, or seek or object to the sale or other disposition, of any Collateral, whether or not such Carve-Out Expenses have been paid to such Person, and (ii) provision for the payment of the Carve-Out Expenses shall be made (x) in any order approving the sale of assets and businesses of the Borrower pursuant to Section 363 of the Bankruptcy Code, (y) in any order confirming a plan pursuant to Section 1129 of the Bankruptcy Code; or (z) in any order converting or dismissing the Chapter 11 Case. The Lender may pay (but is not required to do so) the Carve-Out Expenses to the Borrower, and, upon such payment, the Borrower shall hold such Carve-Out Expenses in trust for the benefit of the payees thereof, and the obligation of the Lender to pay such Carve-Out Expenses to the payees thereof shall be immediately discharged.

Section 3.02 Administrative Priority. Pursuant to Section 364(c)(1) of the Bankruptcy Code and as provided for in the Interim Cash Collateral and Financing Order or the Final Cash Collateral and Financing Order, the Borrower agrees that all Obligations of the Borrower under this Agreement shall constitute allowed superpriority administrative expenses in the Chapter 11 Case having priority over all administrative expenses and unsecured claims against the Borrower now existing or hereafter arising, of any kind or nature whatsoever, including all administrative expenses of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code, subject, as to priority, only to Carve-Out Expenses. Such allowed superpriority administrative expenses of the Lender shall be payable from the Collateral and all proceeds thereof.

Section 3.03 Grants, Rights and Remedies. The Liens and security interests granted pursuant to Section 3.01(a) and the administrative priority granted pursuant to Section 3.02 are independently granted by this Agreement and by the other Loan Documents hereafter entered into. This Agreement, the Interim Cash Collateral and Financing Order, the Final Cash Collateral and Financing Order and such other Loan Documents supplement one another, and the grants, priorities, rights and remedies of the Lender hereunder and thereunder are cumulative.

Section 3.04 No Filings Required. Notwithstanding Section 3.01(c) hereof, the Liens and security interests referred to in Section 3.01(a) hereof and in the Loan Documents shall be deemed valid and perfected by entry of the Interim Cash Collateral and Financing Order. The Lender shall not be required to file any financing statements, mortgages, notices of Lien or similar instruments in any jurisdiction or filing office, enter into any control agreements, or to take any other action in order to validate or perfect the Liens and security interests granted by or pursuant to this Agreement, the Interim Cash Collateral and Financing Order, the Final Cash Collateral and Financing Order or any other Loan Document, except to the extent required under the Final Cash Collateral and Financing Order.

Section 3.05 Survival. The Liens, lien priority, administrative priorities and other rights and remedies granted to the Lender pursuant to this Agreement, the Interim Cash Collateral and Financing Order, the Final Cash Collateral and Financing Order and the other Loan Documents (including the existence, perfection and priority of the Liens and security interests provided herein and therein, and the administrative priority provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of debt by the Borrower (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of the Chapter 11 Case, or by any other act or

omission whatever. Without limitation, notwithstanding any such order, financing, extension, incurrence, dismissal, conversion, act or omission:

(a) no costs or expenses of administration which have been or may be incurred in the Chapter 11 Case or any conversion of the same or in any other proceedings related thereto, and no priority claims, including claims and charges under Section 506(c) of the Bankruptcy Code, are or will be prior to or on a parity with any claim of the Lender against the Borrower in respect of any Obligation,

(b) the Liens in favor of the Lender set forth in Section 3.01(a) shall constitute valid and perfected first priority priming Liens and security interests and shall be superior in priority to all other Liens and security interests, now existing or hereafter arising, in favor of any other creditor or any other Person whatsoever, and

(c) the Liens in favor of the Lender set forth in Section 3.01(a) and in the Loan Documents shall continue to be valid and perfected without the necessity that the Lender file financing statements, mortgages, enter into control agreements or otherwise perfect its Liens under applicable non-bankruptcy law.

ARTICLE IV

PAYMENTS

Section 4.01 Payments. The Borrower shall pay the Loans in full not later than 12:00 noon (Phoenix, Arizona time) on the day when due, in lawful money of the United States of America and in immediately available funds, to the Lender. All payments shall be made by the Borrower without defense, set-off or counterclaim to the Lender. Whenever any payment to be made under any Loan Document shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall in such case be included in the computation of interest or fees, as the case may be. Each determination by the Lender of an interest rate or fees hereunder shall be conclusive and binding for all purposes in the absence of manifest error.

Section 4.02 Apportionment of Payments. After the occurrence and during the continuance of an Event of Default, the Lender may apply all payments in respect of any Obligations and all proceeds of the Collateral, subject to the provisions of this Agreement, first, to pay the Obligations in respect of any fees, expense reimbursements, indemnities and other amounts then due to the Lender until paid in full; second, to pay interest due in respect of the Loans until paid in full; third, to pay principal of the Loans until paid in full; and, fourth, to the payment of all other Obligations then due and payable.

Section 4.03 Taxes, Withholding. All sums payable by the Borrower hereunder and under the other Loan Documents shall (except to the extent required by law) be paid free and clear of, and without any deduction or withholding on account of, any Tax imposed, levied, collected, withheld or assessed by or within the United States of America or any political subdivision in or of the United States of America or any other jurisdiction from or to which a payment is made by or on behalf of the Borrower or by any federation or organization of which

the United States of America or any such jurisdiction is a member at the time of payment. If any of the Borrower or any other Person is required by law to make any deduction or withholding on account of any such Tax from any sum paid or payable by the Borrower to the Lender under any of the Loan Documents: (a) the Borrower shall notify the Lender of any such requirement or any change in any such requirement as soon as the Borrower becomes aware of it; (b) the Borrower shall pay any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on the Borrower) for its own account or (if that liability is imposed on the Lender, as the case may be) on behalf of and in the name of the Lender; (c) the sum payable by the Borrower in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment, the Lender receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made; and (d) within thirty days after paying any sum from which it is required by law to make any deduction or withholding, and within thirty days after the due date of payment of any Tax which it is required by clause (b) above to pay, the Borrower shall deliver to the Lender evidence satisfactory to the Lender of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority; *provided* that no such additional amount shall be required to be paid to the Lender under clause (c) above except to the extent that any change after the date hereof in any such requirement for a deduction, withholding or payment as is mentioned therein shall result in an increase in the rate of such deduction, withholding or payment from that in effect at the date hereof in respect of payments to the Lender.

Section 4.04 Lender Legal Fees.

The Lender shall be entitled to prompt reimbursement of the Lender Legal Fees. From and after the Petition Date, three (3) business days after receipt of an invoice, the Borrower shall promptly pay all Lender Legal Fees included in such invoice. None of the Lender Legal Fees shall be subject to separate approval by the Bankruptcy Court and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto.

ARTICLE V

CONDITIONS PRECEDENT TO EFFECTIVENESS OF AGREEMENT AND MAKING OF LOANS

Section 5.01 Conditions Precedent to Effectiveness of Agreement. The effectiveness of this Agreement and the obligation of Lender to make any Loan shall be subject to the fulfillment, in a manner satisfactory to the Lender, of the following conditions precedent:

(a) With respect to any Loan made prior to entry of the Final Cash Collateral and Financing Order, the Bankruptcy Court shall have entered the Interim Cash Collateral and Financing Order in form and substance satisfactory to Lender and such Interim Cash Collateral and Financing Order shall not have been appealed, stayed or modified;

(b) With respect to all other Loans, the Bankruptcy Court shall have entered the Final Cash Collateral and Financing Order in form and substance satisfactory to Lender and such Interim Cash Collateral and Financing Order shall not have been appealed, stayed or modified

(c) the Lender shall have received each Loan Document, in each case properly executed and delivered by the Borrower;

(d) the Lender shall have received and approved the Budget;

(e) the representations and warranties contained in Article VI and in each other Loan Document, certificate or other writing delivered to the Lender pursuant hereto or thereto on or prior to the Agreement Date are true and correct in all material respects on and as of such date as though made on and as of such date;

(f) no Material Adverse Change or an event that would constitute a Default or an Event of Default if this Agreement were effective shall have occurred;

(g) the Lender shall have received a certificate of an officer of the Borrower, dated as of the Agreement Date and certifying that (i) the representations and warranties contained in Article VI and in each other Loan Document, certificate or other writing delivered to the Lender pursuant hereto or thereto on or prior to the Agreement Date are true and correct in all material respects on and as of such date as though made on and as of such date, and (ii) no Material Adverse Change or an event that would constitute a Default or an Event of Default if this Agreement were effective has occurred;

(h) the Borrower shall have obtained all permits, licenses, authorizations, plans, directives, consent orders or consent decrees of or from all Governmental Authorities and all consents of other Persons, in each case that are necessary or advisable in connection with the transactions contemplated by the Loan Documents (other than such permits, licenses, authorizations, plans, directives, consent orders or consent decrees of or from the Governmental Authorities and consents of other Persons the absence of which would not be reasonably likely to result in a Material Adverse Change), and each of the foregoing shall be in full force and effect and in form and substance satisfactory to the Lender;

(i) there shall not exist any action, suit, investigation, litigation, proceeding, hearing or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority (other than the Chapter 11 Case) that, in the reasonable opinion of the Lender, singly or in the aggregate, materially impairs the transactions contemplated by the Loan Documents, or that could result in a Material Adverse Change;

(j) all of the Lender's actual out-of-pocket expenses and all professional fees and costs previously incurred by the Lender (including those referred to in Section 9.05) shall have been paid and reimbursed; and

(k) the Lender shall have received such other agreements, instruments, approvals, opinions and other documents, including due diligence documents, each satisfactory to the Lender in form and substance, as the Lender may reasonably request.

Section 5.02 Additional Conditions Precedent to Making of Each Loan. The obligation of the Lender to make each Loan is subject to the fulfillment, in a manner satisfactory to the

Lender, of the following conditions precedent (unless waived by the Lender in accordance with the terms hereof):

(a) no Default, Event of Default or Maturity Date shall have occurred;

(b) the Lender shall have received a certificate of an officer of the CRO, dated as of the date of the making of such Loan and certifying that (i) the representations and warranties contained in Article VI and in each other Loan Document, certificate or other writing delivered to the Lender pursuant hereto or thereto on or prior to such date are true and correct in all material respects on and as of such date as though made on and as of such date, (ii) no Material Adverse Change, Default or Event of Default has occurred and (iii) after giving effect to the making of such Loan and the application of proceeds thereof, no Default or Event of Default would result from the making of such Loan;

(c) the making of such Loan shall not contravene any law, rule or regulation applicable to the Lender;

(d) the Lender shall have received a properly completed and executed Notice of Borrowing with respect to such Loan; and

(e) the Lender shall have received such other agreements, instruments, approvals, opinions and other documents, including due diligence documents, each satisfactory to the Lender in form and substance, as the Lender may reasonably request.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF BORROWER

Section 6.01 Representations and Warranties of Borrower. The Borrower hereby represents and warrants to the Lender, on the Agreement Date, as follows:

(a) Organization, Good Standing, Etc. The Borrower (i) is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (ii) subject to the entry of the Final Cash Collateral and Financing Order, has all requisite corporate power and authority to conduct its business as now conducted and as currently contemplated and to make the borrowings hereunder, and to execute and deliver each Loan Document to which it is a party, and to consummate the transactions contemplated thereby, and (iii) is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary, except where the failure to be so qualified or in good standing is not reasonably likely to result in a Material Adverse Change.

(b) Authorization, Etc. The execution, delivery and performance by the Borrower of each Loan Document to which it is or will be a party, (i) upon entry of the Final Cash Collateral and Financing Order, have been duly authorized by all necessary action, (ii) do not and will not contravene its charter or by-laws or any applicable law or any contractual restriction binding on or otherwise affecting it or any of its properties (other than conflicts, breaches and defaults the enforcement of which will be stayed by virtue of the filing of the

Chapter 11 Case), (iii) do not and will not result in or require the creation of any Lien (other than pursuant to any Loan Document) or Permitted Liens upon or with respect to any of its properties, and (iv) do not and will not result in any suspension, revocation, impairment, forfeiture or non-renewal of any permit, license, authorization or approval applicable to its operations or any of its properties to the extent such suspension, revocation, impairment, forfeiture or non-renewal would result in a Material Adverse Change.

(c) Execution and Binding Effect. Upon entry of the Final Cash Collateral and Financing Order, each of the Loan Documents executed and delivered on or prior to the Agreement Date constitutes a legal, valid and binding obligation thereof enforceable in accordance with the terms hereof or thereof. Each Loan Document that was not required to be executed and delivered by the Borrower prior to the Agreement Date, when executed and delivered, will be validly executed and delivered by the Borrower, and will constitute legal, valid and binding obligations of the Borrower, enforceable in accordance with the terms thereof.

(d) Rights in Collateral. The Borrower has rights (or the power to transfer the right) in the Collateral in which it is granting a security interest and a Lien hereunder free and clear of any and all Liens except for Permitted Liens.

(e) Governmental Approvals. Other than (i) the permits, licenses, authorizations, plans, directives, consent orders or consent decrees of or from the Governmental Authorities and the consents of other Persons that the Borrower have already obtained and delivered to the Lender and (ii) the permits, licenses, authorizations, plans, directives, consent orders or consent decrees of or from the Governmental Authorities and consents of other Persons the absence of which would not be reasonably likely to result in a Material Adverse Change, no permits, licenses, authorizations, plans, directives, consent orders or consent decrees of or from the Governmental Authorities, or consents of other Persons, are required in connection with the due execution, delivery and performance by the Borrower of any Loan Document.

(f) Litigation. There does not exist any action, suit, investigation, litigation, proceeding, hearing or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority (other than the Chapter 11 Case) that, singly or in the aggregate, could result in a Material Adverse Change.

(g) Compliance with Law, Etc. The Borrower is not in violation of its organizational documents, any law, rule, regulation, judgment or order of any Governmental Authority applicable to it or any of its property or assets which is reasonably likely to result in a Material Adverse Change, and no Default or Event of Default has occurred and is continuing. The Borrower has paid all Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises.

(h) Pre-Petition Loan Documents. The Pre-Petition Loan Documents constitute the legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their terms, except as enforceability may be limited by applicable bankruptcy, insolvency, liquidation, reorganization and other laws affecting the rights of creditors generally, and general principles of equity. Each and all representations and warranties of the Borrower in the Pre-Petition Loan Documents are and will continue to be true, accurate and correct in all

material respects except that it is acknowledged that any representation or covenant in the Pre-Petition Loan Documents that there has been no material adverse change in the Borrower's financial condition or operation is no longer true, accurate or correct. The Pre-Petition Loan Documents are ratified and affirmed by Borrower and shall remain in full force and effect. The Liens of the Existing Lender on and security interests in any and all real or personal property (tangible or intangible) granted as security pursuant to any of the Pre-Petition Loan Documents shall continue in full force and effect, and none of such property is or shall be released from such liens and security interests; and this Agreement shall not constitute a waiver of any rights or remedies of the Existing Lender in respect of the Pre-Petition Loan Documents.

ARTICLE VII

COVENANTS OF BORROWER

Section 7.01 Affirmative Covenants. So long as any principal of or interest on any Loan or any other Obligation (whether or not due) shall remain unpaid or the Lender shall have any Commitment hereunder, the Borrower will, unless the Lender shall otherwise consent in writing:

(a) Use of Proceeds of Initial Term Loans. Apply the total amount of the proceeds of the Initial Term Loans to pay (i) the expenses and make the disbursements set forth in the Budget in an amount that shall not, for any given week, exceed one hundred ten percent of the sum of the "Total Operating Disbursements" set forth in the Budget; (ii) the Loan Fees for the Initial Term Loans; and (iii) the Lender's Legal Fees.

(b) Compliance with Laws, Etc. Except for such noncompliance which is not reasonably likely to result in a Material Adverse Change, and subject to any restrictions imposed under the Bankruptcy Code or by the Bankruptcy Court, comply with all applicable laws, rules, regulations, judgments and orders, such compliance to include paying all lawful claims the enforcement of which is not stayed by the filing of the Chapter 11 Case before the same become a Lien or charge upon any of its properties, except in any such case to the extent contested in good faith by proper proceedings which stay the imposition of any penalty, fine or Lien resulting from the non-payment thereof and with respect to which adequate reserves have been set aside for the payment thereof.

(c) Budget Compliance. Borrower shall not permit:

(i) for any week set forth in the Budget, the sum of all actual operating disbursements (calculated in the same manner as the "Total Operating Disbursements in the Budget were calculated), on a cumulative basis from the Agreement Date through and including the last day of such week, to exceed one hundred ten percent (110%) of the sum of the Total Operating Disbursement budgeted for the period commencing on the Agreement Date and continuing through and including the last day of such week;

(ii) for any week set forth in the Budget, the sum of the actual receipts of the Debtors, on a cumulative basis from the Agreement Date through and

including the last day of such week, to be less than ninety percent (90%) of the sum of the "Total Receipts" budgeted for the period commencing on the Agreement Date and continuing through and including the last day of such week

(d) Reporting. Furnish, or cause to be furnished, to the Lender copies of the following financial statements, reports, notices and information:

(i) Within [three] Business Days after the end of each week, a cash flow report showing the variance between the actual results for the preceding week then ended and the Budget for such week then ended;

(ii) Within [three] Business Days after the end of each calendar month, cash flow statements for the calendar month then ended and description of any differences between such cash flow report and the Budget for such month then ended for the year to date;

(e) CRO Employment. Continue to employ the CRO upon terms and conditions existing prior to the Petition Date.

(f) CRO Plan. On or before 45 days following the Petition Date, present the CRO Plan to the Lender.

(g) Maintenance of Existence; Etc. At all times preserve and keep in full force and effect its corporate existence, good standing and all rights and franchises, licenses and permits material to its business.

(h) Keeping of Records and Books of Account. Keep adequate records and books of account, with complete entries made in accordance with GAAP.

(i) Maintenance of Properties, Etc. Repair, replace, maintain and preserve all of its properties (whether owned or held under lease) which are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted, and except, as otherwise (i) approved by the Bankruptcy Court or (ii) permitted by the terms of this Agreement.

(j) Maintenance of Insurance. Maintain insurance with responsible and reputable insurance companies or associations with respect to its properties (including all real properties leased or owned by it) and business, in such amounts and covering such risks as is required by any Governmental Authority having jurisdiction with respect thereto or as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated.

(k) Inspection Rights. Permit the Lender or representatives thereof at any time and from time to time during normal business hours and upon reasonable advance notice, at the expense of the Borrower, to examine and make copies of and abstracts from its records and books of account, to visit and inspect its properties, to verify materials, leases, notes receivable, deposit accounts and other assets of the Borrower, to conduct, on a reasonable basis and, unless a Default or Event of Default has occurred and is continuing, in consultation with the Borrower,

audits, physical counts, valuations, appraisals, environmental assessments or examinations and to discuss its affairs, finances and accounts with any of the directors, officers, managerial employees, independent accountants or other representatives thereof.

(l) Payment of Taxes and Claims. Pay all Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; *provided* that no such Tax or claim need be paid if (i) it is subject to the automatic stay in connection with the Chapter 11 Case, (ii) such Tax or claim does not, together with all other Taxes then remaining unpaid, exceed $50,000 in the aggregate, or (iii) it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (A) adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor, and (B) in the case of a Tax or claim which has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such Tax or claim.

(m) Notice of Default. Promptly upon any of its officers obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to the Borrower with respect thereto, (ii) that any Person has given any notice to the Borrower, or taken any other action with respect to, default by the Borrower on an agreement with such Person or (iii) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Change, deliver to the Lender a certificate specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, default, event or condition, and what action the Borrower has taken, is taking and proposes to take with respect thereto.

(n) Notice of Litigation. Promptly upon any of its officers obtaining knowledge of (i) the institution of, or non-frivolous threat of, any adverse proceeding not previously disclosed in writing by the Borrower to the Lender, or (ii) any material development in any adverse proceeding that, in the case of either clause (i) or (ii), if adversely determined could be reasonably expected to result in a Material Adverse Change, or seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, deliver to the Lender written notice thereof (together with such other information as may be reasonably available to the Borrower to enable the Lender and its counsel to evaluate such matters).

(o) Notice of Change in Board of Directors. With reasonable promptness, deliver to the Lender written notice of any change in the board of directors (or similar governing body) of the Borrower.

(p) Information Regarding Collateral. Furnish to the Lender prompt written notice of any change in the Borrower's (i) corporate name, (ii) identity or corporate structure, (iii) jurisdiction of organization or (iv) Federal taxpayer identification number or state organizational identification number. The Borrower agrees not to effect or permit any change

referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for the Lender to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral as contemplated in the Loan Documents. The Borrower also agrees promptly to notify the Lender if any material portion of the Collateral has been damaged or destroyed, or if a change in the location of any Collateral has occurred.

(q) Further Assurances. Take such action and authorize, execute, acknowledge and deliver such agreements, promissory notes, instruments or other documents as the Lender may reasonably require from time to time in order to carry out more effectively the purposes of this Agreement and the other Loan Documents.

Section 7.02 Negative Covenants. So long as any principal of or interest on any Loan or any other Obligation (whether or not due) shall remain unpaid or the Lender shall have any Commitment hereunder, the Borrower shall not, unless the Lender shall otherwise consent in writing:

(a) Interim and Final Cash Collateral and Financing Order; Administrative Priority; Lien Priority; Payment of Claims.

(i) At any time seek, consent to or suffer to exist any modification, stay, vacation or amendment of the Interim Cash Collateral and Financing Order or the Final Cash Collateral and Financing Order,

(ii) At any time suffer to exist a priority for any administrative expense or unsecured claim against the Borrower (now existing or hereafter arising of any kind or nature whatsoever, including any administrative expenses of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code) equal or superior to the priority of the Lender or the Existing Lender in respect of the Obligations, except for the Carve-Out Expenses;

(iii) At any time suffer to exist any Lien on the Collateral having a priority equal or superior to the Lien in favor of the Lender in respect of the Collateral except for Permitted Liens; or

(iv) Prior to the date on which the Obligations have been paid in full in cash and the Lender no longer has any Commitment hereunder, pay any administrative expense claims except (1) any Obligations due and payable hereunder, and (2) other administrative expense claims incurred in the ordinary course of the business of the Borrower or the Chapter 11 Case, but only as specifically set forth and provided for in the Budget.

(b) Liens, Etc. Create, incur, assume or suffer to exist any Lien (other than Liens existing on the Agreement Date) upon or with respect to any of its properties, whether now owned or hereafter acquired, to file or suffer to exist under the UCC or any similar law or statute of any jurisdiction, a financing statement (or the equivalent thereof) that names the Borrower as debtor, to sign or suffer to exist any security agreement authorizing any secured party thereunder

to file such financing statement (or the equivalent thereof), to sell any of its property or assets subject to an understanding or agreement, contingent or otherwise, to repurchase such property or assets (including sales of accounts receivable) with recourse to the Borrower or assign or otherwise transfer, any account or other right to receive income; other than, as to all of the above, Permitted Liens.

(c) Payment of Existing Indebtedness. Make any payment on the existing Indebtedness (other than Permitted Indebtedness to the extent permitted by the Bankruptcy Court or by the Lender in writing); *provided* that it shall make payments required to be made by the Bankruptcy Code, including under Section 365 of the Bankruptcy Code, and may make payments permitted by any of the "first day" orders consented to by the Lender and any other orders of the Bankruptcy Court consented to by the Lender.

(d) Incurrence of Indebtedness. Create, incur, assume, guarantee or suffer to exist, or otherwise become or remain liable with respect to, any Indebtedness other than Permitted Indebtedness.

(e) Additional Financing. Finance the acquisition of any property or assets other than in accordance herewith.

(f) Expenditures Not Approved by Budget. Make any material expenditure except of the type and for the purposes provided for in the Budget.

(g) Fundamental Changes. Wind-up, liquidate or dissolve (or permit or suffer any thereof) or merge, consolidate or amalgamate with any Person, convey, sell, lease or sublease, transfer or otherwise dispose of, whether in one transaction or a series of related transactions, all or substantially all of its business, property or assets, whether now owned or hereafter acquired.

(h) Change in Type of Business. Make any substantial change in the type of its business as carried on at the date hereof.

(i) Use of Proceeds. Use the proceeds of any Loan for any purpose other than the Designated Purposes.

ARTICLE VIII

EVENTS OF DEFAULT

Section 8.01 Events of Default. Any one of the following events shall constitute an "Event of Default" hereunder:

(a) the Borrower shall fail to pay any principal of or interest on any Loan, or any fee, indemnity or other amount payable under this Agreement or any other Loan Document, when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), including, but not limited to, the Lender Legal Fees;

(b) the Borrower shall fail to perform or comply with the covenants or agreements contained in Section 7.01 or Section 7.02;

(c) the Borrower shall fail to make prepayments pursuant to Section 2.07;

(d) the Borrower shall fail to perform or comply with any term, covenant or agreement contained in any Loan Document to be performed or observed by it and, except as set forth in Sections 8.01(a) and 8.01(b), such failure, if capable of being remedied, shall remain unremedied for five days after written notice of such default shall have been given by the Lender to the Borrower and the Committee;

(e) any representation, warranty, certification or other statement made or deemed made by the Borrower in any Loan Document or in any statement or certificate at any time given by the Borrower in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect as of the date made or deemed made;

(f) the Borrower shall fail to comply with the terms of the Interim Cash Collateral and Financing Order or the Final Cash Collateral and Financing Order in any material respect or the right of the Borrower to borrow under this Agreement is terminated by an order entered by the Bankruptcy Court;

(g) the Borrower shall cease substantially all of its business operations at any location, and such cessation shall continue for five days after the date written notice of such cessation shall have been given by the Lender to the Borrower;

(h) any money judgment, writ or warrant of attachment, or similar process involving an amount in any individual case in excess of $100,000 or an amount in the aggregate at any time in excess of $250,000 (in either case to the extent not covered by insurance as to which the insurance company has not declined coverage) is, after the Petition Date, entered or filed against the Borrower or its assets and remains undischarged, unvacated or unstayed for a period of twenty-five days;

(i) the Borrower shall file, support or fail to oppose a motion seeking, or the Bankruptcy Court shall enter, an order shall be entered by the Bankruptcy Court (i) dismissing the Chapter 11 Case and not containing a provision for termination of the Lender's Commitment and payment in full in cash of all Obligations upon entry of such order, (ii) converting the Chapter 11 Case to a Chapter 7 case, (iii) appointing a Chapter 11 trustee in the Chapter 11 Case, (iv) appointing an examiner having enlarged powers relating to the operation of the business of the Borrower (beyond those set forth under Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code, (v) granting a superpriority claim or a Lien *pari passu* or senior to that of the Existing Lender granted hereunder or under the Pre-Petition Loan Documents, (vi) staying, reversing, vacating, or otherwise modifying the Interim Cash Collateral and Financing Order or the Final Cash Collateral and Financing Order, without the prior written consent of the Lender, (vii) granting relief from the automatic stay (or any other injunction having similar effect) so as to allow a third party to proceed against any material property or assets of the Borrower or (viii) granting any other relief that is adverse to the Lender's interests under any Loan Document or its and remedies hereunder or its interest in the Collateral;

(j) (i) the Borrower shall file a plan of reorganization in the Chapter 11 Case which does not contain a provision for termination of the Lender's Commitment and payment in full in cash of all Obligations on or before the effective date of such plan or plans, or (ii) an order shall be entered by the Bankruptcy Court confirming a plan of reorganization in the Chapter 11 Case which does not contain a provision for termination of the Lender's Commitment and payment in full in cash of all Obligations of the Borrower hereunder and under the other Loan Documents and the release of the Lender in full from all claims of the Borrower on or before the effective date of such plan upon entry thereof, unless the Lender has consented thereto;

(k) a Change of Control shall occur;

(l) any of the Loan Documents or the Pre-Petition Loan Documents for any reason ceases to be in full force and effect or is declared to be null and void by a court of competent jurisdiction, or the Borrower or any third party shall seek to, or shall support (in any such case by way of any motion or other pleading filed with the Bankruptcy Court or any other writing to another party-in-interest executed by or on behalf of the Borrower or such third party) any other Person's motion to, disallow in whole or in part the Lender's or the Existing Lender's claims under the Loan Documents or the Pre-Petition Loan Documents or to challenge the validity and enforceability of the Liens in favor of the Lender or the Existing Lender;

(m) absent the written consent of the Lender, entry by the Bankruptcy Court of an order under Section 363 or 365 of the Bankruptcy Code authorizing or approving the sale or assignment of the Borrower' assets to a Person other than Lender, or the Borrower seeking, supporting, or failing to contest in good faith the entry of such an order in the Chapter 11 Case;

(n) the sale, without the Lender's consent, of all or substantially all of the Borrower's assets either through a sale under Section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Chapter 11 Case, or otherwise.

Section 8.02 Remedies. Immediately upon the occurrence of an Event of Default, the Lender's Commitment shall terminate and the Lender shall have no obligation to make any further Loans hereunder. If any of the Events of Default shall have occurred and be continuing, the Lender may, five Business Days after giving written notice of such Event of Default to counsel for the Borrower, counsel for the Committee, and the U.S. Trustee (which such notice shall be filed on the Bankruptcy Court's electronic docket), without further notice, hearing or approval of the Bankruptcy Court, (a) declare all Loans and other amounts then outstanding to be due and payable, whereupon the aggregate principal of such Loans, all accrued and unpaid interest thereon, all fees and all other amounts payable under this Agreement and the other Loan Documents and the Pre-Petition Loan Documents shall become due and payable immediately, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower, and (b) to take any and all actions or remedies which the Lenders may deem appropriate to proceed against and realize upon the Collateral to obtain the full and indefeasible repayment of the Obligations and all other amounts payable under the Pre-Petition Loan Documents and exercise any and all of its other rights and remedies under applicable law (including the Bankruptcy Code and the UCC), hereunder and under the other Loan Documents. The Lender shall not in any event seek the recovery or disgorgement of, nor prevent the payment of, any administrative expenses permitted to be paid by the Borrower in accordance with Section 7.02(a)(iv). Nothing contained in this Section 8.02 shall be construed to limit or otherwise modify the provisions of the Interim Cash Collateral and Financing Order, the Final Cash Collateral and Financing Order or limit or otherwise affect the rights and remedies of the Existing Lender.

ARTICLE IX

MISCELLANEOUS

Section 9.01 Notices, Etc. All notices and other communications provided for hereunder shall be in writing and shall be hand delivered, telecopied or sent by a nationally-recognized overnight courier if to the Borrower, at the following address, telecopy number or email address:

Waterloo Restaurant Ventures, Inc.
_____
_____
Attention: _____
Telephone: _____
Telecopy: _____

with a copy to counsel for the Borrower:

_____
_____
_____
Attention: _____
Telephone: _____
Telecopy: _____

with a copy to counsel for the Committee,

and with a copy to the U.S. Trustee;

if to the Lender, to it at the following address or telecopy number:

GE Capital Franchise Finance Corporation
Attention: Mark Flamm
6464 185th Ave NE, Suite 100
Redmond, WA 98052
T 425-602-3808
F 877-543-4151
Mark.R.Flamm@ge.com

David A. Burger
Senior Vice President
10 Riverview Drive
Danbury, CT 06810
T- 203 749 6194
F 866-421-2713
david.burger@ge.com

with a copy to counsel for the Lender:

Jeffrey T. Wegner
Joel Wiegert
Kutak Rock
The Omaha Building
1650 Farnam Street
Omaha, NE 68102
T-402-346-6000
F-402-346-1148
Jeffrey.wegner@kutakrock.com
Joel.wiegert@kutakrock.com

All such notices and other communications shall be effective, (a) if hand delivered, upon delivery (or refusal of delivery), (b) if telecopied, when transmitted and confirmation received or

(c) if sent by a nationally-recognized overnight courier, one Business Day after the date of deposit with such courier.

Section 9.02 Waivers, Amendments, Etc. No waiver of any provision of this Agreement or the other Loan Documents, and no consent to any departure by the Lender therefrom, shall in any event be effective unless the same shall be in writing and signed by the Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. The Borrower and the Lender may enter into amendments and modifications to this Agreement and the other Loan Documents without further order of the Bankruptcy Court; *provided* that such amendments and modifications shall be in writing and served upon counsel for the Committee and the U.S. Trustee; and *provided* further that any amendments or modifications that would have the effect of shortening the Maturity Date of the facilities or increasing the aggregate fees payable, under this Agreement or the other Loan Documents, shall be done only pursuant to a further order of the Bankruptcy Court. The Loan Documents shall be amended as soon as practicable after entry of the Final Cash Collateral and Financing Order to ensure the terms and conditions of the Final Cash Collateral and Financing Order are incorporated in the Loan Documents.

Section 9.03 Assignment. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that none of the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void).

Section 9.04 No Waiver; Remedies, Etc. No failure on the part of the Lender to exercise, and no delay in exercising, any right hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right under any Loan Document preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Lender provided herein and in the other Loan Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the Lender under any Loan Document against any party thereto are not conditional or contingent on any attempt by the Lender to exercise any of its rights under any other Loan Document against such party or against any other Person.

Section 9.05 Expenses. Without any further order of the Bankruptcy Court, and regardless of whether or not the transactions contemplated hereby are consummated, the Borrower will pay on demand all out-of-pocket costs and expenses incurred by or on behalf of the Lender, regardless of whether the transactions contemplated hereby are consummated, including reasonable fees, costs, client charges and expenses of counsel for the Lender arising from or relating to: (a) the negotiation, preparation, execution, delivery, performance and administration of this Agreement and the other Loan Documents (including the preparation of any additional Loan Documents), (b) any requested amendments, waivers or consents to this Agreement or the other Loan Documents whether or not such documents become effective or are given, and (c) the preservation, protection and enforcement of any of the Lender's rights under this Agreement or the other Loan Documents.

Section 9.06 Right of Set-off. Upon the occurrence and during the continuance of any Event of Default, the Lender may, and is hereby authorized to, at any time and from time to time, without notice to the Borrower (any such notice being expressly waived by the Borrower) or any other Person and to the fullest extent permitted by law, set off and apply any and all indebtedness at any time owing by the Lender to or for the credit or the account of the Borrower against any and all obligations of any of them now or hereafter existing under any Loan Document, irrespective of whether or not the Lender shall have made any demand hereunder or thereunder and although such obligations may be contingent or unmatured.

Section 9.07 Marshalling; Payments Set Aside. The Lender shall be under no obligation to marshal any assets in favor of the Borrower or any other Person or against or in payment of any or all of the Obligations. To the extent that the Borrower makes a payment or payments to the Lender, or the Lender enforces any security interests or exercises its rights of set-off, and such payment or payments or the proceeds of such enforcement or set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or set-off had not occurred.

Section 9.08 Survival. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the Lender and shall survive the execution and delivery of this Agreement and the making of any Loans, regardless of any investigation made by the Lender or on its behalf, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid and so long as the Commitment has not expired.

Section 9.09 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 9.10 Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

Section 9.11 Confidentiality. The Borrower and the Lender shall take reasonable precautions, in accordance with their customary procedures for handling confidential information of the same nature, to maintain the confidentiality of all non-public information obtained pursuant to the requirements of this Agreement or any other Loan Document but may, in any event, make disclosures (a) as required or requested by any Governmental Authority or representative thereof or as required pursuant to legal process, (b) to their respective attorneys,

accountants and other professional consultants, (c) as otherwise required by law or (d) in connection with litigation involving the Borrower or the Lender.

Section 9.12 Headings. Article, Section and paragraph headings herein are included for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

Section 9.13 GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF ARIZONA (WITHOUT REFERENCE TO ITS CONFLICT-OF-LAWS PROVISIONS) APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN THE STATE OF ARIZONA, EXCEPT AS GOVERNED BY THE BANKRUPTCY CODE.

Section 9.14 WAIVER OF JURY TRIAL, ETC. THE BORROWER AND THE LENDER HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS AGREEMENT, THE NOTES OR OTHER LOAN DOCUMENTS, OR UNDER ANY AMENDMENT, WAIVER, CONSENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION THEREWITH, OR ARISING FROM ANY FINANCING RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT, AND AGREE THAT ANY SUCH ACTION, PROCEEDINGS OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

Section 9.15 Consent to Jurisdiction. Each party to this Agreement hereby irrevocably and unconditionally submits for itself and its property in any legal action or proceeding relating to this Agreement or any of the other Loan Documents, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Bankruptcy Court, and, if the Bankruptcy Court does not have (or abstains from) jurisdiction), to the jurisdiction of any state or federal court of competent jurisdiction sitting in Phoenix, Arizona.

(b) Each party to this Agreement hereby irrevocably waives, in connection with any such action or proceeding relating to this Agreement or any of the other Loan Documents, any objection, including, without limitation, any objection to the laying of venue or based on the grounds of forum *non-conveniens*, which they may now or hereafter have to the bringing of any such action or proceeding such respective jurisdiction.

(c) Each party to this Agreement hereby irrevocably consents to the service of process of any of the aforementioned courts in any such action or proceeding relating to this Agreement or any of the other Loan Documents by the mailing of copies thereof by registered or certified mail, postage prepaid, to each such party, as the case may be, at its address set forth in Section 9.01 hereof.

Section 9.16 Prior Agreements. This Agreement represents the entire agreement of the parties with regard to the subject matter hereof and the terms of any agreements, letters and other documentation entered into between the Borrower and the Lender prior to the execution of this

Agreement which relate to the Loans to be made hereunder shall be replaced by the terms of this Agreement and the other Loan Documents.

Section 9.17 No Party Deemed Drafter. Each of the parties hereto agrees that no party hereto shall be deemed to be the drafter of this Agreement.

Section 9.18 Indemnification. In addition to the Borrower's other Obligations under this Agreement, the Borrower agrees to defend, protect, indemnify and hold harmless the Lender and its officers, directors, employees, attorneys, consultants and agents (collectively called the "Indemnitees") from and against any and all losses, damages, liabilities, obligations, penalties, fees, reasonable costs and expenses (including reasonable attorneys' fees, costs and expenses) incurred by such Indemnitees, whether prior to or from and after the Agreement Date, as a result of or arising from or relating to or in connection with any of the following: (a) the negotiation, preparation, execution or performance or enforcement of this Agreement, any other Loan Document or of any other document executed in connection with the transactions contemplated by this Agreement, (b) the Lender's furnishing of funds to the Borrower under this Agreement, (c) any matter relating to the financing transactions contemplated by this Agreement or the other Loan Documents or by any document executed in connection with the transactions contemplated by this Agreement or the other Loan Documents, or (d) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto (collectively, the "Indemnified Matters"); *provided*, *however*, that the Borrower shall not have any obligation to any Indemnitee under this Section 9.18 for any Indemnified Matter caused by the gross negligence or willful misconduct of such Indemnitee, as determined by a final judgment of a court of competent jurisdiction. To the extent that the undertaking to indemnify, pay and hold harmless set forth in this Section 9.18 may be unenforceable because it is violative of any law or public policy, the Borrower shall contribute the maximum portion which it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all Indemnified Matters incurred by the Indemnitees. This Indemnity shall survive the repayment of the Obligations and the discharge of the Liens granted under the Loan Documents. In no event, whether as a result of breach of contract, warranty, tort (including negligence or strict liability), indemnity or otherwise, shall the Borrower be liable for any special, consequential, incidental, punitive or penal damages.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Debtor-in-Possession Credit and Security Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

BORROWER:

WATERLOO RESTAURANT
VENTURES, INC.

By: _____
Name: _____
Title: _____

LENDER:

GENERAL ELECTRIC CAPITAL
CORPORATION

By: _____
Name: _____
Title: Authorized Representative

[EXECUTION PAGE OF DEBTOR-IN-POSSESSION
CREDIT AND SECURITY AGREEMENT]

SCHEDULE I

PRE-PETITION LOAN DOCUMENTS

A. LOAN 1 DOCUMENTS

(1) Loan Agreement dated as of May 24, 2006 between WATERLOO RESTAURANT VENTURES, INC. and GE CAPITAL FRANCHISE FINANCE CORPORATION.

(2) Promissory Note dated as of May 24, 2006 ($2,545,000) by WATERLOO RESTAURANT VENTURES, INC. to GE CAPITAL FRANCHISE FINANCE CORPORATION.

(3) Unconditional Guaranty of Payment and Performance (the "First Guaranty") dated as of May 24, 2006 by G. Barry McGowan, Paul W. Acker and Robert C. Hudson for the benefit of GE CAPITAL FRANCHISE FINANCE CORPORATION.

(4) Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of May 24, 2006 among WATERLOO RESTAURANT VENTURES, INC., LAWYERS TITLE INSURANCE CORPORATION and GE CAPITAL FRANCHISE FINANCE CORPORATION No. 2006-091490 filed June 20, 2006 in the Official Records of County of San Mateo, California.

(5) Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of May 24, 2006 among WATERLOO RESTAURANT VENTURES, INC., LAWYERS TITLE INSURANCE CORPORATION and GE CAPITAL FRANCHISE FINANCE CORPORATION No. 2006-198668 filed June 23, 2006 in the Recorder's Office of County of Contra Costa, California.

(6) Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of May 24, 2006 among WATERLOO RESTAURANT VENTURES, INC., LAWYERS TITLE INSURANCE CORPORATION and GE CAPITAL FRANCHISE FINANCE CORPORATION, No. 18982446 filed June 20, 2006 in the Recorder's Office of County of Santa Clara County, California.

(7) UCC Financing Statement #2006-070382 filed June 13, 2006 in Delaware Department of State.

(8) Intercreditor Agreement dated May 24, 2006 among GE CAPITAL FRANCHISE FINANCE CORPORATION, BRINKER INTERNATIONAL, INC. and WATERLOO RESTAURANT VENTURES, INC.

(9) Environmental Indemnity Agreement dated as of May 24, 2006 among WATERLOO RESTAURANT VENTURES, INC. and GE CAPITAL FRANCHISE FINANCE CORPORATION.

(10) Ground Lease Estoppel Certificate, Consent, and Agreement dated May 16, 2006 among BOHANNON DEVELOPMENT COMPANY, BRINKER RESTAURANT CORPORATION, WATERLOO RESTAURANT VENTURES, INC. and GE CAPITAL FRANCHISE FINANCE CORPORATION.

(11) Ground Lease Estoppel Certificate, Consent, and Agreement dated May 23, 2006 among KMV PROPERTIES, LLC, BRINKER RESTAURANT CORPORATION, WATERLOO RESTAURANT VENTURES, INC. and GE CAPITAL FRANCHISE FINANCE CORPORATION.

(12) Ground Lease Estoppel Certificate, Consent, and Agreement dated May 25, 2006 among ALBERT C. LAMPERTI, JUDITH E. LAMPERTI, BRINKER RESTAURANT CORPORATION, WATERLOO RESTAURANT VENTURES, INC. and GE CAPITAL FRANCHISE FINANCE CORPORATION.

(13) All documents ancillary to the documents described in 1-12 above.

B. LOAN 2 DOCUMENTS

(1) Equipment Loan and Security Agreement dated as of May 24, 2006 between WATERLOO RESTAURANT VENTURES, INC. and GE CAPITAL FRANCHISE FINANCE CORPORATION.

(2) Equipment Promissory Note ($4,700,000) dated as of May 24, 2006 by WATERLOO RESTAURANT VENTURES, INC. to GE CAPITAL FRANCHISE FINANCE CORPORATION.

(3) Unconditional Guaranty of Payment and Performance (Equipment) (the "Second Guaranty") dated as of May 24, 2006 by G. Barry McGowan, Paul W. Acker and Robert C. Hudson for the benefit of GE CAPITAL FRANCHISE FINANCE CORPORATION.

(4) UCC Financing Statement #61747658 filed May 16, 2006 in Delaware Department of State.

(5) Intercreditor Agreement dated May 24, 2006 among GE CAPITAL FRANCHISE FINANCE CORPORATION, BRINKER INTERNATIONAL, INC. and WATERLOO RESTAURANT VENTURES, INC.

(6) All documents ancillary to the documents described in 1-5 above.

C. LOAN 3 DOCUMENTS

(1) Loan Agreement dated as of May 24, 2006 between GE CAPITAL FRANCHISE FINANCE CORPORATION and WATERLOO RESTAURANT VENTURES, INC.

(2) Promissory Note dated as of May 24, 2006 ($2,056,600) by WATERLOO RESTAURANT VENTURES, INC. to GE CAPITAL FRANCHISE FINANCE CORPORATION.

(3) Unconditional Guaranty of Payment and Performance (the "Third Guaranty") dated as of May 24, 2006 by G. Barry McGowan, Paul W. Acker and Robert C. Hudson for the benefit of GE CAPITAL FRANCHISE FINANCE CORPORATION.

(4) Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of May 17, 2006 among WATERLOO RESTAURANT VENTURES, INC., LAWYERS TITLE INSURANCE CORPORATION and GE CAPITAL

FRANCHISE FINANCE CORPORATION filed No. 2006-066667 June 5, 2006 in the Recorder's Office of Washington County, Oregon.

(5) Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of May 17, 2006 among WATERLOO RESTAURANT VENTURES, INC., LAWYERS TITLE INSURANCE CORPORATION and GE CAPITAL FRANCHISE FINANCE CORPORATION filed No. 2006-065847 June 1, 2006 in the Recorder's Office of Washington County, Oregon.

(6) Intercreditor Agreement dated May 24, 2006 among GE CAPITAL FRANCHISE FINANCE CORPORATION, BRINKER INTERNATIONAL, INC. and WATERLOO RESTAURANT VENTURES, INC.

(7) Environmental Indemnity Agreement dated as of May 24, 2006 among WATERLOO RESTAURANT VENTURES, INC. and GE CAPITAL FRANCHISE FINANCE CORPORATION.

(8) Ground Lease Estoppel Certificate and Consent dated May 20, 2006 among WATERLOO RESTAURANT VENTURES, INC., BV CENTERCAL, LLC and GE CAPITAL FRANCHISE FINANCE CORPORATION.

(9) Ground Lease Estoppel Certificate and Consent dated May 23, 2006 among WATERLOO RESTAURANT VENTURES, INC., STREETS OF TANASBOURNE, LLC and GE CAPITAL FRANCHISE FINANCE CORPORATION.

(10) All documents ancillary to the documents described in 1-9 above.

D. LOAN 4 DOCUMENTS

(1) Equipment Loan and Security Agreement dated as of May 24, 2006 between WATERLOO RESTAURANT VENTURES, INC. and GE CAPITAL FRANCHISE FINANCE CORPORATION.

(2) Equipment Promissory Note ($4,958,378) dated as of May 24, 2006 by WATERLOO RESTAURANT VENTURES, INC. to GE CAPITAL FRANCHISE FINANCE CORPORATION.

(3) Unconditional Guaranty of Payment and Performance (Equipment) (the "Fourth Guaranty") dated as of May 24, 2006 by G. Barry McGowan, Paul W. Acker and Robert C. Hudson for the benefit of GE CAPITAL FRANCHISE FINANCE CORPORATION.

(4) UCC Financing Statement #6174763 filed May 16, 2006 in Delaware Department of State.

(5) Ground Lease Estoppel Certificate and Consent dated May 20, 2006 among WATERLOO RESTAURANT VENTURES, INC., BV CENTERCAL, LLC and GE CAPITAL FRANCHISE FINANCE CORPORATION.

(6) Ground Lease Estoppel Certificate and Consent dated May 23, 2006 among WATERLOO RESTAURANT VENTURES, INC., STREETS OF TANASBOURNE, LLC and GE CAPITAL FRANCHISE FINANCE CORPORATION.

(7) All documents ancillary to the documents described in 1-6 above.

E. LOAN 5 DOCUMENTS

(1) Loan Agreement dated as of October 22, 2007 between GE CAPITAL FRANCHISE FINANCE CORPORATION and WATERLOO RESTAURANT VENTURES, INC.

(2) Amended and Restated Promissory Note ($1,250,000) dated as of February 29, 2008 by WATERLOO RESTAURANT VENTURES, INC. to GE CAPITAL FRANCHISE FINANCE CORPORATION.

(3) Unconditional Guaranty of Payment and Performance (the "Fifth Guaranty") dated as of October 22, 2007 by G. Barry McGowan, Paul W. Acker and Robert C. Hudson for the benefit of GE CAPITAL FRANCHISE FINANCE CORPORATION.

(4) Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of October 22, 2007 among WATERLOO RESTAURANT VENTURES, INC., LAWYERS TITLE INSURANCE CORPORATION and GE CAPITAL FRANCHISE FINANCE CORPORATION No. 20071024002053 filed October 24, 2007 in the Recorder's Office of King County, Washington.

(5) UCC Financing Statement #2007-3014924 filed July 13, 2007 in Delaware Department of State.

(6) Ground Lease Estoppel Certificate and Consent dated December 21, 2006 among WATERLOO RESTAURANT VENTURES, INC., NORTHGATE MALL PARTNERSHIP and GE CAPITAL FRANCHISE FINANCE CORPORATION.

(7) Environmental Indemnity Agreement dated as of October 22, 2007 among WATERLOO RESTAURANT VENTURES, INC. and GE CAPITAL FRANCHISE FINANCE CORPORATION.

(8) Architect's Consent, Agreement, and Certificate dated June 25, 2007 by CORTLAND MORGAN in favor of GE CAPITAL FRANCHISE FINANCE CORPORATION.

(9) Contractor's Consent, Agreement and Certificate dated May 22, 2007 by ADB COMMERCIAL CONSTRUCTION, INC., in favor of GE CAPITAL FRANCHISE FINANCE CORPORATION.

(10) Disbursement Agreement dated October 22, 2007 among GE CAPITAL FRANCHISE FINANCE CORPORATION and WATERLOO RESTAURANT VENTURES, INC.

(11) All documents ancillary to the documents described in 1-10 above.

F. LOAN 6 DOCUMENTS

(1) Equipment Loan and Security Agreement dated as of October 22, 2007 between WATERLOO RESTAURANT VENTURES, INC. and GE CAPITAL FRANCHISE FINANCE CORPORATION.

(2) Equipment Promissory Note ($575,000) dated as of February 29, 2008 by WATERLOO RESTAURANT VENTURES, INC. to GE CAPITAL FRANCHISE FINANCE CORPORATION.

(3) Unconditional Guaranty of Payment and Performance (Equipment) (the "Sixth Guaranty") dated as of October 22, 2007 by G. Barry McGowan, Paul W. Acker and Robert C. Hudson for the benefit of GE CAPITAL FRANCHISE FINANCE CORPORATION.

(4) UCC Financing Statement #2007-2643244 filed July 13, 2007 in Delaware Department of State.

(5) Ground Lease Estoppel Certificate and Consent dated December 21, 2006 among WATERLOO RESTAURANT VENTURES, INC., NORTHGATE MALL PARTNERSHIP and GE CAPITAL FRANCHISE FINANCE CORPORATION.

(6) All documents ancillary to the documents described in 1-5 above.

G. LOAN 7 DOCUMENTS

(1) Loan Agreement dated as of July 18, 2007 between GE CAPITAL FRANCHISE FINANCE CORPORATION and WATERLOO RESTAURANT VENTURES, INC.

(2) Promissory Note ($1,250,000) dated as of July 18, 2007 by WATERLOO RESTAURANT VENTURES, INC. to GE CAPITAL FRANCHISE FINANCE CORPORATION.

(3) Unconditional Guaranty of Payment and Performance (the "Seventh Guaranty") dated as of July 18, 2007 by G. Barry McGowan, Paul W. Acker and Robert C. Hudson for the benefit of GE CAPITAL FRANCHISE FINANCE CORPORATION.

(4) Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated July 18, 2007 among WATERLOO RESTAURANT VENTURES, INC., LAWYERS TITLE INSURANCE CORPORATION and GE CAPITAL FRANCHISE FINANCE CORPORATION No. 2007-064429 filed July 24, 2007 in the Recorder's Office of Clackamas County, Oregon.

(5) UCC Financing Statement #2007-1860302 filed July 24, 2007 in Delaware Department of State.

(6) Agreement Regarding Ground Lease dated July 18, 2007 between CLACKAMAS MALL, LLC and GE CAPITAL FRANCHISE FINANCE CORPORATION filed July 24, 2007, No. 2007-064430 in Recorder's Office Clackamas County, Oregon.

(7) Environmental Indemnity Agreement dated as of July 18, 2007 among WATERLOO RESTAURANT VENTURES, INC. and GE CAPITAL FRANCHISE FINANCE CORPORATION.

(8) Subordination, Non-disturbance and Attornment Agreement dated June 26, 2007 among WATERLOO RESTAURANT VENTURES, INC., CLACKAMAS MALL, LLC, LASALLE BANK NATIONAL ASSOCIATION, filed July 24, 2007, No. 2007-064431 Recorder's Office Clackamas County, Oregon.

(9) Architect's Consent, Agreement, and Certificate dated December 15, 2006 by CORTLAND MORGAN in favor of GE CAPITAL FRANCHISE FINANCE CORPORATION.

(10) Contractor's Consent, Agreement and Certificate dated November 29, 2006 by T.J. NISBET CONSTRUCTION, INC., in favor of GE CAPITAL FRANCHISE FINANCE CORPORATION.

(11) All documents ancillary to the documents described in 1-10 above.

H. LOAN 8 DOCUMENTS

(1) Equipment Loan and Security Agreement dated as of July 18, 2007 between WATERLOO RESTAURANT VENTURES, INC. and GE CAPITAL FRANCHISE FINANCE CORPORATION.

(2) Equipment Promissory Note ($575,000) dated as of July 18, 2007 by WATERLOO RESTAURANT VENTURES, INC. to GE CAPITAL FRANCHISE FINANCE CORPORATION.

(3) Unconditional Guaranty of Payment and Performance (Equipment) (the "Eighth Guaranty") dated as of July 18, 2007 by G. Barry McGowan, Paul W. Acker and Robert C. Hudson for the benefit of GE CAPITAL FRANCHISE FINANCE CORPORATION.

(4) UCC Financing Statement #2007-1815132 filed May 14, 2007 in Delaware Department of State.

(5) Agreement Regarding Ground Lease dated May 3, 2007 between CLACKAMAS MALL, LLC and GE CAPITAL FRANCHISE FINANCE CORPORATION.

(6) All documents ancillary to the documents described in 1-5 above.

I. LOAN 9 DOCUMENTS

(1) Loan Agreement dated as of March 2, 2007 between GE CAPITAL FRANCHISE FINANCE CORPORATION and WATERLOO RESTAURANT VENTURES, INC.

(2) Amended and Restated Promissory Note ($1,250,000) dated as of July 31, 2007 by WATERLOO RESTAURANT VENTURES, INC. to GE CAPITAL FRANCHISE FINANCE CORPORATION.

(3) Unconditional Guaranty of Payment and Performance (the "Ninth Guaranty") dated as of March 2, 2007 by G. Barry McGowan, Paul W. Acker and Robert C. Hudson for the benefit of GE CAPITAL FRANCHISE FINANCE CORPORATION.

(4) Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of March 2, 2007 among WATERLOO RESTAURANT VENTURES, INC., LAWYERS TITLE INSURANCE CORPORATION and GE CAPITAL FRANCHISE FINANCE CORPORATION No. 19333501 filed March 9, 2007 in the Recorder's Office of Santa Clara, California.

(5) UCC Financing Statement #2007-576529 filed February 9, 2007 in Delaware Department of State.

(6) Agreement Regarding Ground Lease dated May 18, 2006 between EASTRIDGE SHOPPING CENTER, LLC and GE CAPITAL FRANCHISE FINANCE CORPORATION Doc. No. 19333502 filed March 9, 2007 in Recorder's Office Santa Clara County, California.

(7) Environmental Indemnity Agreement dated as of March 2, 2007 among WATERLOO RESTAURANT VENTURES, INC. and GE CAPITAL FRANCHISE FINANCE CORPORATION.

(8) Architect's Consent, Agreement, and Certificate dated May 3, 2006 by CORTLAND MORGAN in favor of GE CAPITAL FRANCHISE FINANCE CORPORATION.

(9) Contractor's Consent, Agreement and Certificate dated April 28, 2006 by T.J. NISBET CONSTRUCTION, INC., in favor of GE CAPITAL FRANCHISE FINANCE CORPORATION.

(10) Disbursement Agreement dated March 2, 2007 among GE CAPITAL FRANCHISE FINANCE CORPORATION and WATERLOO RESTAURANT VENTURES, INC.

(11) All documents ancillary to the documents described in 1-10 above.

J. LOAN 10 DOCUMENTS

(1) Equipment Loan and Security Agreement dated as of March 2, 2007 between WATERLOO RESTAURANT VENTURES, INC. and GE CAPITAL FRANCHISE FINANCE CORPORATION.

(2) Amendment to Loan Documents dated as of April 1, 2007 between WATERLOO RESTAURANT VENTURES, INC. and GE CAPITAL FRANCHISE FINANCE CORPORATION.

(3) Equipment Promissory Note ($575,000) dated as of July 31, 2007 by WATERLOO RESTAURANT VENTURES, INC. to GE CAPITAL FRANCHISE FINANCE CORPORATION.

(4) Unconditional Guaranty of Payment and Performance (Equipment) (the "Tenth Guaranty") dated as of March 2, 2007 by G. Barry McGowan, Paul W. Acker and Robert C. Hudson for the benefit of GE CAPITAL FRANCHISE FINANCE CORPORATION.

(5) UCC Financing Statement #2007-0515576 filed February 8, 2007 in Delaware Department of State.

(6) Intercreditor Agreement dated May 24, 2006 among GE CAPITAL FRANCHISE FINANCE CORPORATION, BRINKER INTERNATIONAL, INC. and WATERLOO RESTAURANT VENTURES, INC.

(7) Agreement Regarding Ground Lease dated May 18, 2006 between EASTRIDGE SHOPPING CENTER, LLC and GE CAPITAL FRANCHISE FINANCE CORPORATION.

(8) All documents ancillary to the documents described in 1-7 above.

Together, the First Guaranty, the Second Guaranty, the Third Guaranty, the Fourth Guaranty, the Fifth Guaranty, the Sixth Guaranty, the Seventh Guaranty, the Eighth Guaranty, the Ninth Guaranty and the Tenth Guaranty shall be referred to herein as the "Guaranties".