

# BEST BUY CO INC

## FORM 10-Q (Quarterly Report)

Filed 09/30/94 for the Period Ending 08/27/94

Address	7601 PENN AVE SOUTH RICHFIELD, MN 55423
Telephone	6122911000
CIK	0000764478
Symbol	BBY
SIC Code	5731 - Radio, Television, and Consumer Electronics Stores
Industry	Retail (Technology)
Sector	Services
Fiscal Year	02/03

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Filed 9/30/1994 For Period Ending 8/27/1994

Address	7601 PENN AVE SOUTH RICHFIELD, Minnesota 55423
Telephone	612-291-1000
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Fiscal Year	03/01

**UNITED STATES SECURITIES AND EXCHANGE  
COMMISSION  
WASHINGTON, D.C. 20549  
FORM 10-Q**

(Mark One)

X QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
- --- EXCHANGE ACT OF 1934 For the quarterly period ended August 27, 1994

OR

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES**

- --- EXCHANGE ACT OF 1934 For the transition period from \_\_\_\_\_ to \_\_\_\_\_

*Commission File Number: 1-9595*

**BEST BUY CO., INC.**

(Exact Name of Registrant as Specified in Charter)

Minnesota (State of Incorporation)	41-0907483 (IRS Employer Identification Number)
7075 Flying Cloud Drive Eden Prairie, Minnesota (Address of principal executive offices)	55344 (Zip Code)

Registrant's telephone number, including area code: 612/947-2000

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

**YES X NO**

At August 27, 1994, there were 42,067,290 shares of common stock, \$.10 par value, outstanding.

**BEST BUY CO., INC.**

**FORM 10-Q FOR THE QUARTER ENDED AUGUST 27, 1994**

INDEX

	Page
Part I. Financial Information	
Item 1. Financial Statements:	
a. Balance sheets as of August 27, 1994, February 26, 1994, and August 28, 1993	3
b. Statements of earnings for the three and six months ended August 27, 1994, and August 28, 1993	4
c. Statement of changes in shareholders' equity for the six months ended August 27, 1994	5
d. Statements of cash flows for the six months ended August 27, 1994, and August 28, 1993	6
e. Notes to financial statements	7
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	8-11
Part II. Other Information	
Item 4. Submission of matters to a Vote of Security Holders	12
Item 6. Exhibits and Reports on Form 8-K	13
Signatures	14

**Part I - Financial Information**

**Item 1. Financial Statements**

**BEST BUY CO., INC.  
BALANCE SHEETS  
(\$ IN 000, EXCEPT PER SHARE AMOUNTS)**

**ASSETS**

	AUGUST 27, 1994	FEBRUARY 26, 1994	AUGUST 28, 1993
	----- (UNAUDITED)	----- (UNAUDITED)	----- (UNAUDITED)
<b>CURRENT ASSETS:</b>			
Cash and cash equivalents.....	\$ 47,427	\$ 59,872	\$ 43,888
Receivables.....	87,804	52,944	37,606
Merchandise inventories.....	863,500	637,950	468,963
Deferred income taxes.....	14,157	13,088	9,649
Prepaid expenses.....	5,958	756	1,415
	-----	-----	-----
Total current assets.....	1,018,846	764,610	561,521
<b>PROPERTY AND EQUIPMENT, at cost:</b>			
Land and buildings.....	75,982	37,660	7,392
Property under capital leases.....	21,902	17,870	14,930
Leasehold improvements.....	69,079	55,279	35,821
Furniture, fixtures and equipment.....	145,449	122,683	94,443
	-----	-----	-----
	312,412	233,492	152,586
Less accumulated depreciation and amortization.....	77,286	60,768	50,891
	-----	-----	-----
Total property and equipment.....	235,126	172,724	101,695
<b>OTHER ASSETS:</b>			
Deferred income taxes.....	8,105	7,078	6,385
Other assets.....	8,828	8,082	3,046
	-----	-----	-----
Total other assets.....	16,933	15,160	9,431
	-----	-----	-----
<b>TOTAL ASSETS.....</b>	<b>\$ 1,270,905</b>	<b>\$ 952,494</b>	<b>\$ 672,647</b>
	-----	-----	-----

**LIABILITIES AND SHAREHOLDERS' EQUITY**

<b>CURRENT LIABILITIES:</b>			
Note payable, bank.....	\$ 95,000		
Obligations under financing arrangements.....	23,713	\$ 11,156	\$ 27,873
Accounts payable.....	481,440	294,060	229,470
Accrued salaries and related expenses.....	19,181	19,319	12,963
Other accrued liabilities.....	47,524	37,754	23,166
Deferred service plan revenue and warranty reserve.....	20,774	19,146	16,750
Accrued income taxes.....	3,583	11,694	3,722
Current portion of long-term debt.....	9,144	8,899	6,326
	-----	-----	-----
Total current liabilities.....	700,359	402,028	320,270
Deferred service plan revenue and warranty reserve.....	31,887	28,211	23,988
Long-Term Debt.....	211,013	210,811	50,907
<b>SHAREHOLDERS' EQUITY:</b>			
Preferred stock, \$1.00 par value; authorized 400,000 shares; none issued			
Common stock, \$.10 par value; authorized 120,000,000 shares; issued and outstanding 42,067,000, 41,742,000, and 41,630,000 shares, respectively.....	4,207	2,087	2,082
Additional paid-in capital.....	226,330	224,089	222,732
Retained earnings.....	97,109	85,268	52,668
	-----	-----	-----
Total shareholders' equity.....	327,646	311,444	277,482
	-----	-----	-----
<b>TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY.....</b>	<b>\$ 1,270,905</b>	<b>\$ 952,494</b>	<b>\$ 672,647</b>
	-----	-----	-----

See notes to financial statements.

**BEST BUY CO., INC.**  
**STATEMENTS OF EARNINGS**  
(\$ IN 000, EXCEPT PER SHARE AMOUNTS)

(UNAUDITED)

	THREE MONTHS ENDED		SIX MONTHS ENDED	
	AUGUST 27, 1994	AUGUST 28, 1993	AUGUST 27, 1994	AUGUST 28, 1993
Revenues.....	\$ 933,172	\$ 562,980	\$ 1,782,575	\$ 1,004,899
Cost of goods sold.....	800,988	468,782	1,531,439	836,225
Gross profit.....	132,184	94,198	251,136	168,674
Selling, general and administrative expenses.....	114,525	81,108	221,791	151,910
Income from operations.....	17,659	13,090	29,345	16,764
Interest expense, net.....	5,099	720	9,775	1,949
Earnings before income taxes and cumulative effect of change in accounting principle.....	12,560	12,370	19,570	14,815
Income taxes.....	4,960	4,776	7,729	5,705
Earnings before cumulative effect of change in accounting principle.....	7,600	7,594	11,841	9,110
Cumulative effect of change in accounting for income taxes.....				(425)
Net earnings.....	\$ 7,600	\$ 7,594	\$ 11,841	\$ 8,685
Earnings per share:				
Earnings before cumulative effect of change in accounting principle.....	\$.18	\$.18	\$.27	\$.23
Cumulative effect of change in accounting for income taxes.....				(.01)
Net earnings per share.....	\$.18	\$.18	\$.27	\$.22
Weighted average common shares outstanding (000).....	43,208	42,492	43,226	39,292

See notes to financial statements.

**BEST BUY CO., INC.**  
**STATEMENT OF CHANGES IN SHAREHOLDERS' EQUITY**  
**FOR THE SIX MONTHS ENDED AUGUST 27, 1994**  
(\$ IN 000)

(UNAUDITED)

	COMMON STOCK	ADDITIONAL PAID IN CAPITAL	RETAINED EARNINGS
	-----	-----	-----
Balance, February 26, 1994.....	\$ 2,087	\$ 224,089	\$ 85,268
Stock options exercised.....	31	4,330	
Effect of two-for-one stock split.....	2,089	(2,089)	
Net earnings, for the six months ended August 27, 1994.....			11,841
	-----	-----	-----
Balance, August 27, 1994.....	\$ 4,207	\$ 226,330	\$ 97,109
	-----	-----	-----

See notes to financial statements.

**BEST BUY CO., INC.**  
**STATEMENTS OF CASH FLOWS**  
(\$ IN 000)

(UNAUDITED)

	SIX MONTHS ENDED	
	AUGUST 27, 1994	AUGUST 28, 1993
<b>OPERATING ACTIVITIES:</b>		
Net earnings.....	\$ 11,841	\$ 8,685
Charges to earnings not affecting cash:		
Depreciation and amortization.....	16,632	9,369
(Gain) Loss on disposal of property and equipment.....	(4)	414
Cumulative effect of change in accounting for income taxes.....		425
	28,469	18,893
Changes in operating assets and liabilities:		
Receivables.....	(22,879)	362
Merchandise inventories.....	(225,550)	(218,972)
Prepaid income taxes and expenses.....	(7,298)	(1,762)
Accounts payable.....	187,380	111,132
Accrued salaries and related expenses.....	(138)	613
Other current liabilities.....	1,659	2,122
Deferred service plan revenue and warranty reserve.....	5,305	1,774
	(33,052)	(85,838)
Total cash used in operating activities.....		
<b>INVESTING ACTIVITIES:</b>		
Additions to property and equipment.....	(81,983)	(28,711)
Recoverable store development expenditures.....	(11,981)	
Proceeds from sale/leaseback transactions.....	7,954	44,460
Sale of property and equipment.....	53	46
Decrease in other assets.....	(747)	(1,556)
	(86,704)	14,239
Total cash (used in) provided by investing activities.....		
<b>FINANCING ACTIVITIES:</b>		
Common stock issued.....	4,361	86,513
Borrowings on revolving credit line.....	322,800	59,300
Payments on revolving credit line.....	(227,800)	(63,000)
Borrowings on long-term debt.....		5,311
Payments on long-term debt.....	(4,607)	(2,777)
Increase in obligations under financing arrangements.....	12,557	23,002
	107,311	108,349
Total cash provided by financing activities.....		
(DECREASE) INCREASE IN CASH AND CASH EQUIVALENTS.....	(12,445)	36,750
CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD.....	59,872	7,138
CASH AND CASH EQUIVALENTS AT END OF PERIOD.....	\$ 47,427	\$ 43,888
<p>Amounts in this statement are presented on a cash basis and therefore may differ from those shown in other sections of this quarterly report.</p>		
Supplemental cash flow information:		
Non-cash investing and financing activities:		
Leased asset additions.....	\$ 5,054	\$ 829
Cash paid during the period for:		
Interest (net of amount capitalized).....	\$ 9,423	\$ 1,975
Income taxes.....	\$ 15,093	\$ 8,685

See notes to financial statements.



**BEST BUY CO., INC.**

**NOTES TO INTERIM FINANCIAL STATEMENTS**

**1. BASIS OF PRESENTATION:**

The balance sheets as of August 27, 1994, and August 28, 1993, the related statements of earnings and cash flows for the three and six month periods ended August 27, 1994, and August 28, 1993, and the statement of changes in shareholders' equity for the six months ended August 27, 1994, are unaudited; in the opinion of management all adjustments necessary for a fair presentation of such financial statements have been included and were normal and recurring in nature. Interim results are not necessarily indicative of results for a full year. The financial statements and notes thereto should be read in conjunction with the financial statements and notes included in the Company's annual report to shareholders for the fiscal year ended February 26, 1994.

**2. INCOME TAXES:**

Income taxes are provided based upon management's estimate of the annual effective tax rate.

**3. STOCK SPLIT:**

The Company effected a two-for-one stock split in the form of a stock dividend in April 1994. All common share and per share data reflect this stock split.

**4. BANK REVOLVING LINE OF CREDIT:**

On July 29, 1994 the Company increased its bank line of credit to allow seasonal borrowings of up to \$400 million.

**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

**Results of Operations**

Earnings for the second quarter of fiscal 1995, were \$7.6 million (\$.18 per share) which was level with the earnings reported in the second quarter of the prior year. For the first six months of fiscal 1995 earnings increased 30% over the prior year to \$11.8 million (\$.27 per share) compared to \$9.1 million (\$.23 per share) in the first six months of fiscal 1994. Earnings for the six month period in fiscal 1994 are before the cumulative effect of a change in accounting for income taxes which reduced earnings by \$425,000 (\$.01 per share). Net earnings in the current quarter were essentially unchanged compared to the prior year as a 35% improvement in operating income was reduced by interest expense on short- and long-term borrowings used to finance store growth and increased inventory levels. For the six month period, operating income increased by 75% compared to the prior year.

Revenues of \$933 million in the second quarter were 66% over the second quarter of fiscal 1994 and year to date revenues of \$1.8 billion were 77% above last year's first six months. The increases in revenues are the result of an additional 44 stores opened in the last twelve months and comparable store sales increases of 18% and 26% for the quarter and year to date periods. The new stores opened in the past year include entry into the major markets of Detroit, Atlanta and Phoenix in the second half of fiscal 1994, the entry into new markets in Florida, Ohio and the Carolinas in the current fiscal year and the addition of stores to existing markets. The comparable store sales increase in the second quarter is on top of a 27% increase in the second quarter last year. The comparable store sales increase for the second quarter last year was greater than the current year due to the introduction, near the beginning of that quarter, of many of the widely recognized brand names of personal computers to the Company's product assortment and a new private label credit card program. Management believes that the Company's improving merchandise in-stock position, which has contributed to the increases in revenues, will continue to be an important factor in revenue growth. However, in light of the strong comparable store sales increases reported in the second half of last year and the strong sales results posted in the major metropolitan markets entered last year, it is expected that the comparable store sales increases for the remainder of the current fiscal year could be less than those experienced to date.

Gross profit margins were 14.2% in the second quarter and

14.1% for the year to date period compared to 16.7% and 16.8% for the comparable periods last year. Competition in most of the Company's product lines and promotional pricing has led to the change in gross profit margin. Competition has increased in the past year as the Company has entered new, more competitive markets and as new competitors have entered existing markets. Gross profit margins in the second quarter were consistent with the margins reported in the first quarter of this fiscal year and with the last quarter of fiscal 1994, suggesting that margins have begun to stabilize. Management does expect, however, that margins in the second half of fiscal 1995 could be slightly lower than the first half as the impact of promotional pricing associated with the entry into new major markets and the traditional decline in margins during the holiday selling season is realized.

Revenues from the sale of extended service plans were 1% or less of total sales in the second quarter and year to date periods for both fiscal 1994 and 1995. Profit from extended service plans, before the allocation of selling, general and administrative (SG&A) expenses, other than direct selling expenses, was \$3.7 million and \$7.4 million for the second quarter and year to date periods compared to \$3.2 million and \$6.1 million in the second quarter and year to date periods of fiscal 1994.

SG&A expenses were 12.3% and 12.4% of sales for the second quarter and year to date periods respectively, representing improvements of 2.1% and 2.7% of sales compared to the same periods in the prior year. The improvement in this ratio indicates that the earnings generated by the Company's revenue growth from new stores and comparable store sales increases continue to outpace the growth in operating costs. Greater efficiencies in advertising expenditures were achieved as more stores were added to existing markets, revenues per store increased and the Company reduced the size of some of its weekly newspaper inserts. SG&A expenses were impacted in the second quarter of the current year by the costs associated with opening two new distribution facilities and preparing to open a greater number of new stores compared to the prior year.

Net interest expense increased in both the second quarter and year to date periods of the current year compared to the prior year due to interest on the \$150 million Senior Subordinated Notes issued in October 1993 and a higher level of bank borrowings used to support the growth in inventories. Additionally, in the prior fiscal year the proceeds of the Company's \$86 million common stock offering and a \$44 million sale/leaseback transaction in the first

quarter last year were temporarily invested in short term investments resulting in higher levels of investment income in the first half of last year.

The Company's effective tax rate for fiscal 1995 is 39.5%, up slightly from the rate in fiscal 1994 mainly due to a lower level of tax exempt interest income. In fiscal 1994, the Company adopted the provisions of FASB Statement Financial Accounting Standards No. 109, "Accounting for Income Taxes", the cumulative effect of which reduced net earnings by \$425,000, or \$.01 per share.

### **Financial Condition**

At August 27, 1994, the Company had working capital of \$318 million compared to \$363 million at the end of the prior fiscal year. The change in working capital is the result of the use of working capital, on a short-term basis, to finance current year store development. During the last six months, inventories increased \$226 million as a result of the opening of 17 new stores and the Company's new distribution centers in Minnesota and Virginia and the expansion of the Oklahoma distribution facility, as well as a greater emphasis on achieving an improved merchandise in-stock position. Management believes that the increased inventories in the stores have contributed to the comparable store sales growth. Inventory turns of 4.7 times for the trailing twelve months are expected to increase to approximately 5 times by the end of fiscal 1995 as the seasonally higher sales volume and opening of additional stores improve this ratio. The growth in inventories was financed principally through vendor financing and borrowings under the Company's revolving credit facility. Management expects that the seasonal increase in inventories and the opening of additional stores and a California distribution center in the third quarter will result in increasing levels of inventory through that period. The stores opened in the first half of the year and those scheduled to be opened in the second half are larger stores, generally 45,000 or 58,000 square feet, and feature a larger selection of products, resulting in higher inventory levels in the stores. In addition to the new stores, the Company is expanding or relocating approximately 30 stores to the larger store format in the current year.

In July, the Company entered into a new revolving credit facility which increased the seasonal borrowing availability to \$400 million. The facility expires in June 1996 and provides for a one year extension at the option of the participating lenders. Borrowings under the facility are subject to a limitation of \$50 million once each year for approximately one month. In August, the Company entered into a master lease program under which the lessor will develop, and the Company will lease, approximately 16 newly constructed stores and the Virginia distribution center and

related equipment. In addition, the Company owns certain retail locations, the majority of which are subject to commitments for sale/leaseback that will generate in excess of \$40 million in the third quarter. As the Company's policy is to lease rather than own its retail locations, it intends to enter into sale/leasebacks for those remaining locations not currently subject to commitments. In August, the Company also completed the financing on the \$4.5 million expansion of the Oklahoma distribution center.

The Company expects that capital spending for the remainder of the year, net of amounts expected to be recovered through sale/leasebacks, will approximate \$50 million. The Company's introduction of a new store format, which will generally utilize the 45,000 and 58,000 square foot stores, is expected to result in the continuation of the Company's practice of expanding or relocating stores where appropriate.

Cash flows in the first six months of fiscal 1994 benefited from the proceeds of an \$86 million equity offering and the sale/leaseback of 17 stores which generated \$44 million in net proceeds.

In connection with a proposed underwritten public offering, the Company intends to file on or about September 30, 1994, a Registration Statement on Form S-3 covering 4,600,000 Convertible Monthly Income Preferred Securities, Liquidation preference \$50 per security, of Best Buy Capital, L.P., a Delaware limited partnership of which the Company is the general partner. Management believes that the anticipated proceeds from the offering, which are intended to be loaned by Best Buy Capital, L.P. to the Company, together with working capital from the Company's new revolving credit facility, vendor financing and long-term financing for real estate development, will be adequate to support the Company's operations and planned growth for the immediate future.

**BEST BUY CO., INC.**

**Part II - Other Information**

**ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

a) The regular meeting of the Shareholders of the Company was held June 22, 1994. The following individuals were elected at the meeting as Directors of the Company to serve until the 1996 regular meeting of shareholders. Shares voted in favor of these directors and shares withheld were as follows:

**BRADBURY H. ANDERSON**

Shares For	37,556,064
Shares Withheld	183,174

**FRANK D. TRESTMAN**

Shares For	37,554,230
Shares Withheld	185,008

**DAVID STANLEY**

Shares For	37,554,230
Shares Withheld	184,930

**JAMES C. WETHERBE**

Shares For	37,554,308
Shares Withheld	184,930

Other matters voted on and the results of voting were as follows:

i) Shareholders ratified the appointment by the Board of Directors of Deloitte & Touche as the corporation's independent auditor for the fiscal year beginning February 27, 1994 with shares voted as follows:

Shares For	37,703,676
Shares Against	14,797
Shares Abstaining	20,765

ii) Shareholders authorized and approved a bonus compensation plan for the corporation's executive offers with shares voted as follows:

Shares For	37,201,906
Shares Against	443,841
Shares Abstaining	93,491

iii) Shareholders authorized and approved the 1994 Full-Time Employee Non-Qualified Stock Option Plan with shares voted as follows:

Shares For	34,835,330
Shares Against	2,851,224
Shares Abstaining	52,684

**Item 6. EXHIBITS AND REPORTS ON FORM 8-K:**

a.	Exhibits:	Method of Filing -----
4.1	Credit Agreement dated July 29, 1994 between Best Buy Co., Inc. and First Bank National Association	Filed herewith
11.1	Computation of Earnings per Common Share	Filed herewith
27.1	Financial Data Schedule	Filed herewith

**b. Reports on Form 8-K:**

A Form 8-K was filed on August 16, 1994 reporting the dismissal of Deloitte & Touche LLP as the Company's auditors and appointment of Ernst & Young LLP.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

**BEST BUY CO., INC.**  
(Registrant)

Date: September 30, 1994

By: /s/ ALLEN U. LENZMEIER

-----  
Allen U. Lenzmeier, Executive Vice  
President & Chief Financial Officer  
(principal financial officer)

By: /s/ ROBERT C. FOX

-----  
Robert C. Fox, Senior Vice President-  
Finance & Treasurer (principal accounting  
officer)



**EXHIBIT 4.1**

September 6, 1994

Best Buy Co., Inc.  
P.O. Box 9312  
Minneapolis, Minnesota 55440-9312  
Attention: Allan Lenzmeier

**Re: CREDIT AGREEMENT DATED AS OF JULY 29, 1994, AMONG BEST BUY CO., INC.,  
THE BANKS PARTY THERETO AND FIRST BANK NATIONAL ASSOCIATION, AS AGENT**

Ladies and Gentlemen:

1. Reference is made to the above-referenced Credit Agreement (herein the "Loan Agreement"); all terms defined in the Loan Agreement shall have the same meanings when used herein.
2. First Bank National Association ("Assignor") has agreed to sell to Bank of America Illinois ("Assignee") an assignment in the aggregate amount of \$25,000,000, representing a 25% assignment of the Commitment of the Assignor. The Assignor and Assignee hereby request, on the "Effective Date" (as described in the Assignment Agreement between Assignor and Assignee) and upon the return of Assignor's Note to the Company, that the Company execute and deliver to the Assignor and Assignee new Notes in the amounts of their respective Commitments (after giving effect to such assignment), containing the same terms as Assignee's current Note. The Assignor shall notify the Company and the Agent of the Effective Date within three Business Days after it occurs.
3. The Assignee hereby elects, as of the Effective Date, to become party to, and be bound by each of the provisions of, the Loan Agreement as a "Bank" (as defined in the Loan Agreement) with a Commitment as set forth in paragraph 2 above.
4. The Assignee's address for purposes of notices under the Credit Agreement is 231 South LaSalle Street, Chicago, Illinois 60697, Attention: R. Guy Stapleton, Vice President.

Best Buy Co., Inc.  
September 6, 1994

Page 2

5. This Notice of Assignment may be executed in one or more counterparts, which taken together shall constitute a single original instrument.

Very truly yours,

**FIRST BANK NATIONAL  
ASSOCIATION**

By  
**Its Vice President**

**BANK OF AMERICA ILLINOIS**

By  
**Its Vice President**

TABLE OF CONTENTS

PAGE

ARTICLE I  
DEFINITIONS

Section 1.01	Certain Defined Terms . . . . .	1
Section 1.02	Accounting Terms and Calculations . . . . .	14
Section 1.03	Computation of Time Periods . . . . .	15
Section 1.04	Principles of Construction . . . . .	15

ARTICLE II  
TERMS OF THE CREDIT FACILITY

Section 2.01	The Commitments . . . . .	15
Section 2.02	Procedure for Loans . . . . .	15
Section 2.03	Notes . . . . .	17
Section 2.04	Conversions and Continuations . . . . .	17
Section 2.05	Interest Rates, Interest Payments and Default Interest . .	18
Section 2.06	Repayment; Mandatory Prepayments; Deposits Into Holding Account . . . . .	18
Section 2.07	Optional Prepayments . . . . .	19
Section 2.08	Letters of Credit . . . . .	20
Section 2.09	Procedures for Letters of Credit . . . . .	20
Section 2.10	Terms of Letters of Credit . . . . .	20
Section 2.11	Agreement to Repay Letter of Credit Draws . . . . .	20
Section 2.12	Loans to Cover Unpaid Draws . . . . .	21
Section 2.13	Obligations Absolute . . . . .	21
Section 2.14	Optional Reduction or Termination of Commitments . . . . .	23
Section 2.15	Designation of Available Amount of Seasonal Commitments . .	23
Section 2.16	Agent's Fees . . . . .	24
Section 2.17	Facility Fees and Commitment Fees . . . . .	24
Section 2.18	Letter of Credit Fees . . . . .	25
Section 2.19	Computation . . . . .	25
Section 2.20	Payments . . . . .	25
Section 2.21	Use of Loan Proceeds . . . . .	26
Section 2.22	Interest Rate Not Ascertainable, Etc . . . . .	26
Section 2.23	Increased Cost . . . . .	26
Section 2.24	Illegality . . . . .	27
Section 2.25	Capital Adequacy . . . . .	28
Section 2.26	Funding Losses . . . . .	28
Section 2.27	Discretion of Banks as to Manner of Funding . . . . .	29
Section 2.28	Setoff . . . . .	29
Section 2.29	Extension . . . . .	29

ARTICLE III  
CONDITIONS PRECEDENT

Section 3.01	Conditions Precedent to Initial Loan . . . . .	30
Section 3.02	Conditions Precedent to Each Loan . . . . .	31

ARTICLE IV  
REPRESENTATIONS AND WARRANTIES

Section 4.01	Organization, Standing, Etc . . . . .	32
Section 4.02	Authorization and Validity . . . . .	33
Section 4.03	Compliance With Law and Other Agreements . . . . .	33
Section 4.04	Governmental Consent . . . . .	33
Section 4.05	Financial Statements and No Material Adverse Change . . . . .	33
Section 4.06	Litigation . . . . .	34
Section 4.07	ERISA . . . . .	34
Section 4.08	Environmental, Health and Safety Laws . . . . .	34
Section 4.09	Federal Reserve Regulations . . . . .	34
Section 4.10	Title to Property; Possession Under Leases . . . . .	35
Section 4.11	Taxes . . . . .	35
Section 4.12	Trademarks, Patents . . . . .	35
Section 4.13	Business and Properties of Company and its Subsidiaries . . . . .	35
Section 4.14	Securities Laws . . . . .	36
Section 4.15	Investment Company Act . . . . .	36
Section 4.16	Public Utility Holding Company Act . . . . .	36
Section 4.17	Retirement Benefits . . . . .	36
Section 4.18	Indebtedness . . . . .	36
Section 4.19	Subsidiaries . . . . .	36
Section 4.20	Senior Indebtedness . . . . .	36
Section 4.21	Full Disclosure . . . . .	36

ARTICLE V  
COVENANTS

Section 5.01	Financial Statements . . . . .	37
Section 5.02	Corporate Existence . . . . .	38
Section 5.03	Compliance with Laws, etc . . . . .	39
Section 5.04	Insurance . . . . .	39
Section 5.05	Payment of Indebtedness, Taxes and Claims . . . . .	39
Section 5.06	Books and Records; Inspections; Audits . . . . .	39
Section 5.07	Maintenance of Properties . . . . .	40
Section 5.08	ERISA . . . . .	40
Section 5.09	Litigation and Other Notices . . . . .	40
Section 5.10	Supplemental Disclosure . . . . .	41
Section 5.11	Restrictions on Fundamental Changes . . . . .	42
Section 5.12	Liens . . . . .	42
Section 5.13	Indebtedness . . . . .	44
Section 5.14	Investments . . . . .	44

Section 5.15	Guarantees . . . . .	45
Section 5.16	Restricted Payments . . . . .	45
Section 5.17	General Capital Expenditures . . . . .	45
Section 5.18	Federal Reserve Regulations . . . . .	45
Section 5.19	Environmental Matters . . . . .	45
Section 5.20	Payment of Subordinated Indebtedness . . . . .	45
Section 5.21	Minimum Tangible Net Worth . . . . .	46
Section 5.22	Leverage Ratio . . . . .	46
Section 5.23	Inventory Turnover Ratio . . . . .	46
Section 5.24	Interest Coverage Ratio . . . . .	46
Section 5.25	Owned Land and Buildings . . . . .	46
Section 5.26	Negative Pledges . . . . .	46

ARTICLE VI  
EVENTS OF DEFAULT AND REMEDIES

Section 6.01	Events of Default . . . . .	46
Section 6.02	Remedies . . . . .	49

ARTICLE VII  
THE AGENT

Section 7.01	Appointment and Authorization . . . . .	50
Section 7.02	Note Holders . . . . .	50
Section 7.03	Consultation With Counsel . . . . .	50
Section 7.04	Loan Documents . . . . .	50
Section 7.05	First Bank and Affiliates . . . . .	51
Section 7.06	Action by Agent . . . . .	51
Section 7.07	Credit Analysis . . . . .	51
Section 7.08	Notices of Event of Default, Etc . . . . .	51
Section 7.09	Indemnification . . . . .	52
Section 7.10	Payments and Collections . . . . .	52
Section 7.11	Sharing of Payments . . . . .	53
Section 7.12	Advice to Banks . . . . .	53
Section 7.13	Successor Agent . . . . .	53

ARTICLE VIII  
MISCELLANEOUS

Section 8.01	Amendments and Waivers; No Waiver of Rights and Remedies . . . . .	54
Section 8.02	Notices . . . . .	55
Section 8.03	Costs and Expenses . . . . .	55
Section 8.04	Survival of Agreement . . . . .	55
Section 8.05	Binding Effect; Assignments and Participations . . . . .	56
Section 8.06	Taxes . . . . .	57
Section 8.07	Severability of Provisions . . . . .	57
Section 8.08	Governing Law and Construction . . . . .	58
Section 8.09	Consent to Jurisdiction . . . . .	58

Section 8.10 Captions . . . . . 58  
Section 8.11 Entire Agreement; No Third Party Beneficiaries . . . . . 58  
Section 8.12 Counterparts . . . . . 58  
Section 8.13 Company Acknowledgements . . . . . 59  
Section 8.14 Highest Lawful Rate . . . . . 59

## CREDIT AGREEMENT

CREDIT AGREEMENT dated as of July 29, 1994 by and between BEST BUY CO., INC. (the "Company"), a Minnesota corporation, the lenders from time to time party hereto (such lenders being hereinafter sometimes referred to collectively as the "Banks" and individually as a "Bank") and FIRST BANK NATIONAL ASSOCIATION, as agent for the Banks (in such capacity, the "Agent").

The Company has applied to the Banks for a revolving credit facility in the amount of \$400,000,000 to provide for its working capital requirements. The Banks have indicated that they are prepared to extend such revolving credit facility on the terms and subject to the conditions hereinafter set forth.

Accordingly, the parties hereto hereby agree as follows:

### ARTICLE I DEFINITIONS

Section 1.01 CERTAIN DEFINED TERMS. As used herein and, unless otherwise defined therein, in each Exhibit and Schedule, the following terms shall have the following respective meanings (such meanings to be equally applicable to both the singular and plural form of the terms defined, as the context may require):

"ADJUSTED EURODOLLAR RATE": with respect to each Interest Period applicable to a Eurodollar Advance, the rate (rounded upward, if necessary, to the next higher one hundredth of one percent) determined by dividing the Eurodollar Rate for such Interest Period by 1.00 minus the Eurodollar Reserve Percentage.

"ADVANCE": a Reference Rate Advance or a Eurodollar Advance.

"AFFILIATE": when used with respect to a specified Person, another Person that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. For purposes hereof, "control" shall have the meaning given such term in Rule 12b-2 under the Securities Exchange Act of 1934, and "controlled" shall have a correlative meaning.

"AGGREGATE AVAILABLE AMOUNT" as of any date of determination, the sum of the Available Amounts of all of the Banks.

"AGGREGATE BASE COMMITMENT AMOUNT": as of any date of determination, the sum of the Base Commitment Amounts of all of the Banks.

"AGGREGATE COMMITMENT AMOUNT": as of any date of determination, the sum of the Commitment Amounts of all of the Banks.

"AGGREGATE DESIGNATED AMOUNT": as of any date of determination, the sum of the Designated Amounts of all the Banks.

**"AGGREGATE SEASONAL COMMITMENT AMOUNT": as of any date of**

determination, the sum of the Seasonal Commitment Amounts of all of the Banks.

"AGREEMENT": this Credit Agreement, as amended, supplemented, restated or otherwise modified and in effect from time to time.

"APPLICABLE MARGIN": with respect to:

**Reference Rate Advances, 0%; and**

**Eurodollar Advances, +1.00%.**

The Applicable Margin for Eurodollar Advances shall be reduced by 0.25% for all Interest Periods beginning after the time the Company or any senior unsecured public debt issued by the Company that is not credit-enhanced has a rating of BBB- or better from Standard & Poor's Corporation or Baa3 or better from Moody's Investors Services, Inc. Such reduction shall be effective for Interest Periods beginning after the date the Agent receives evidence satisfactory to it of such rating, and shall not apply to Interest Periods beginning after the time the Company or its senior unsecured public debt that is not credit-enhanced no longer has such rating.

"AVAILABLE AMOUNT": as to any Bank, the sum of its Base Commitment Amount and its Designated Amount.

"BASE COMMITMENT AMOUNT": as to any Bank, the amount set forth opposite such Bank's name as its "Base Commitment Amount" in Schedule 1.01(a), as the same may be reduced from time to time pursuant to Section 2.14.

"BOARD": the Board of Governors of the Federal Reserve System of the United States.

"BORROWING BASE": as of a date of determination, 71 43/100% of the sum

(a) 55% of the lower of: (i) cost (as determined on a first-in, first-out basis) of Eligible Inventory LESS (A) the amount of Indebtedness of the Company secured by Liens on inventory and (B) the amount accrued for losses due to missing inventory (shrink accrual) or (ii) market value of



Eligible Inventory LESS (A) the amount of Indebtedness of the Company secured by Liens on inventory and (B) the amount accrued for losses due to missing inventory (shrink accrual); and

(b) 40% of the lower of: (i) cost (as determined on a first-in, first-out basis) of Eligible Close-Out Inventory LESS amounts accrued for price reduction on inventory (markdown reserve) or (ii) market value of Eligible Close-Out Inventory LESS amounts accrued for price reduction on inventory (markdown reserve),

MINUS the amount of any unsecured Indebtedness incurred by the Company pursuant to Section 5.13(g);

"BORROWING BASE CERTIFICATE": a certificate in the form of Exhibit A.

"BORROWING BASE DEFICIENCY": at the time of any determination, the amount by which the Total Outstandings exceed the Borrowing Base.

"BORROWING DATE": each Business Day or Eurodollar Business Day on which the Banks are to make Loans to the Company pursuant to Section 2.01.

"BUSINESS DAY": any day (other than a Saturday, Sunday or legal holiday) on which banks are permitted to be open for business in all of the cities where any Bank has its principal office in the United States of America.

"CAPITAL EXPENDITURES": with respect to any Person for any specified period, the aggregate of all gross expenditures during such period for any fixed assets, or for improvements, replacements, substitutions or additions therefor or thereto, which are reflected as additions to property and equipment on statements of cash flows of such Person in accordance with GAAP.

"CODE": the Internal Revenue Code of 1986, as amended or any successor thereto.

"COMMITMENT": as to any Bank, the obligation of such Bank to make Loans pursuant to Sections 2.01 and 2.12 and, as to First Bank, its obligation to issue Letters of Credit pursuant to Section 2.08.

"COMMITMENT AMOUNT": as to any Bank, the amount set opposite such Bank's name as its "Total Commitment Amount" in Schedule 1.01(a), as the same may be reduced from time to time pursuant to Section 2.14.

"COMMITMENT FEE": as such term is defined in Section 2.17(b).

"COMPLIANCE CERTIFICATE": a certificate in the form of Exhibit B.

"CONQUEST": Conquest Funding, Limited Partnership, a Delaware limited partnership.

"DESIGNATED AMOUNT": with respect to any Bank for any month from July 1 of any year to January 1 of the following year, such Bank's Pro Rata Share of the amount of the Aggregate Seasonal Commitment Amount designated by the Company as available pursuant to Section 2.15.

"DOCUMENTARY LETTER OF CREDIT": a letter of credit which requires that the drafts thereunder be accompanied by a document of title covering or securing title to the goods acquired with the proceeds of such drafts.

"ERISA": the Employee Retirement Income Security Act of 1974, as amended.

"ERISA AFFILIATE": any trade or business (whether or not incorporated) that is a member of a group of which the Company is a member and which is treated as a single employer under Section 414 of the Code.

"EARNINGS BEFORE INTEREST, INCOME TAXES AND DEPRECIATION": for any period of determination, the consolidated net income of the Company and its Subsidiaries before deductions for income taxes, net interest expense, and provisions for depreciation and amortization of goodwill and intangibles accounted for in calculating consolidated net income, all as determined in accordance with GAAP, excluding therefrom (a) nonoperating gains (including, without limitation, extraordinary or unusual gains, gains from discontinuance of operations, gains arising from the sale of assets and other nonrecurring gains) of the Company and its Subsidiaries during the applicable period and (b) similar nonoperating losses (including, without limitation, losses arising from the sale of assets and other nonrecurring losses) of the Company and its Subsidiaries during such period.

"EFFECTIVE DATE": the date on or after the execution and delivery of this Agreement by the Company, the Banks and the Agent on which all of the conditions precedent set forth in Section 3.01 shall have been satisfied or waived in writing by the Banks.

"ELIGIBLE CLOSE-OUT INVENTORY": all inventory held by the Company for retail sale in the ordinary course of business that would constitute Eligible Inventory except for its failure to comply with the requirements of subsection (h) of the definition of Eligible Inventory.

"ELIGIBLE INVENTORY": all inventory held by the Company for retail sale in the ordinary course of business of the product classes listed on Schedule 1.01(b) hereto or otherwise approved by the Agent and which:

- (a) is free and clear of all Liens except such as are permitted by Section 5.12(f);
- (b) is not so identified to a contract to sell that it is evidenced by an account receivable;
- (c) is of good and merchantable quality free from any defects which would affect the market value thereof;
- (d) is not, as reasonably determined by the Agent, nonsalable in the ordinary course of the Company's business;
- (e) is insured against loss or damage in accordance with the provisions of the Credit Agreement;
- (f) is not subject to or covered by a negotiable document of title, including, without limitation, negotiable warehouse receipts and negotiable bills of lading;
- (g) is not stored in a public warehouse or held by any Person as bailee, unless the terms of such storage or bailment are satisfactory to the Agent;
- (h) is not a product that has been discontinued by the manufacturer or by the vendor from which the Company purchased such inventory (close-out inventory); and
- (i) is not being held for repair at the Company's service center (service center inventory) or being held for return to the vendor from which the Company purchased it (defective center inventory (Devo));

PROVIDED, that the Agent shall, notwithstanding the foregoing, have the right, in the reasonable exercise of its discretion following consultation with the Company, to establish reserves against the aggregate amount of Eligible Inventory.

"EURODOLLAR ADVANCE": an Advance with respect to which the interest rate is determined by reference to the Adjusted Eurodollar Rate.

"EURODOLLAR BUSINESS DAY": a Business Day which is also a day for trading by and between banks in United States dollar deposits in the interbank eurodollar market and a day on which banks are open for business in New York, New York.

"EURODOLLAR RATE": with respect to each Interest Period applicable to a Eurodollar Advance, the rate per annum at which United States dollar deposits are offered to the Agent in the interbank Eurodollar market two Eurodollar Business Days prior to the first day of such Interest Period for delivery in Immediately Available Funds on the first day of such Interest Period in an amount approximately equal to the Advance made by the Agent to which such Interest Period is to apply and for a period equal to such Interest Period, as determined by the Agent; PROVIDED, that in lieu of determining the rate in the foregoing manner, the Agent may substitute the per annum rate for United States dollars displayed on the Reuters screen, LIBO page, at 10:00 A.M. (Minneapolis time) on such Eurodollar Business Day.

"EURODOLLAR RESERVE PERCENTAGE": as of any day, that percentage (expressed as a decimal) which is in effect on such day, as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement for a member bank of the Federal Reserve System, with deposits comparable in amount to those held by the Agent, in respect of "Eurocurrency Liabilities" (or in respect of any other category of liabilities which includes deposits by reference to which the interest rate of Eurodollar Advances is determined or any category of extensions of credit or other assets which includes loans by a non-United States office of a Bank to United States residents). The rate of interest applicable to any outstanding Eurodollar Advances shall be adjusted automatically on and as of the effective date of any change in the Eurodollar Reserve Percentage.

"EVENT OF DEFAULT": any event described in Section 6.01.

"FEDERAL FUNDS RATE": for any date of determination, the effective rate charged to the Agent for overnight Federal funds transactions with member banks of the Federal Reserve System.

"FIRST BANK": First Bank National Association, a national banking association, in its individual capacity.

"GAAP": generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the Signing Date.

"GENERAL CAPITAL EXPENDITURES": Capital Expenditures of the Company or any Subsidiary other than Real Estate Capital Expenditures.

"GOVERNMENTAL AUTHORITY": any federal, state, local or foreign court or governmental agency, authority, department, board, instrumentality or regulatory body.

"GUARANTEE": with respect to any Person at the time of any determination, without duplication, any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person (the "primary obligor") in any manner, whether directly or otherwise: (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any direct or indirect security therefor, (b) to purchase property, securities, or services for the purpose of assuring the owner of such Indebtedness of the payment of such Indebtedness, (c) to maintain working capital, equity capital, or other financial statement condition of the primary obligor so as to enable the primary obligor to pay such Indebtedness or otherwise to protect the owner thereof against loss in respect thereof, or (d) entered into for the purpose of assuring in any manner the owner of such Indebtedness of the payment of such Indebtedness or to protect the owner against loss in respect thereof; PROVIDED, that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business.

"HOLDING ACCOUNT": an interest-bearing account established by the Agent, which shall be under the Agent's sole dominion and control, for the benefit of First Bank, as the issuer of the Letters of Credit, and the Banks, into which the Company shall, as required hereunder, deposit funds, and from which the Agent may disburse funds, to pay the obligations of the Company under Section 2.11 or Section 6.02 to reimburse First Bank for any amount drawn on any Letter of Credit, and to pay any other obligation of the Company to the Banks arising in connection with any Letter of Credit.

"IMMEDIATELY AVAILABLE FUNDS": funds with good value on the day and in the city in which payment is received.

"INDEBTEDNESS": with respect to any Person at the time of any determination, without duplication, all obligations, contingent or otherwise, of such Person which in conformity with GAAP should be classified upon the balance sheet of such Person as liabilities, but in any event shall include: (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid or accrued, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person, (e) all obligations of such Person issued or assumed as the deferred purchase price of property or services, (f) all obligations of others secured by any Lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (g) all capitalized lease

obligations of such Person, (h) all obligations of such Person in respect of interest rate protection agreements, (i) all obligations of such Person, actual or contingent, as an account party in respect of letters of credit or bankers' acceptances, (j) all obligations of any partnership or joint venture as to which such Person is or may become personally liable, and (k) all Guarantees by such Person of Indebtedness of others.

"INTEREST COVERAGE RATIO": for any period of determination, the ratio of (i) the sum of (A) Earnings Before Interest, Income Taxes and Depreciation and (B) Rental and Lease Expense to (ii) the sum of (y) Rental and Lease Expense and (z) consolidated net interest expense of the Company and its Subsidiaries, as included in the Company's financial statements referred to in Section 4.05 and 5.01.

"INTEREST PERIOD": with respect to each Eurodollar Advance, the period commencing on the date of such Advance and ending seven, fourteen or twenty-one days or one, two, three or six months thereafter, as the Company may elect in the applicable Notice of Borrowing, Continuation or Conversion; PROVIDED, that:

(1) Any Interest Period which would otherwise end on a day which is not a Eurodollar Business Day shall be extended to the next succeeding Eurodollar Business Day unless such Interest Period is one month or longer and such Eurodollar Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Eurodollar Business Day;

(2) Any Interest Period of one month or longer which begins on the last Eurodollar Business Day of a calendar month (or a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Eurodollar Business Day of a calendar month;

(3) No Interest Period may end after January 1 of any year unless, after giving effect to the selection of such Interest Period, the sum of the unpaid principal amount of all Eurodollar Advances ending after such date and the outstanding face amount of all Letters of Credit having an expiration date after such date will be less than or equal to the Aggregate Base Commitment Amount; and

(4) No Interest Period may end after the date set forth in clause (a) of the definition of Termination Date.

"INVENTORY TURNOVER RATIO": for any period of determination, the ratio of (a) the cost of inventory sold by the Company and its Subsidiaries in the ordinary course of business during such period to (b) the average cost of the

inventory held by the Company and its Subsidiaries as at the end of each calendar month during such period.

"INVESTMENTS": as applied to any Person, any direct or indirect purchase or other acquisition by such Person of, or a beneficial interest in, stock or other securities of any other Person, or any direct or indirect loan, advance (other than advances to employees for moving and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contribution by such Person to any other Person, including all Indebtedness and accounts receivable from that other Person which did not arise from sales to such other Person in the ordinary course of business. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment.

"LETTER OF CREDIT": an irrevocable letter of credit issued by First Bank for the account of the Company pursuant to Section 2.08, which shall not be a Documentary Letter of Credit and shall not include letters of credit issued by First Bank pursuant to that certain Letter of Credit Agreement dated as of February 1, 1989, as amended, and that certain Covenant Rider dated as of October 30, 1992, as amended, between First Bank and the Company.

"LETTER OF CREDIT FEE": as defined in Section 2.18.

"LETTER OF CREDIT LOAN": a loan made by a Bank to or for the account of the Company pursuant to Section 2.12.

"LETTER OF CREDIT USAGE": as of any date, the amount equal to the sum of (a) the amount of all Unpaid Draws PLUS (b) the amount available to be drawn under all outstanding Letters of Credit.

"LEVERAGE RATIO": at any date of determination, the ratio of (a) the Indebtedness of the Company and its Subsidiary MINUS the sum of cash and Investments with a maturity of less than one year of the type permitted pursuant to Section 5.14(c) of the Company and its Subsidiaries, as set forth in the Borrower's consolidated balance sheet under the item "Cash and Cash Equivalents," to (b) Tangible Net Worth, in all cases as in the Company's financial statements referenced to in Section 4.05 and 5.01.

"LIEN": with respect to any Person, any security interest, mortgage, pledge, lien, charge, encumbrance, title retention agreement or analogous instrument or device (including but not limited to the interest of each lessor under any capitalized lease), in, of or on any assets or properties of such Person, now owned or hereafter acquired, whether arising by agreement or operation of law.

"LOAN": a loan made by a Bank to or for the account of the Company pursuant to Section 2.01, or a Letter of Credit Loan.

"LOAN DOCUMENTS": this Agreement, the Notes, the Letters of Credit and all other agreements, documents, certificates and instruments delivered pursuant hereto or in connection herewith, in each case as amended, supplemented, restated or otherwise modified and in effect from time to time.

"MAJORITY BANKS": at any time, Banks whose Pro Rata Shares (determined under clause (b) of the definition thereof if any Loans are outstanding, and otherwise under clause (a) of such definition) aggregate at least 66-2/3%.

"MATERIAL ADVERSE EFFECT": with respect to any Person, (a) a materially adverse effect on the business, assets, operations, or financial condition of such Person and its subsidiaries taken as a whole, (b) material impairment of the ability of such Person to perform any material obligation under any Loan Document to which such Person is or becomes a party or (c) material impairment of any of the material rights of, or benefits available to, the Agent or the Banks under any Loan Document.

"MEASUREMENT PERIOD": each period of four fiscal quarters ending on the last day of a fiscal quarter of the Company.

"MULTIEMPLOYER PLAN": as such term is defined in Section 4001(a)(3) of ERISA, which is maintained (on the Signing Date, within the five years preceding the Signing Date, or at any time after the Signing Date) for employees of Company or any ERISA Affiliate.

"NOTES": as such term is defined in Section 2.03.

"NOTICE OF BORROWING, CONTINUATION OR CONVERSION": the written notice, substantially in the form of Exhibit C, delivered in accordance with, and within the period specified in, Section 2.02 or 2.04, as applicable.

"OBLIGATIONS": (a) the Company's obligations in respect of the due and punctual payment of principal and interest on the Loans when and as due, whether at maturity, by acceleration, or otherwise, (b) the Company's obligations to reimburse First Bank in the amount of each draw under a Letter of Credit on the date of such draw, and to make deposits into the Holding Account in respect of Letters of Credit pursuant to Sections 2.06(a), (c) or (d), 2.14 or 6.02, and (c) all fees, expenses, indemnities, reimbursements and other obligations, monetary or otherwise, owed to the Agent and the Banks under this Agreement or any other Loan Document.



"PBGC": the Pension Benefit Guaranty Corporation created by Section 4002(a) of ERISA or any Governmental Authority succeeding to the functions thereof.

"PERSON": any natural person, corporation, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision or any other entity, whether acting in an individual, fiduciary or other capacity.

"PLAN": each employee benefit plan (whether in existence on the Signing Date or thereafter instituted), as such term is defined in Section 3 of ERISA, maintained for the benefit of employees, officers or directors of Company or of any ERISA Affiliate.

"PROHIBITED TRANSACTION": as such term is defined in Section 4975 of the Code or Section 406 of ERISA.

"PRO RATA SHARE": with respect to each Bank, in each case expressed as a percentage:

(a) as such term pertains to such Bank's obligation to make Loans, right to receive Commitment Fees and Letter of Credit Fees, obligation to reimburse the Agent pursuant to Section 7.09, and the calculation of such Bank's Designated Amount, the percentage set forth opposite such Bank's name as its "Commitment Percentage" in Schedule 1.01, and

(b) as such term pertains to such Bank's right to receive payment of interest on and principal of its outstanding Loans and for all other purposes, the fraction which the amount of the unpaid principal balance of its outstanding Loans is to the aggregate unpaid principal balance of all outstanding Loans.

"REAL ESTATE CAPITAL EXPENDITURES": Capital Expenditures of the Company or any Subsidiary for land and buildings PLUS the amount of any receivable incurred by the Company as a result of advances by the Company to fund the acquisition or construction by Conquest of land and buildings.

"REFERENCE RATE": the greater of (a) rate of interest from time to time publicly announced by First Bank as its "reference rate" MINUS 0.5% or (b) the Federal Funds Rate plus 0.5%. First Bank may lend to its customers at rates that are at, above or below the Reference Rate. For purposes of determining any interest rate hereunder or under the Notes which is based on the Reference Rate, such interest rate shall change as and when the Reference Rate shall change.

"REFERENCE RATE ADVANCE": an Advance with respect to which the interest rate is determined by reference to the Reference Rate.

"REGULATION D": Regulation D of the Board as from time to time in effect and all official rulings and interpretations thereunder and thereof.

"REGULATION G": Regulation G of the Board as from time to time in effect and all official rulings and interpretations thereunder and thereof.

"REGULATION U": Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder and thereof.

"REGULATION X": Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder and thereof.

"REGULATORY CHANGE": with respect to any Bank, any change after the Signing Date in federal, state or foreign laws or regulations or the adoption or making after such date of any interpretations, directives or requests, in either case applying to a class of banks including such Bank under any federal, state or foreign laws or regulations (whether or not having the force of law) by any court or Governmental Authority charged with the interpretation or administration thereof.

"RENTAL AND LEASE EXPENSE": for any period of determination, all amounts paid by the Company or any Subsidiary under all capital leases and other leases of real or personal property, other than any portion thereof included in calculating consolidated net interest expense of the Company for such period.

"REPORTABLE EVENT": as such term is defined in Section 4043 of ERISA and the regulations issued under such Section, with respect to a Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event, PROVIDED, that a failure to meet the minimum funding standard of Section 412 of the Code and of Section 302 of ERISA shall be a Reportable Event regardless of the issuance of any such waivers in accordance with Section 412(d) of the Code.

"RESTRICTED PAYMENTS": with respect to any Person, collectively, all dividends or other distributions of any nature (cash, securities (other than common stock of such Person), assets or otherwise), and all payments on any class of equity securities (including, without limitation, warrants, options or rights therefor) issued by such Person, whether such securities are authorized or outstanding on the Signing Date or at any time thereafter and any distribution in respect of any of the foregoing, whether directly or indirectly.

"SEASONAL COMMITMENT AMOUNT": as to any Bank, the amount set forth opposite such Bank's name as its "Seasonal Commitment Amount" in Schedule 1.01(a), as the same may be reduced from time to time pursuant to Section 2.14.

"SIGNING DATE": the Business Day on which counterparts of this Agreement, duly executed by the Company, the Banks and the Agent, have been delivered to the Agent.

"SUBORDINATED INDEBTEDNESS": (a) the Company's 9% Subordinated Extendible Notes due 1997, (b) the Company's 9.95% Subordinated Notes due 1999, (c) the Company's 8 5/8% Senior Subordinated Notes due 2000 and (d) any other Indebtedness of the Company incurred after the Signing Date which is subordinated to the obligations of the Company to the Banks hereunder and under the Notes in a manner and to an extent which the Banks have reasonably determined to be satisfactory by a writing sent to the Company.

"SUBSIDIARY": with respect to any Person, any corporation, partnership, trust or other Person of which more than 50% of the outstanding capital stock (or similar property right in the case of partnerships and trusts) having ordinary voting power to elect a majority of the board of directors of such corporation (or similar governing body or Person with respect to partnerships and trusts) (irrespective of whether or not at the time capital stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency) is at the time directly or indirectly owned by such Person, by such Person and one or more other Subsidiaries of such Person, or by one or more other Subsidiaries of such Person.

"TANGIBLE NET WORTH": as of any date of determination, the sum of the amounts set forth on the consolidated balance sheet of the Company as the sum of the common stock, preferred stock, additional paid-in capital and retained earnings of the Company (excluding treasury stock), less the book value of all assets of the Company and its Subsidiaries that would be treated as intangibles under GAAP, including, without limitation, all such items as goodwill, trademarks, trade names, service marks, copyrights, patents, licenses, unamortized debt discount and expenses and the excess of the purchase price of the assets of any business acquired by the Company or any Subsidiary over the book value of such assets.

"TERMINATION DATE": the earliest to occur of (a) June 30, 1996, as the same may be extended with respect to the Commitment of any Bank pursuant to Section 2.29, (b) the date on which the Commitments are terminated pursuant to Section 2.14 or (c) the date on which the Commitments are terminated pursuant to Section 6.02.

"TOTAL OUTSTANDINGS": as of any date of determination, the sum of (a) the aggregate unpaid principal balance of Loans outstanding on such date, PLUS  
(b) the Letter of Credit Usage.

"UNFUNDED LIABILITIES": (a) in the case of Plans subject to Title IV of ERISA (other than Multiemployer Plans), the amount (if any) by which the present value of all vested nonforfeitable benefits under such Plan exceeds the fair market value of all Plan assets allocable to such benefits, all determined as of the then most recent valuation report prepared by the actuary for such Plan, and (b) in the case of Multiemployer Plans, the withdrawal liability of the Company and the ERISA Affiliates.

"UNMATURED EVENT OF DEFAULT": any event which, with the giving of notice (whether such notice is required under Section 6.01, or under some other provision of this Agreement, or otherwise) or lapse of time, or both, would constitute an Event of Default.

"UNPAID DRAW": the obligation of the Company to reimburse First Bank for a draw under a Letter of Credit, to the extent not reimbursed by the Company in accordance with Section 2.11.

"UNUSED BASE COMMITMENT AMOUNT": at the time of any determination, the Aggregate Base Commitment Amount less the Total Outstandings.

"UNUSED DESIGNATED AMOUNT": at any time of determination from July 1 of any year to January 1 of the following year, the Aggregate Available Amount less the greater of (a) Total Outstandings and (b) the Aggregate Base Commitment Amount.

"UNUSED SEASONAL COMMITMENT AMOUNT": at any time of determination from July 1 of any year to January 1 of the following year, the Aggregate Seasonal Commitment Amount MINUS the Aggregate Designated Amount, and at any other time of determination, the Aggregate Seasonal Commitment Amount.

Section 1.02 ACCOUNTING TERMS AND CALCULATIONS. Except as may be expressly provided to the contrary herein, all accounting terms used herein shall be interpreted and all accounting determinations hereunder shall be made in conformity with GAAP. To the extent any change in GAAP after the Signing Date affects any computation or determination required to be made pursuant to this Agreement, such computation or determination shall be made as if such change in GAAP had not occurred unless the Company and the Banks agree in writing on an adjustment to such computation or determination to account for such change in GAAP.

Section 1.03 COMPUTATION OF TIME PERIODS. In this Agreement, in the computation of a period of time from a specified date to a later specified date, unless otherwise stated the word "from" means "from and including" and the word "to" or "until" each means "to but excluding".

Section 1.04 PRINCIPLES OF CONSTRUCTION. In this Agreement, the singular includes the plural and the plural the singular; words imparting any gender include the other genders; references to "Section", "Exhibit", "Schedule" and like references shall be to sections of, and exhibits and schedules to, this Agreement unless otherwise specifically provided; the words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; references to "writing" include printing, typing, lithography and other means of reproducing words in a visible form; references to agreements and other contractual instruments shall be deemed to include all subsequent amendments thereto or changes therein entered into in accordance with their respective terms; and references to Persons include their permitted successors and assigns. Unless the context in which used herein otherwise clearly requires, "or" has the inclusive meaning represented by the phrase "and/or."

## **ARTICLE II TERMS OF THE CREDIT FACILITY**

### **PART A -- TERMS OF LENDING**

Section 2.01 THE COMMITMENTS. On the terms and subject to the conditions hereof, each Bank severally agrees to make Loans to the Company on a revolving basis at any time and from time to time from the Effective Date to the Termination Date, during which period the Company may borrow, repay and reborrow in accordance with the provisions hereof, PROVIDED, that no Loan will be made (i) in any amount which after giving effect thereto, would cause the Total Outstandings to exceed the Aggregate Available Amount, or (ii) if, after giving effect to such Loan, a Borrowing Base Deficiency would exist; PROVIDED, that no Bank shall be required to make any Loan if, after giving effect thereto, the sum of the outstanding principal balance of such Bank's Note plus such Bank's Pro Rata Share of the Letter of Credit Usage would exceed such Bank's Available Amount. Loans hereunder shall be made by the Banks ratably based on their respective Pro Rata Shares. Loans may be obtained and maintained, at the election of the Company but subject to the limitations hereof, as Reference Rate Advances or Eurodollar Advances.

Section 2.02 PROCEDURE FOR LOANS. Any request by the Company to borrow hereunder shall be made to the Agent by telephone, promptly confirmed by

giving the Agent a Notice of Borrowing, Continuation or Conversion, and must be received by the Agent not later than 12:00 noon (Minneapolis time) three Eurodollar Business Days prior to the requested Borrowing Date if the Loans are requested as Eurodollar Advances and not later than 12:00 noon (Minneapolis time) on the requested Borrowing Date if the Loans are requested as Reference Rate Advances. Each request to borrow hereunder shall be irrevocable and shall be deemed a representation by the Company that on the requested Borrowing Date and after giving effect to the requested Loans the applicable conditions specified in Article III have been and will be satisfied. Each request to borrow hereunder shall specify (a) the requested Borrowing Date, (b) the aggregate amount of Loans to be made on such date, which shall be in a minimum amount of \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof, to the extent such Loans are to be funded as Eurodollar Advances, or \$2,000,000 or an integral multiple of \$500,000 in excess thereof, to the extent such Loans are to be funded as Reference Rate Advances, (c) whether such Loans are to be funded as Reference Rate Advances or Eurodollar Advances, and (d) in the case of Eurodollar Advances, the duration of the initial Interest Period applicable thereto. Without in any way limiting the Company's obligation to confirm in writing any telephone request to borrow hereunder, the Agent may rely on any such request which it believes in good faith to be genuine; and the Company hereby waives any claim against the Agent or the Banks based on a dispute with the Agent's record of the terms of such telephone request. The Agent shall promptly notify each other Bank of the receipt of such request not later than 2:00 P.M. (Minneapolis time) on the date it receives such request, the matters specified therein, and of such Bank's Pro Rata Share of the requested Loans. On the requested Borrowing Date, each Bank shall provide its Pro Rata Share of the requested Loans to the Agent in Immediately Available Funds not later than 4:00 P.M. (Minneapolis time). Unless the Agent determines that any applicable condition specified in Article III has not been satisfied, the Agent will make available to the Company at the Agent's principal office in Minneapolis, Minnesota in Immediately Available Funds not later than 4:00 P.M. (Minneapolis time) on the requested Borrowing Date the amount of the requested Loans. If the Agent has made a Loan on behalf of a Bank but has not received the amount of such Loan (or a Federal Reserve Bank reference number for the wire transfer of the amount of such Loan) from such Bank by 4:00 P.M. (Minneapolis time) on the requested Borrowing Date, such Bank shall pay interest to the Agent on the amount so advanced at the Federal Funds Rate from the date of such Loan to the date funds are received by the Agent from such Bank, such interest to be payable with such remittance from such Bank of the principal amount of such Loan (PROVIDED, HOWEVER, that the Agent shall not make any Loans on behalf of a Bank if the Agent has received prior notice from such Bank that it will not make such Loan). If the Agent does not receive payment from such Bank by the next Business Day after the date of any Loan, the Agent shall be entitled to recover such Loan, with interest thereon at the rate then applicable to the such Loan, on demand, from the Company, without prejudice to the Agent's and the Company's rights against such Bank. If such Bank pays the Agent the amount herein required with interest at the Federal Funds Rate before

the Agent has recovered from the Company, such Bank shall be entitled to the interest payable by the Company with respect to the Loan in question accruing from the date the Agent made such Loan.

Section 2.03 NOTES. The Loans made by each Bank shall be evidenced by a single promissory note of the Company payable to the order of such Bank in the form of Exhibit D, in a principal amount equal to the amount of such Bank's Commitment originally in effect (each, together with any such promissory note hereafter executed and delivered to a Bank to evidence the Loans, a "Note" and, collectively, the "Notes"). Each Bank shall enter in its ledgers and records the amount of each Loan, the various Advances made, converted or continued and the payments made thereon, and each Bank is authorized by the Company to enter on a schedule attached to its Note a record of such Loans, Advances and payments; PROVIDED, HOWEVER that the failure by any Bank to make any such entry or any error in making such entry shall not limit or otherwise affect the obligation of the Company hereunder and on the Notes, and, in all events, the principal amount owing by the Company in respect of each Note shall be the aggregate amount of all Loans made by the Bank to which such Note is payable less all payments of principal thereof made by the Company.

Section 2.04 CONVERSIONS AND CONTINUATIONS. On the terms and subject to the limitations hereof, the Company shall have the option at any time and from time to time to convert all or any portion of the Advances into Reference Rate Advances or Eurodollar Advances, or to continue a Eurodollar Advance as such (in a minimum amount of \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof, with respect to any conversion into or continuation as Eurodollar Advances, or \$2,000,000 or an integral multiple of \$500,000 in excess thereof, with respect to any conversion into Reference Rate Advances); PROVIDED, HOWEVER that (i) a Eurodollar Advance may be converted or continued only on the last day of the Interest Period applicable thereto, and (ii) no Advance may be converted into or continued as a Eurodollar Advance if an Unmatured Event of Default or Event of Default has occurred and is continuing on the proposed date of continuation or conversion. The Company shall give the Agent a Notice of Borrowing, Continuation or Conversion with respect to the continuation or conversion of any Advance so as to be received by the Agent not later than 12:00 noon (Minneapolis time) three Eurodollar Business Days prior to requested date of conversion or continuation in the case of the continuation of, or conversion to, Eurodollar Advances and not later than 12:00 noon (Minneapolis time) on the date of any requested conversion to Reference Rate Advances. Each such notice shall specify (a) the amount to be continued or converted, (b) the date for the continuation or conversion (which must be (i) the last day of the preceding Interest Period and a Eurodollar Business Day in the case of conversions to or continuations of Eurodollar Advances, and (ii) a Business Day in the case of conversions to Reference Rate Advances), and (c) in the case of conversions to or continuations of Eurodollar Advances, the Interest Period applicable thereto. Any notice given by the Company

under this Section 2.04 shall be irrevocable. If the Company shall fail to notify the Agent of the continuation of any Eurodollar Advances or of the conversion of Eurodollar Advances within the time required by this Section 2.04, such Advances shall, on the last day of the Interest Period applicable thereto, automatically be converted into Reference Rate Advances of the same principal amount. All conversions to and continuations of Advances shall be made uniformly and ratably among the Banks.

Section 2.05 INTEREST RATES, INTEREST PAYMENTS AND DEFAULT INTEREST. Interest shall accrue and be payable as follows:

(a) Each Eurodollar Advance shall bear interest on the unpaid principal amount thereof during the Interest Period applicable thereto at a rate per annum equal to the sum of (i) the Adjusted Eurodollar Rate for such Interest Period PLUS (ii) the Applicable Margin.

(b) Each Reference Rate Advance shall bear interest on the unpaid principal amount thereof at a floating rate per annum equal to the sum of (i) the Reference Rate PLUS (ii) the Applicable Margin.

(c) Any Advance not paid when due, whether at the date scheduled therefor or earlier upon acceleration, shall bear interest until paid in full (i) during the balance of any Interest Period applicable to such Advance, at a rate per annum equal to the sum of the rate applicable to such Advance during such Interest Period PLUS 2.0%, and (ii) otherwise, at a rate per annum equal to the sum of the Reference Rate PLUS 2.00%.

(d) Interest accrued through each date of payment shall be payable

(i) with respect to each Eurodollar Advance having an Interest Period of three months or less, on the last day of the Interest Period applicable thereto; (ii) with respect to any Eurodollar Advance having an Interest Period greater than three months, on the last day of the Interest Period applicable thereto and on each day that would have been the last day of the Interest Period for such Advance had successive Interest Periods of three months duration been applicable to such Advance; (iii) with respect to any Reference Rate Advance, on the first day of each month; and (iv) with respect to all Advances, on the Termination Date; PROVIDED that interest under Section 2.05(c) shall also be payable on demand.

Section 2.06 REPAYMENT; MANDATORY PREPAYMENTS; DEPOSITS INTO HOLDING ACCOUNT.

(a) Principal of all Loans, together with all accrued, unpaid interest thereon, shall be due and payable on the Termination Date. If any Letters of Credit are outstanding on the Termination Date, the Company shall deposit



into the Holding Account an amount sufficient to cause the amount deposited in the Holding Account to equal the aggregate undrawn face amount of all outstanding Letters of Credit. At any time after such deposit is made and all outstanding Obligations, other than Obligations with respect to outstanding Letters of Credit, have been paid in full, if an outstanding Letter of Credit expires or is reduced without the full amount thereof having been drawn, the Agent shall withdraw from the Holding Account and deliver to the Company an amount equal to the amount by which the amount on deposit in the Holding Account exceeds the aggregate undrawn face amount of outstanding Letters of Credit (after giving effect to such expiration or reduction).

(b) On or after December 1 of each year and on or before February 15 of the following year, the Company shall reduce the outstanding principal balance of the Loans to not more than \$50,000,000 and, for a period of not less than 45 consecutive days thereafter, shall not have Loans in a principal amount exceeding \$50,000,000 outstanding.

(c) If at any time a Borrowing Base Deficiency shall exist, the Company will immediately prepay the outstanding Loans in the amount of such Borrowing Base Deficiency and, if such Borrowing Base Deficiency exceeds the amount of outstanding Loans, deposit into the Holding Account, in Immediately Available Funds, an aggregate amount equal to such excess. To the extent that, prior to the occurrence of any Event of Default, the Borrowing Base increases, the Agent shall, at the request of the Company, deliver to the Company an amount equal to the amount by which the deposits held in the Holding Account pursuant to this Section 2.06(c) exceed the Borrowing Base Deficiency.

(d) If at any time the Total Outstandings exceed the Aggregate Available Amount, the Company shall prepay the Loans in the amount of such excess and, if such excess exceeds the amount of outstanding Loans, deposit into the Holding Account an amount equal to the amount by which such excess exceeds the amount of outstanding Loans.

Section 2.07 OPTIONAL PREPAYMENTS. The Company may prepay Reference Rate Advances, in whole or in part, at any time, without premium or penalty. Each partial prepayment shall be in an aggregate amount for all the Banks of \$2,000,000 or an integral multiple of \$500,000 in excess thereof, and shall be distributed to the Banks in accordance with their respective Pro Rata Shares. Except upon an acceleration following an Event of Default, upon termination of the Commitments in whole under Section 2.14 or upon a reduction of the Aggregate Available Amount, the Company may pay Eurodollar Advances only on the last day of the Interest Period applicable thereto. Amounts paid (unless following an acceleration or upon termination of the Commitments in whole) or prepaid under

this Section 2.07 may be reborrowed upon the terms and subject to the conditions and limitations of this Agreement.

## **PART B -- TERMS OF THE LETTER OF CREDIT FACILITY**

Section 2.08 **LETTERS OF CREDIT.** The letters of credit issued by First Bank for the account of the Company and described on Schedule 2.08 shall be "Letters of Credit" hereunder from and after the Effective Date, and the rights and obligations of First Bank, the Agent, the Banks and the Company with respect to such letters of credit shall be those set forth therein and, to the extent not inconsistent therewith, those set forth herein with respect to Letters of Credit. Upon the terms and subject to the conditions of this Agreement, First Bank agrees to issue Letters of Credit for the account of the Company from time to time between the Effective Date and the Termination Date in such amounts as the Company shall request; PROVIDED that no Letter of Credit will be issued in any amount which, after giving effect to such issuance, would cause (i) Total Outstandings to exceed the Aggregate Available Amount, (ii) a Borrowing Base Deficiency to exist or increase, (iii) the sum of the unpaid amount of all Eurodollar Advances ending after January 1 of any year and the outstanding face amount of all Letters of Credit having an expiration date after such date to exceed the Aggregate Base Commitment Amount or (iv) the Letter of Credit Usage to exceed \$75,000,000.

Section 2.09 **PROCEDURES FOR LETTERS OF CREDIT.** Each request for a Letter of Credit shall be made by the Company in writing and received by First Bank by 12:00 noon (Minneapolis time) not later than one Business Day preceding the requested date of issuance (which shall also be a Business Day). Each request for a Letter of Credit shall be deemed a representation by the Company that on the date of issuance of such Letter of Credit and after giving effect thereto the conditions specified in Article III have been and will be satisfied. First Bank may require that such request be made on such letter of credit application and reimbursement agreement form as First Bank may from time to time specify. First Bank shall promptly notify the Agent, and the Agent shall notify the other Banks by 1:00 P.M (Minneapolis time) on the date First Bank issues any Letter of Credit, of the issuance of each Letter of Credit, and each Bank's Pro Rata Share thereof, and First Bank will promptly provide to the Agent, and the Agent will promptly provide to the other Banks, a copy of each Letter of Credit issued hereunder.

Section 2.10 **TERMS OF LETTERS OF CREDIT.** Letters of Credit shall be issued in support of obligations of the Company incurred in the ordinary course of its business. No Letter of Credit may have an expiration date more than two years after the date of its issuance.

Section 2.11 **AGREEMENT TO REPAY LETTER OF CREDIT DRAWS.** If First Bank has decided that it will pay a draw made on any Letter of Credit, it will notify the Agent and the Company of that fact. The Company shall reimburse First Bank in an

amount equal to the amount of such draw by 11:00 A.M. (Minneapolis time) on the day on which such draw is to be paid in Immediately Available Funds. To the extent funds are available in the Holding Account, First Bank may, in its discretion, withdraw the amount of such draw from the Holding Account and apply such amount to the Company's reimbursement obligations in respect of such draw. To the extent the amount of funds available in the Holding Account equals or exceeds the Letter of Credit Usage as of the date of such draw, First Bank shall withdraw the amount of such draw from the Holding Account and apply such amount to the Company's reimbursement obligations in respect of such draw. If First Bank is not reimbursed for the amount of such draw as provided in the three preceding sentences, First Bank shall notify the Agent thereof by 1:00 P.M. (Minneapolis time) on the date such draw is to be paid.

Section 2.12 LOANS TO COVER UNPAID DRAWS. Whenever the Agent receives notice from First Bank of an Unpaid Draw pursuant to Section 2.11, the Agent shall give the other Banks notice to that effect, by 2:00 P.M. (Minneapolis time) on the date it receives notice of such Unpaid Draw from First Bank, specifying the amount thereof, in which event each Bank is authorized (and the Company does here so authorize each Bank) to, and shall, make a Loan (as a Reference Rate Advance) to the Company in an amount equal to such Bank's Pro Rata Share of the amount of the Unpaid Draw. Each Bank shall make such Loan, regardless of noncompliance with the applicable conditions precedent specified in Article III hereof and regardless of whether an Event of Default then exists or the Commitments have been terminated, and provide First Bank with the proceeds of such Loan in Immediately Available Funds, at the office of First Bank, not later than 4:00 P.M. (Minneapolis time) on the day on which such Bank received such notice. First Bank shall apply the proceeds of such Loans directly to reimburse itself for such Unpaid Draw. If any portion of any such amount paid to First Bank should be recovered by or on behalf of the Company from First Bank in bankruptcy, by assignment for the benefit of creditors or otherwise, the loss of the amount so recovered shall be ratably shared between and among the Banks in the manner contemplated by Section 7.10. If at the time the Banks make funds available to First Bank pursuant to the provisions of this

Section 2.12 the applicable conditions precedent specified in Article III shall not have been satisfied, the Company shall pay to the Agent for the account of the Banks interest on the funds so advanced at a floating rate per annum equal to the Reference Rate plus two percent (2.00%).

Section 2.13 OBLIGATIONS ABSOLUTE. The obligations of the Company to repay First Bank for the amount of any draw on a Letter of Credit pursuant to

Section 2.11 and to repay any Letter of Credit Loans shall be absolute, unconditional and irrevocable, shall continue for so long as any Letter of Credit is outstanding notwithstanding any termination of this Agreement, and shall be paid strictly in accordance with the terms of this Agreement, under all circumstances whatsoever, including without limitation the following circumstances:

(a) any lack of validity or enforceability of any Letter of Credit;

(b) the existence of any claim, setoff, defense or other right which the Company may have or claim at any time against any beneficiary, transferee or holder of any Letter of Credit (or any Person for whom any such beneficiary, transferee or holder may be acting), the Agent, First Bank or any Bank or any other Person, whether in connection with a Letter of Credit, this Agreement, the transactions contemplated hereby, or any unrelated transaction; or

(c) any statement or any other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect whatsoever.

Neither the Agent, First Bank, any other Bank nor the officers, directors, agents or employees of any thereof shall be liable or responsible for, and the obligations of the Company to First Bank and the Banks shall not be impaired by:

(i) the use which may be made of any Letter of Credit or for any acts or omissions of any beneficiary, transferee or holder thereof in connection therewith;

(ii) the validity, sufficiency or genuineness of documents, or of any endorsements thereon, even if such documents or endorsements should, in fact, prove to be in any or all respects invalid, insufficient, fraudulent or forged;

(iii) the acceptance by First Bank of documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary; or

(iv) any other circumstances whatsoever in making or failing to make payment under any Letter of Credit.

Notwithstanding the foregoing, the Company shall have a claim against First Bank, and First Bank shall be liable to the Company, to the extent, but only to the extent, of any direct, as opposed to consequential, damages suffered by the Company which the Company proves were caused by First Bank's willful misconduct or gross negligence in determining whether documents presented under any Letter of Credit comply with the terms thereof.

## PART C -- GENERAL

Section 2.14 OPTIONAL REDUCTION OR TERMINATION OF COMMITMENTS. The Company may, at any time, upon not less than ten Business Days' prior written notice to the Agent, reduce the Commitments, ratably, with any such reduction in a minimum aggregate amount for all the Banks of \$10,000,000, or an integral multiple thereof, or terminate the Commitments in their entirety; PROVIDED, HOWEVER, that (a) the Company may not at any time reduce the Aggregate Base Commitment Amount below the Letter of Credit Usage as of the date of such reduction unless the Company reduces the Aggregate Commitment Amount to zero and deposits with First Bank in the Holding Account an amount equal to the Letter of Credit Usage as of such date; (b) the Company may not reduce the Commitments if the payment required by the next sentence as a result of such reduction would result in any outstanding Eurodollar Advances being repaid, in whole or in part, prior to the last day of the Interest Period applicable to such Advances; and (c) the Company shall designate which portion of such reduction shall reduce the Base Commitment Amounts and which portion of such reduction shall reduce the Seasonal Commitment Amounts. Upon any reduction in the Commitments pursuant to this Section 2.14, the Company shall pay to the Agent for the account of the Banks the amount, if any, by which the Total Outstandings exceed the Aggregate Available Amount after giving effect to such reduction. Upon termination of the Commitments pursuant to this Section, the Company shall pay to the Agent for the account of the Banks the full amount of all outstanding Loans, all accrued and unpaid interest thereon, all unpaid Commitment Fees accrued to the date of such termination, any indemnities payable pursuant to Section 2.26 and all other unpaid obligations of the Company to the Banks and the Agent hereunder, and shall deposit with First Bank in the Holding Account an amount equal to the Letter of Credit Usage as of such date.

Section 2.15 DESIGNATION OF AVAILABLE AMOUNT OF SEASONAL COMMITMENTS. Not less than five nor more than ten days prior to the beginning of each month from July to December of each year, the Company may by written notice to the Agent designate all or any portion of the Aggregate Seasonal Commitment Amount as available for the following month. If the Company shall fail to make such designation as provided in the preceding sentence, the Designated Amount of each Bank for the following month shall be the same as the Designated Amount for the preceding month, as adjusted pursuant to the second paragraph of this Section

2.15. Until such time that the Company makes an initial designation for any period in which the Seasonal Commitment Amount is available for designation, the Designated Amount of each Bank shall be zero. The Agent shall notify each Bank in writing, within one Business Day after its receipt of any such designation, of such designation and such Bank's Designated Amount for the following month. The Agent shall also notify each Bank in writing, within one Business Day after the expiration of the time for the Company to make a designation under this Section 2.15 for any month, if no such designation has been made.

Notwithstanding the foregoing, the Company may increase the Aggregate Designated Amount for any particular month during such month by requesting Loans pursuant to Section 2.02 that would cause Total Outstandings to exceed the Aggregate Available Amount, but not the Aggregate Commitment Amount. Each Bank shall make its Loan in its Pro Rata Share of the requested Loans in accordance with the provisions of Section 2.02 so long as all other terms of lending under this Agreement have been satisfied. In each such case the Company shall specify in its request to borrow the aggregate amount by which the requested Loans will cause the Total Outstandings to exceed the Aggregate Available Amount (and thus the amount by which the Aggregate Designated Amount shall be increased) for such month and the Agent shall include such information in the notification provided to each Bank pursuant to Section 2.02. The Company shall pay to the Agent, for the account of the Banks, for the period from and including the first calendar day of the month in which the requested Loans are made through the last calendar day thereof, a fee in an amount equal to three-eighths of one percent (0.375%) per annum of the aggregate amount by which such requested Loans will cause the Total Outstandings to exceed the Aggregate Available Amount (and thus the amount by which the Aggregate Designated Amount will be increased). Such fee shall be in lieu of the Commitment Fee under Section 2.17 otherwise applicable to such excess amount during such month and shall be payable quarterly in arrears on the first day of the following calendar quarter and on the Termination Date. The Designated Amount of each Bank shall be increased by its Pro Rata Share of the amount by which the Aggregate Designated Amount shall be increased pursuant to this Section.

Section 2.16 AGENT'S FEES. The Company shall pay to the Agent fees in accordance with the terms of a letter agreement of even date herewith.

Section 2.17 FACILITY FEES AND COMMITMENT FEES.

(a) The Company shall pay to each Bank on the Effective Date, in consideration of its Commitment, a facility fee in the amount set forth opposite such Bank's name on Schedule 2.17(a).

(b) The Company shall pay to the Agent, for the account of the Banks, for the period from the Effective Date until the Termination Date, fees (the "Commitment Fees") in an amount equal to (a) one-quarter of one percent (0.25%) per annum of the average daily Unused Base Commitment Amount, (b) one-eighth of one percent (0.125%) per annum of the average daily Unused Seasonal Commitment Amount and (c) one-quarter of one percent (0.25%) per annum of the Unused Designated Amount. Such Commitment Fees are payable quarterly in arrears on the first day of the following calendar quarter and on the Termination Date.

Section 2.18 LETTER OF CREDIT FEES. For each Letter of Credit issued, the Company shall pay to the Agent for the account of the Banks, in advance on the date of issuance, a fee (a "Letter of Credit Fee") in an amount equal to (a) with respect to Letters of Credit having a scheduled expiration date not more than six months after the date of issuance, 0.75% per annum, and (b) with respect to Letters of Credit having a scheduled expiration date more than six months after the date of issuance, 1.00% per annum, of the original face amount of the Letter of Credit for the period from the date of issuance to the scheduled expiration date of such Letter of Credit. The Company shall also pay to First Bank, for its own account, on demand, all issuance, amendment, drawing and other fees regularly charged by First Bank to its letter of credit customers and all out-of-pocket expenses incurred by First Bank in connection with the issuance, amendment, administration or payment of any Letter of Credit.

Section 2.19 COMPUTATION. Commitment Fees, Letter of Credit Fees and interest on Advances shall be computed on the basis of actual days elapsed (or, in the case of Letter of Credit Fees which are paid in advance, actual days to elapse) and a year of 360 days.

Section 2.20 PAYMENTS. Payments and prepayments of principal of, and interest on, the Notes and all fees, expenses and other obligations under this Agreement payable to the Agent or the Banks shall be made without setoff or counterclaim in Immediately Available Funds not later than 12:00 noon (Minneapolis time) (except as otherwise provided herein) on the dates called for under this Agreement to the Agent at its main office in Minneapolis, Minnesota. Payments payable to First Bank for its own account in respect of Letters of Credit under this Agreement shall be made without setoff or counterclaim in Immediately Available Funds not later than 12:00 noon (Minneapolis time) (except as otherwise provided herein) on the dates called for in this Agreement to First Bank at its main office in Minneapolis, Minnesota. Funds received after such time shall be deemed to have been received on the next Business Day. The Agent will promptly distribute in like funds to each Bank its Pro Rata Share of each such payment of principal, interest, Commitment Fees, Letter of Credit Fees or other amounts received by the Agent for the account of the Banks. If the Agent does not make any such distribution (or provide Federal Reserve Bank reference numbers for the wire transfer of the amount thereof) by 3:00 P.M. (Minneapolis time) on the date such payment of principal, interest or other amounts is received or deemed received under this Section 2.20, the Agent will pay interest to each Bank entitled to receive a portion of such distribution on the amount distributable to it at the Federal Funds Rate from the date such payment was received or deemed received until the date such distribution is made, such interest to be payable with such distribution. Whenever any payment to be made hereunder or on the Notes shall be stated to be due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time, in the case of a payment of principal, shall be included in the computation of any interest on such principal.

Section 2.21 USE OF LOAN PROCEEDS. The proceeds of the Loans shall be used for the Company's general corporate purposes in a manner not in conflict with any of the Company's covenants in this Agreement.

Section 2.22 INTEREST RATE NOT ASCERTAINABLE, ETC. If, on or prior to the date for determining the Adjusted Eurodollar Rate in respect of the Interest Period, any Bank reasonably determines (which determination shall be conclusive and binding, absent error) that:

- (a) deposits in dollars (in the applicable amount) are not being made available to such Bank in the relevant market for such Interest Period, or
- (b) the Adjusted Eurodollar Rate will not adequately and fairly reflect the cost to such Bank of funding or maintaining Eurodollar Advances for such Interest Period,

such Bank shall forthwith give notice to the Agent and the Company and the other Banks of such determination, whereupon the obligation of such Bank to make or continue, or to convert any Advances to, Eurodollar Advances shall be suspended until such Bank notifies the Company and the Agent that the circumstances giving rise to such suspension no longer exist. While any such suspension continues, all further Advances by such Bank shall be made as Reference Rate Advances. No such suspension shall affect the interest rate then in effect during the applicable Interest Period for any Eurodollar Advance outstanding at the time such suspension is imposed.

Section 2.23 INCREASED COST. If, after the date hereof, any Regulatory Change:

- (a) shall subject any Bank (or its applicable lending office) to any tax, duty or other charge with respect to its Eurodollar Advances, its Notes, its obligation to make Eurodollar Advances, its issuance of Letters of Credit or its obligation to make Letter of Credit Loans, or shall change the basis of taxation of payment to any Bank (or its applicable lending office) of the principal of or interest on its Eurodollar Advances, or any other amounts due under this Agreement in respect of its Eurodollar Advances, its obligation to make Eurodollar Advances, its obligation to issue Letters of Credit or its obligation to make Letter of Credit Loans (except for changes in the rate of tax on the overall net income of such Bank or its applicable lending office imposed by the jurisdiction in which such Bank's principal office or applicable lending office is located); or
- (b) shall impose, modify or deem applicable any reserve, special deposit, capital requirement or similar requirement (including, without



limitation, any such requirement imposed by the Board of Governors of the Federal Reserve System, but excluding with respect to any Eurodollar Advance any such requirement to the extent included in calculating the applicable Adjusted Eurodollar Rate) against assets of, deposits with or for the account of, or credit extended by, any Bank's applicable lending office or shall impose on any Bank (or its applicable lending office) or on the interbank eurodollar market any other condition affecting its Eurodollar Advances, its Notes, its obligation to make Eurodollar Advances, its obligation to issue Letters of Credit or its obligations to make Letter of Credit Loans;

and the result of any of the foregoing is to increase the cost to such Bank (or its applicable lending office) of making or maintaining any Eurodollar Advance, issuing or maintaining Letters of Credit or making Letter of Credit Loans, or to reduce the amount of any sum received or receivable by such Bank (or its applicable lending office) under this Agreement or under its Notes, then, within 30 days after demand by such Bank (with a copy to the Agent), the Company shall pay to such Bank such additional amount or amounts as will compensate such Bank for such increased cost or reduction. Each Bank will promptly notify the Company and the Agent of any Regulatory Change of which it has knowledge, occurring after the date hereof, which will entitle such Bank to compensation pursuant to this Section 2.23 and will designate a different applicable lending office if such designation will avoid the need for, or reduce the amount of, such compensation and will not, in the judgment of such Bank, be otherwise disadvantageous to such Bank. A certificate of any Bank claiming compensation under this Section 2.23, setting forth the additional amount or amounts to be paid to it hereunder and stating in reasonable detail the basis for the charge and the method of computation, shall be conclusive in the absence of error. In determining such amount, any Bank may use any reasonable averaging and attribution methods. The Company shall not be obligated to pay any such amount that is attributable to the period ending 91 days prior to the date of the first notice delivered by any Bank under the third preceding sentence with respect to any Regulatory Change (the "Excluded Period"), except to the extent any amount is attributable to the Excluded Period as a result of the retroactive application of the applicable Regulatory Change. Failure on the part of any Bank to demand compensation for any increased costs or reduction in amounts received or receivable with respect to any Interest Period or other applicable period shall not constitute a waiver of such Bank's rights to demand compensation for any increased costs or reduction in amounts received or receivable in any subsequent Interest Period or other applicable period.

Section 2.24 ILLEGALITY. If, after the date of this Agreement, any Regulatory Change shall make it unlawful or impossible for such Bank to make, maintain or fund any Eurodollar Advances, such Bank shall notify the Company and the Agent, whereupon the obligation of such Bank to make or continue, or to convert any Advances to, Eurodollar Advances shall be suspended until such Bank notifies the Company and the Agent that the circumstances giving rise to such

suspension no longer exist. Before giving any such notice, such Bank shall designate a different applicable lending office if such designation will avoid the need for giving such notice and will not, in the judgment of such Bank, be otherwise disadvantageous to such Bank. If such Bank determines that it may not lawfully continue to maintain any Eurodollar Advances to the end of the applicable Interest Periods, all of the affected Advances shall be automatically converted to Reference Rate Advances as of the date of such Bank's notice, and upon such conversion the Company shall indemnify such Bank in accordance with Section 2.26.

Section 2.25 CAPITAL ADEQUACY. In the event that any Bank shall have reasonably determined that any Regulatory Change has or shall have the effect of reducing the rate of return on such Bank's capital or the capital of its parent corporation as a consequence of its Commitment, the Advances and/or the Letters of Credit or its obligations to make Loans to cover Unpaid Draws to a level below that which such Bank or its parent corporation could have achieved but for such Regulatory Change (taking into account such Bank's policies and the policies of its parent corporation with respect to capital adequacy), then the Company shall, within ten days after written notice and demand from such Bank (with a copy to the Agent), pay to such Bank additional amounts sufficient to compensate such Bank or its parent corporation for such reduction; PROVIDED, that the Company shall not be obligated to pay any such additional amount (i) unless such Bank shall first have notified the Company in writing that it intends to seek such compensation pursuant to this Section 2.25 and (ii) that is attributable to the period ending 91 days prior to the date of such notice with respect to any Regulatory Change (the "Excluded Period"), except to the extent any amount is attributable to the Excluded Period as a result of the retroactive application of the applicable Regulatory Change. Any determination by such Bank under this Section and any certificate as to the amount of such reduction given to the Company by such Bank shall be final, conclusive and binding for all purposes, absent error.

Section 2.26 FUNDING LOSSES. The Company shall compensate each Bank, upon its written request, for all losses, expenses and liabilities (including, without limitation, any interest paid by such Bank to lenders of funds borrowed by it to make or carry Eurodollar Advances to the extent not recovered by such Bank in connection with the re-employment of such funds and including loss of anticipated profits) which such Bank may sustain: (a) if for any reason, other than a default by such Bank, a funding of a Eurodollar Advance does not occur on the date specified therefor in the Company's request or notice as to such Advance under Section 2.02 or 2.04, or (b) if, for whatever reason (including, but not limited to, acceleration of the maturity of Advances following an Event of Default), any repayment or prepayment of a Eurodollar Advance, or a conversion pursuant to Section 2.24, occurs on any day other than the last day of the Interest Period applicable thereto. A Bank's request for compensation shall set forth the basis for the amount requested and shall be final, conclusive and binding, absent error.

Section 2.27 DISCRETION OF BANKS AS TO MANNER OF FUNDING. Each Bank shall be entitled to fund and maintain its funding of Eurodollar Advances in any manner it may elect, it being understood, however, that for the purposes of this Agreement all determinations hereunder (including, but not limited to, determinations under Section 2.26, but excluding determinations of the Eurodollar Rate that the Agent may elect to make from the Reuters screen) shall be made as if such Bank had actually funded and maintained each Eurodollar Advance during the Interest Period for such Advance through the purchase of deposits having a maturity corresponding to the last day of the applicable Interest Period and an interest rate equal to the Eurodollar Rate.

Section 2.28 SETOFF. Whenever an Event of Default shall have occurred and be continuing, the Company hereby irrevocably authorizes each Bank to set off the Obligations owed to it (including, without limitation, any participation in the Obligations of other Banks purchased pursuant to Section 7.10 or 7.11) against all deposits and credits of the Company with, and any and all claims of the Company against, such Bank. Such right shall exist whether or not the Agent shall have made any demand hereunder or under any other Loan Document, whether or not such indebtedness, or any part thereof, or deposits and credits held for the account of the Company is or are matured or unmatured, and regardless of the existence or adequacy of any collateral, guaranty or any other security, right or remedy available to the Banks. Each Bank agrees that, as promptly as is reasonably possible after the exercise of any such setoff right, it shall notify the Agent and the Company of its exercise of such setoff right; PROVIDED, HOWEVER, that the failure of any Bank to provide such notice shall not effect the validity of the exercise of such setoff rights. Nothing in this Agreement shall be deemed a waiver or prohibition of or restriction on any rights of banker's lien, setoff and counterclaim available to any Bank pursuant to law.

Section 2.29 EXTENSION. Unless any Bank, in its sole discretion, provides the Company with written notice, on or before July 31, 1995, that such Bank is not willing to extend the Termination Date (subject to an earlier termination of the Commitments pursuant to either Section 2.14 or Section 6.02) with respect to its Commitment to June 30, 1997, and provided no Event of Default or Unmatured Event of Default has occurred and is continuing on July 31, 1995, the Termination Date shall be so extended. The Company shall not be required to pay an extension or origination fee to the Banks or the Agent as a condition precedent to the effectiveness of any such extension. If one or more Banks notifies the Company that it is not willing to so extend the Termination Date with respect to its Commitment, (a) the Company may at any time thereafter, in its sole discretion, require the assignment of such Bank's rights and delegation of such Bank's obligations under the Loan Documents, pursuant to Section 8.05(b), to any other Bank or another assignee selected by the Company and acceptable to the Agent that is willing to agree to such extension, in consideration for (i) the payment by such assignee to the assigning Bank of the principal of, and interest accrued and unpaid to

the date of such assignment on, the Note of such Bank, (ii) the payment by the Company to the assigning Bank of any and all other amounts owing to such Bank under any provision of this Agreement accrued and unpaid to the date of such assignment and (iii) the Company's release of the assigning Bank from any further obligation or liability under this Agreement, and (b) the Termination Date shall nonetheless be so extended with respect to the Banks that have not so notified the Company, but the Aggregate Commitment Amount shall be reduced by the Commitment Amount of the Banks that have notified the Company of their unwillingness to so extend the Termination Date, except to the extent of assignments pursuant to clause (a) above. The assignment fee described in Section 8.05(b) shall not be payable in connection with any assignment pursuant to this Section 2.29. On or before June 30, 1995, the Company shall notify the Agent, and the Agent shall forward copies of such notice to the Banks, of the obligation of the Banks to notify the Company on or before July 31, 1995 of any determination by a Bank not to extend the Termination Date under this Section 2.29.

### **ARTICLE III CONDITIONS PRECEDENT**

Section 3.01 CONDITIONS PRECEDENT TO INITIAL LOAN. The obligation of the Banks to make the initial Loans hereunder, and the obligation of First Bank to issue the initial Letter of Credit hereunder, shall be subject to the prior or simultaneous fulfillment of each of the following conditions:

(a) the Agent shall have received the following:

(i) Notes payable to the Banks, duly executed by the Company, complying with the requirements of Section 2.03;

(ii) copies of Amendments to the Covenant Riders dated as of October 30, 1992 between First Bank and the Company and First Bank and the Ardmore Development Authority, respectively, duly executed by the parties thereto;

(iii) a copy of the articles or certificate of incorporation, including all amendments thereto, of the Company, certified as of a recent date prior to the Effective Date by the appropriate governmental official of the jurisdiction of its incorporation;

(iv) a long-form certificate of good standing of the Company, as of a recent date, from such governmental official;

(v) a certificate of the Secretary or an Assistant Secretary of the Company dated the Effective Date, certifying (A) that attached thereto is a true and complete copy of the by-laws of the Company as in effect on

such date, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of the Company authorizing the execution, delivery and performance of the Loan Documents and the borrowings thereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, (C) that the articles of incorporation of the Company have not been amended since the date of the last amendment thereto shown on the certificate of good standing furnished pursuant to Section 3.01(a)(iii), and (D) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith or therewith on behalf of the Company;

(vi) the favorable written opinion of Robins, Kaplan, Miller & Ciresi, counsel for the Company, addressed to the Banks, as to the matters and to the effect set forth in Exhibit E;

(vii) a copy of a letter from the Company to the accounting firm that audited the financial statements referred to in Section 4.05, informing such accounting firm that the Banks are extending credit in reliance on such statements; and

(viii) an initial Borrowing Base Certificate;

(b) the Agent and the Banks shall have received all fees and other amounts due and payable by the Company to the Agent and the Banks under, or as contemplated by, this Agreement or any other Loan Document on or prior to the Effective Date, including, but not limited to, the reasonable fees and expenses of counsel to the Agent payable pursuant to Section 8.03(a); and

(c) the Company shall have performed and complied with all agreements, terms and conditions contained in this Agreement required to be performed or complied with by the Company prior to or simultaneously with the Effective Date.

Section 3.02. CONDITIONS PRECEDENT TO EACH LOAN. The obligation of the Banks to make all Loans (including the initial Loan) other than Letter of Credit Loans, to continue any Eurodollar Advances as such or to convert any outstanding Advances to Eurodollar Advances, and the obligation of First Bank to issue Letters of Credit, shall be subject to the fulfillment of the following conditions:

(a) the representations and warranties contained in Article IV shall be true and correct on and as of the date on which each Loan is requested to be made, on which each Advance is requested to be continued or converted or on which each Letter of Credit is requested to be issued, with the same force

and effect as if made on and as of such date, and the giving of the relevant Notice of Borrowing, Continuation or Conversion or the making of the relevant request for the issuance of a Letter of Credit shall constitute a representation and warranty to such effect;

(b) no Event of Default or Unmatured Event of Default shall have occurred and be continuing on the Borrowing Date or would exist after giving effect to the making of the requested Loan, the requested continuation or conversion of an Advance or the issuance of the requested Letter of Credit; and

(c) the Agent shall have received a timely and properly completed Notice of Borrowing, Continuation or Conversion, as required under Section 2.02 or Section 2.04, or First Bank shall have received a timely and properly completed written request for the issuance of a Letter of Credit, as required under Section 2.08.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES**

To induce the Banks to enter into this Agreement, to grant their respective Commitments and to make Loans thereunder, and to induce First Bank to issue Letters of Credit hereunder, the Company hereby represents and warrants to the Banks that:

Section 4.01 ORGANIZATION, STANDING, ETC. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has all requisite corporate power and authority to carry on its business as now conducted, to enter into this Agreement and to perform its obligations under each Loan Document to which it is a party. Each Subsidiary of the Company is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and has all requisite power and authority to carry on its business as now conducted. The Company and each Subsidiary (a) holds all certificates of authority, licenses and permits necessary to carry on its business as presently conducted in each jurisdiction in which it is carrying on such business, except where the failure to hold such certificates, licenses or permits would not have a Material Adverse Effect, and (b) is duly qualified and in good standing as a foreign corporation in each jurisdiction in which the character of the properties owned, leased or operated by it or the business conducted by it makes such qualification necessary and the failure so to qualify would permanently preclude it from enforcing its rights with respect to any assets or expose it to any liability, which in either case would be material to it.

Section 4.02 AUTHORIZATION AND VALIDITY. The execution, delivery and performance by the Company of each Loan Document have been duly authorized by all necessary corporate action, and this Agreement and each other Loan Document constitutes the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with its respective terms, subject to limitations as to enforceability which might result from bankruptcy, insolvency, moratorium and other similar laws affecting creditors' rights generally and general principles of equity.

Section 4.03 COMPLIANCE WITH LAW AND OTHER AGREEMENTS. The execution, delivery and performance by the Company of each Loan Document to which it is a party will not (a) violate any provision of any law, statute, rule or regulation or any order, writ, judgment, injunction, decree, determination or award of any Governmental Authority applicable to the Company, (b) violate or contravene any provision of the Articles or Certificate of Incorporation or bylaws of the Company, or (c) result in a breach of or constitute a default under any indenture, loan or credit agreement or any other agreement, lease or instrument to which the Company or any Subsidiary is a party or by which the Company, any Subsidiary or any of their properties may be bound, or result in the creation of any Lien thereunder. Neither the Company nor any Subsidiary is in default under or in violation of any law, statute, rule or regulation, order, writ, judgment, injunction, decree, determination or award of any Governmental Authority applicable to it or any indenture, loan or credit agreement or other agreement, lease or instrument to which it is a party or by which it or any of its properties may be bound in any case in which the consequences of such default or violation would have a Material Adverse Effect.

Section 4.04 GOVERNMENTAL CONSENT. No order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by, any Governmental Authority is required on the part of the Company to authorize, or is required in connection with, the execution, delivery and performance of, or the legality, validity, binding effect or enforceability of, the Loan Documents.

Section 4.05 FINANCIAL STATEMENTS AND NO MATERIAL ADVERSE CHANGE. The Company's audited financial statements as of February 26, 1994, and its consolidated unaudited financial statements as of May 28, 1994, as heretofore furnished to the Banks, have been prepared in conformity with GAAP on a consistent basis (except for year-end audit adjustments as to the unaudited statements) and fairly present the consolidated financial condition of the Company as at such dates and the results of its operations and cash flow for the respective periods then ended. As of the dates of such financial statements, neither the Company nor any Subsidiary had any material obligation, contingent liability, liability for taxes or long-term lease obligations or unusual forward or long-term commitment which is not either reflected in such financial statements or in the

notes thereto. Since the date of the Company's audited financial statements referred to above, there has been no material adverse change in the business, operations, property, assets or condition, financial or otherwise, of the Company or any Subsidiary.

Section 4.06 LITIGATION. Except as described in Schedule 4.06, there are no actions, suits or proceedings pending or, to the knowledge of the Company, threatened against or affecting the Company, any Subsidiary or any of their properties before any arbitrator or any Governmental Authority which has had, or, if determined adversely to the Company or such Subsidiary, would likely have, a Material Adverse Effect.

Section 4.07 ERISA. Each Plan complies with all material applicable requirements of ERISA and the Code and with all material applicable rulings and regulations issued under the provisions of ERISA and the Code setting forth those requirements. No Reportable Event has occurred and is continuing with respect to any Plan. All of the minimum funding standards applicable to such Plans have been satisfied and there exists no event or condition which would permit the institution of proceedings to terminate any Plan under Section 4042 of ERISA. The current value of the Plans' benefits guaranteed under Title IV of ERISA does not exceed the current value of the Plans' assets allocable to such benefits. Neither the Company nor any ERISA Affiliate is a party to or has any liability to any Multiemployer Plan.

Section 4.08 ENVIRONMENTAL, HEALTH AND SAFETY LAWS. There does not exist any violation by the Company or any Subsidiary of any applicable federal, state or local law, rule or regulation or order of any government, governmental department, board, agency or other instrumentality relating to environmental, pollution, health or safety matters which will or threatens to impose a material liability on the Company or a Subsidiary or which would require a material expenditure by the Company or such Subsidiary to cure. Neither the Company nor any Subsidiary has received any notice to the effect that any part of its operations or properties is not in material compliance with any such law, rule, regulation or order or notice that it or its property is the subject of any governmental investigation evaluating whether any remedial action is needed to respond to any release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could reasonably be expected to have a Material Adverse Effect on the Company.

Section 4.09 FEDERAL RESERVE REGULATIONS. The Company is not engaged principally or as one of its important activities in the business of extending credit for the purpose of purchasing or carrying margin stock and no part of the proceeds of any Loan will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, (a) to purchase or carry margin stock or to extend credit to others for the purpose of purchasing or carrying margin stock or to



refund indebtedness originally incurred for such purpose or (b) for any purpose which entails a violation of, or which is inconsistent with, the provisions of Regulations G, U or X. The value of all margin stock owned by the Company does not constitute more than 25% of the value of the assets of the Company.

Section 4.10 TITLE TO PROPERTY; POSSESSION UNDER LEASES. Each of the Company and its Subsidiaries has good title, free of all Liens other than those permitted by Section 5.12 hereof, to all of the properties and assets reflected in the most recent financial statements referred to in Section 4.05 or Section 5.01 hereof as being owned by it and all assets acquired subsequent to the date of such financial statements, except for assets disposed of in the ordinary course of business. To the knowledge of the Company, there are no actual, threatened or alleged material defaults with respect to any leases of any real or personal property under which the Company or any of its Subsidiaries is lessor.

Section 4.11 TAXES. The Company and its Subsidiaries have filed all federal, state, local and foreign tax returns required to be filed by them and have paid or made provision for the payment of all taxes due and payable pursuant to such returns and pursuant to any assessments made against them or any of their property and all other taxes, fees and other charges imposed on them or any of their property by any Governmental Authority (other than taxes, fees or charges the amount or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which adequate reserves have been set aside on the books of the Company or such Subsidiary in conformity with GAAP). No tax Liens have been filed and no material claims are being asserted with respect to any such taxes, fees or charges. The charges, accruals and reserves on the books of the Company and each Subsidiary in respect of taxes and other governmental charges are adequate and the Company knows of no proposed material tax assessment against it or any Subsidiary on any basis therefor. The United States income tax returns of the Company and its Subsidiaries have been audited by the Internal Revenue Service, or the period for audit thereof has expired, for all fiscal years of the Company ending on or before March 31, 1991.

Section 4.12 TRADEMARKS, PATENTS. Each of the Company and its Subsidiaries possesses or has the right to use all of the patents, trademarks, trade names, service marks and copyrights, and applications therefor, and all technology, know-how, processes, methods and designs used in or necessary for the conduct of its business, without known conflict with the rights of others except conflicts that would not be likely to have a Material Adverse Effect on the Company.

Section 4.13 BUSINESS AND PROPERTIES OF COMPANY AND ITS SUBSIDIARIES. Since the date of the most recent financial statements referred to in Section 4.05 or Section 5.01, the business, properties and other assets of the Company and its Subsidiaries have not been materially and adversely affected in any way as the result of any fire or other casualty, strike, lockout, or other labor trouble, embargo,

sabotage, confiscation, condemnation, riot, civil disturbance, activity of armed forces or act of God.

Section 4.14 SECURITIES LAWS. Neither the Company nor any Subsidiary has issued any unregistered securities in violation of the registration requirements of Section 5 of the Securities Act of 1933, as amended, or any other federal, state or foreign law, nor is the Company or any Subsidiary violating any rule, regulation or requirement under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, or other federal, state or foreign law in any material respect.

Section 4.15 INVESTMENT COMPANY ACT. The Company is not an "investment company" or a company "controlled" by an investment company within the meaning of the Investment Company Act of 1940, as amended.

Section 4.16 PUBLIC UTILITY HOLDING COMPANY ACT. The Company is not a "holding company" or a "subsidiary company" of a holding company or an "affiliate" of a holding company or of a subsidiary company of a holding company within the meaning of the Public Utility Holding Company Act of 1940, as amended.

Section 4.17 RETIREMENT BENEFITS. Except as required under Section 4980B of the Code, Section 601 of ERISA or applicable state law, neither the Company nor any Subsidiary is obligated to provide post-retirement medical or insurance benefits with respect to employees or former employees.

Section 4.18 INDEBTEDNESS. The Company and its Subsidiaries have no outstanding Indebtedness except Indebtedness permitted pursuant to Section 5.13.

Section 4.19 SUBSIDIARIES. Schedule 4.19 sets forth the name of each of the Company's Subsidiaries as of the Signing Date and, as to each Subsidiary, the jurisdiction of its incorporation, the authorized and outstanding capital stock thereof by class and number, the name of each Person owning such capital stock and a description (by type and amount) of each Investment by the Company therein other than the ownership of its capital stock. There are no warrants, options or other rights to purchase any such capital stock.

Section 4.20 SENIOR INDEBTEDNESS. All of the Obligations (including, without limitation, all contingent Obligations in respect of outstanding Letters of Credit) are entitled to the benefit of all of the subordination provisions applicable to all Subordinated Indebtedness.

Section 4.21 FULL DISCLOSURE. Subject to the following sentence, neither the financial statements referred to in Section 4.05 or Section 5.01 nor any other certificate, written statement, exhibit or report furnished by or on behalf of the Company in connection with or pursuant to this Agreement contains any untrue

statement of a material fact or omits to state any material fact necessary in order to make the statements contained therein not misleading. Certificates or statements furnished by or on behalf of the Company to the Agent or any Bank consisting of projections or forecasts of future results or events have been prepared in good faith and are based on good faith estimates and assumptions of the management of the Company, and the Company has no reason to believe that such projections or forecasts are not reasonable.

## **ARTICLE V COVENANTS**

Until the Commitments shall have expired or been terminated and all of the Obligations shall have been paid in full, unless the Majority Banks shall otherwise consent in writing, the Company will:

Section 5.01 FINANCIAL STATEMENTS. Furnish to the Agent, with a copy for each Bank:

(a) as soon as available and in any event within 90 days after the end of each fiscal year of the Company, a copy of the consolidated and consolidating financial statements of the Company consisting of at least statements of income, a reconciliation of changes in equity accounts and cash flow statements for such fiscal year and balance sheets as at the end of such fiscal year, setting forth in each case in comparative form corresponding figures from the preceding year audit, certified without qualification by Deloitte & Touche or other independent certified public accountants of recognized national standing selected by the Company and acceptable to the Agent, together with (i) to the extent not previously delivered to such accounting firm under the terms hereof, a letter from the Company to such accounting firm advising such accounting firm that the Banks are extending credit in reliance on such financial statements and (ii) a statement of the accounting firm performing such audit to the effect that in the course of performing its examination nothing came to its attention that caused it to believe that the Company was not in compliance with Sections 5.21, 5.22, 5.23 or 5.24;

(b) as soon as available and in any event within (i) in the case of the last fiscal month of each year, 45 days and (ii) in all other cases, 30 days after the end of each month, a copy of the unaudited consolidated and consolidating financial statements of the Company consisting of at least statements of income for said month and for the period from the beginning of the fiscal year to the end of such month, cash flow statements for such month and for the period from the beginning of the fiscal year to the end of such month and balance sheets as at the end of such month, setting forth, in

each case, comparative figures for the corresponding period of the preceding fiscal year and forecasted figures for such period, certified by the chief financial officer of the Company or his designee as being true and prepared in accordance with GAAP, except for year-end audit adjustments and the absence of footnotes;

(c) as soon as available and in any event within 45 days after the end of each fiscal quarter, and together with the financial statements required pursuant to Section 5.01(a), a properly completed Compliance Certificate, signed by the Senior Vice President and Treasurer of the Company or his designee;

(d) as soon as available and in any event within ten days after the end of each week during which any Loans or Letters of Credit are outstanding, and in all events prior to the making of any Loans or the issuance of any Letters of Credit for the second week prior to the week in which the Company requested the making of such Loans or the issuance of such Letters of Credit, a properly completed Borrowing Base Certificate as of the end of such week, signed by the chief financial officer of the Company or his designee;

(e) promptly after the sending or filing thereof, copies of all regular and periodic financial reports which the Company or any Subsidiary shall file with the Securities and Exchange Commission or any national securities exchange;

(f) as soon as practicable and in any event on or before the last Business Day of the first month of each fiscal year of the Company, projections, in reasonable detail, on a monthly basis for such fiscal year, including projected earnings statements and cash flow statements for each month during such fiscal year and the period from the beginning of such fiscal year through the end of such month, and accompanying balance sheets as of the end of such month, signed by the chief financial officer of the Company or his designee; and

(g) such other information respecting the financial condition and results of operations of the Company as the Agent or any Bank may from time to time reasonably request.

**Section 5.02 CORPORATE EXISTENCE.** Except as permitted by Section 5.11(b), maintain, and cause each Subsidiary to maintain, its corporate existence in good standing under the laws of its jurisdiction of incorporation and its qualification to transact business in each jurisdiction where failure so to qualify would permanently preclude the Company or such Subsidiary from enforcing its rights with respect to any material asset or would expose the Company or such Subsidiary to any material liability, and do or cause to be done, and cause each Subsidiary to do or cause to be

done, all things necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits, franchises and authorizations material to the conduct of its business.

Section 5.03 COMPLIANCE WITH LAWS, ETC. Comply, and cause each Subsidiary to comply, in all material respects with all applicable laws, rules, regulations and orders of any Governmental Authority applicable to the Company or such Subsidiary, whether now in effect or hereafter enacted, the failure to comply with which has had or would likely have a Material Adverse Effect on the Company.

Section 5.04 INSURANCE. Keep, and cause each Subsidiary to keep, its insurable properties adequately insured at all times by financially sound and reputable insurers; maintain, and cause each Subsidiary to maintain, such other insurance, in such amounts and against such risks, as is customary with companies in the same or similar businesses, including (i) public liability insurance against such tort claims which may be asserted against it, and (ii) fire and other risks insured against by extended coverage; and maintain, and cause each Subsidiary to maintain, such other insurance as may be required by law.

Section 5.05 PAYMENT OF INDEBTEDNESS, TAXES AND CLAIMS. Pay, and cause each of its Subsidiaries to pay, its Indebtedness and other obligations promptly and in accordance with their terms; file, and cause each of its Subsidiaries to file, all tax returns and reports which are required by law to be filed by it; pay, and cause each of its Subsidiaries to pay, before they become delinquent, all taxes, assessments and governmental charges and levies imposed upon it or its property and all claims or demands of any kind (including but not limited to those of suppliers, mechanics, carriers, warehousemen, landlords and other like Persons) which, if unpaid, might result in the creation of a Lien upon its property; PROVIDED that the foregoing items need not be paid if they are being contested in good faith by appropriate proceedings, and as long as the Company's or such Subsidiary's title to its property is not materially adversely affected, its use of such property in the ordinary course of its business is not materially interfered with and adequate reserves with respect thereto have been set aside on the Company's or such Subsidiary's books in conformity with GAAP.

Section 5.06 BOOKS AND RECORDS; INSPECTIONS; AUDITS. Keep, and cause each Subsidiary to keep, proper books and records of account in which full, true and correct entries will be made of all its dealings, business and affairs in accordance with GAAP consistently applied and consistent with the principles applied in the preparation of the financial statements referred to in Section 4.05; permit, and cause each Subsidiary to permit, any Person designated by any Bank to visit and inspect any of its properties, corporate books and financial records and to copy and make extracts therefrom and to discuss its affairs and finances with its officers and independent certified public accountants, all at such times as such Bank shall

reasonably request; and permit the Agent or its designee to conduct regular annual audits of the Company's inventory. The Agent shall provide to each of the Banks a copy of the report prepared by or for the Agent concerning such regular annual audits. The Company shall reimburse the Agent for its costs and expenses of conducting the regular annual audits of the Company's inventory described in the preceding sentence.

**Section 5.07 MAINTENANCE OF PROPERTIES.** Maintain, and cause each Subsidiary to maintain, its properties used or useful in the conduct of its business in good condition, repair and working order, and supplied with all necessary equipment, and make all necessary repairs, renewals, replacements, betterments and improvements thereto, all as may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times.

**Section 5.08 ERISA.** Establish, maintain and operate each Plan in compliance with all material applicable requirements of ERISA and of the Code and with all material applicable rulings and regulations issued under the provisions of ERISA and of the Code, and not, and not permit any ERISA Affiliate to, (a) engage in any transaction in connection with which the Company or any ERISA Affiliate would be subject to either a civil penalty assessed pursuant to

Section 502(i) of ERISA or a tax imposed by Section 4975 of the Code, in either case in an amount exceeding \$10,000, (b) fail to make full payment when due of all amounts which, under the provisions of any Plan, the Company or any ERISA Affiliate is required to pay as contributions thereto, or permit to exist any accumulated funding deficiency (as such term is defined in Section 302 of ERISA and Section 412 of the Code), whether or not waived, with respect to any Plan in an aggregate amount exceeding \$100,000 or (c) fail to make any payments in an aggregate amount exceeding \$100,000 to any Multiemployer Plan that the Company or any ERISA Affiliate may be required to make under any agreement relating to such Multiemployer Plan or any law pertaining thereto.

**Section 5.09 LITIGATION AND OTHER NOTICES.** Furnish to the Agent, with a copy for each Bank, written notice of the following promptly after any officer of the Company or any Subsidiary becomes aware of the same:

(a) any Event of Default or Unmatured Event of Default, specifying the nature and extent thereof and the corrective action (if any) proposed to be taken with respect thereto;

(b) the filing or commencement of, or receipt of notice of intention of any person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority, against the Company or any Subsidiary which has had or would likely have a Material Adverse Effect on the Company;

(c) any development affecting or relating to the Company or any Subsidiary, including without limitation any development in the litigation referred to in Schedule 4.06, that in the reasonable judgment of the Company has had, or would likely have, a Material Adverse Effect on the Company;

(d) the issuance by any Governmental Authority of any injunction, order, decision or other restraint prohibiting, or having the effect of prohibiting, the Loans or Letters of Credit, or the initiation of any litigation or similar proceeding seeking any such injunction, order or other restraint;

(e) the occurrence of any Reportable Event with respect to any Plan and the action which is proposed to be taken with respect thereto, together with a copy of the notice of such Reportable Event to the PBGC;

(f) any violation as to any environmental matter by the Company or any Subsidiary or the commencement of any judicial or administrative proceeding relating to health, safety or environmental matters (i) in which an adverse determination or result could result in the revocation of or have a material adverse effect on any operating permits, air emission permits, water discharge permits, hazardous waste permits or other permits held by the Company or any Subsidiary which are material to the operations of the Company or such Subsidiary, or (ii) which will or threatens to impose a material liability on the Company or such Subsidiary to any Person or which will require a material expenditure by the Company or such Subsidiary to cure any alleged problem or violation; or

(g) the issuance by any Governmental Authority of any injunction, order or decision, or the entry by the Company or any Subsidiary into an agreement with any Governmental Agency, materially restricting the business of the Company or any Subsidiary or concerning any material business practice of the Company or any Subsidiary.

Section 5.10 SUPPLEMENTAL DISCLOSURE. From time to time as may be necessary (in the event that such information is not otherwise delivered by the Company to the Banks pursuant to this Agreement), as promptly as is reasonable under the circumstances after any executive officer of the Company or any Subsidiary has knowledge with respect thereto, and at least quarterly, supplement or amend and deliver to the Agent, with a copy for each Bank, each Schedule or representation herein with respect to any matter hereafter arising which, if existing or occurring at the Signing Date, would have been required to be set forth or described in such Schedule or as an exception to such representation or which is necessary to correct any information in such Schedule or representation which has been rendered inaccurate thereby.

Section 5.11 RESTRICTIONS ON FUNDAMENTAL CHANGES. Not, and not permit any Subsidiary to:

- (a) engage in any business activities or operations substantially different from or unrelated to those in which it is engaged on the Signing Date;
- (b) enter into any transaction of merger or consolidation or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), except for the merger of any Subsidiary with and into the Company or any other Subsidiary;
- (c) convey, sell, lease, transfer or otherwise dispose of (or enter into any commitment to convey, sell, lease, transfer or otherwise dispose of), in one or more transactions, all or any part of its business or assets, whether now owned or hereafter acquired, other than the sale of inventory in the ordinary course of business, except (i) the Company may sell the store properties (but not any equipment other than building fixtures), provided that such store properties are leased back to the Company and that no Event of Default or Unmatured Event of Default exists or would exist as a result of such sale and lease back and (ii) in addition, the Company and its Subsidiaries may dispose of any of their respective assets if, after giving effect to any such disposal, the aggregate book value of all assets disposed of by the Company and its Subsidiaries during the period from the Signing Date to the Termination Date (other than inventory sold in the ordinary course of business) does not exceed, on a cumulative basis at the time of any such disposition, ten percent of the Company's Tangible Net Worth as of the end of the preceding fiscal year;
- (d) acquire by purchase or otherwise all or substantially all the business or property of, or stock or other evidence of beneficial ownership of, any Person; or
- (e) create, acquire or own any Subsidiary other than the Subsidiaries listed on Schedule 4.19 and Subsidiaries created after the Signing Date that neither own inventory nor operate retail stores.

Section 5.12 LIENS. Not, and not permit any Subsidiary to, create, incur, assume or suffer to be created, incurred or exist any Lien, or enter into or make any commitment to enter into any arrangement for the acquisition of any property through conditional sale, lease-purchase, or other title retention agreements with respect to property now owned or hereafter acquired by the Company or any Subsidiary, except:



(a) Liens existing on the Signing Date and described in Schedule 5.12, and Liens on the same property securing any Indebtedness the proceeds of which are used solely to refinance the Indebtedness secured by such existing Liens;

(b) deposits or pledges to secure payment of workers' compensation, unemployment insurance, old age pensions or other social security obligations, incurred in the ordinary course of business of the Company;

(c) Liens for taxes, fees, assessments and governmental charges not delinquent or which are being contested in good faith by appropriate proceedings and for which whatever reserves required by GAAP have been established;

(d) Liens consisting of easements, rights-of-way, zoning restrictions, restrictions on the use of real property, and defects and irregularities in the title thereto, landlords' liens and other similar liens and encumbrances none of which interfere materially with the use of the property covered thereby in the ordinary course of the business of the Company or such Subsidiary and which do not materially detract from the value of such properties;

(e) subject to the requirements of Section 5.17 and 5.25, Liens created or assumed in connection with the acquisition of real or personal property by the Company or any Subsidiary, provided that such Liens attach only to the property acquired and secure only Indebtedness incurred solely to finance the acquisition of such property, and Liens on the same property securing any Indebtedness the proceeds of which are used solely to refinance such Indebtedness;

(f) subject to the limitation set forth in Section 5.13(e), Liens on inventory of the Company or any Subsidiary and proceeds thereof pursuant to agreements with the suppliers of inventory or inventory lenders to the Company or such Subsidiary, provided that such Liens secure only Indebtedness incurred solely to finance the acquisition of Inventory by the Company or such Subsidiary; and

(g) subject to the requirements of Sections 5.17 and 5.25, Liens on real property (but not any equipment other than building fixtures), provided that such Liens secure only Indebtedness incurred solely to finance, or reimburse the Company for the cost of, Capital Expenditures for the acquisition or construction of such real property.

Section 5.13 INDEBTEDNESS. Not, and not permit any Subsidiary to, incur, create, issue, assume or remain liable for any Indebtedness, except:

- (a) the Obligations;
- (b) other Indebtedness existing on the Signing Date and described in Schedule 5.13, and Indebtedness the proceeds of which are used solely to refinance such Indebtedness;
- (c) Subordinated Indebtedness;
- (d) Indebtedness secured by Liens permitted under Section 5.12(e) or Section 5.12(g);
- (e) Indebtedness secured by Liens permitted under Section 5.12(f), provided the amount of such Indebtedness at any time outstanding does not exceed thirty percent of the lower of cost (as determined on a first-in, first-out basis) or market value of the Company's inventory;
- (f) Indebtedness in respect of Documentary Letters of Credit incurred in the ordinary course of business;
- (g) from January 2 of any year until June 30 of such year, unsecured Indebtedness of the Company in an amount not to exceed \$25,000,000; and
- (h) current liabilities, other than for borrowed money, incurred in the ordinary course of business.

Section 5.14 INVESTMENTS. Not, and not permit any Subsidiary to, make or maintain any Investment, except:

- (a) Investments existing on the Signing Date as described in Schedule 5.14(a);
- (b) Investments in Subsidiaries in existence on the Signing Date and described on Schedule 4.19;
- (c) Investments made in accordance with the Best Buy Co., Inc. Investment Objectives and Policies set forth on Schedule 5.14(c);
- (d) travel advances in the ordinary course of business to officers and employees;
- (e) other loans and advances made in connection with the hiring or transfer of employees which, when added to loans and advances permitted

solely by this Section 5.14(e), do not exceed \$2,000,000 in the aggregate at any time outstanding; and

(f) Investments, valued at cost, made in connection with the acquisition of new store locations, subject to the requirements of Section 5.25.

**Section 5.15 GUARANTEES.** Not, and not permit any Subsidiary to, be or become liable on any Guarantee, except Guarantees existing on the Signing Date and described in Schedule 5.15 and Guarantees of the obligations of its Subsidiaries to Conquest under the proposed lease agreement between Conquest, as lessor, and a Subsidiary of the Company, as lessee, relating to certain real property used or to be used in the Company's business.

**Section 5.16 RESTRICTED PAYMENTS.** Not make Restricted Payments if, either before or after giving effect thereto, an Event of Default or Unmatured Event of Default would have occurred or be continuing.

**Section 5.17 GENERAL CAPITAL EXPENDITURES.** Not, and not permit its Subsidiaries to, make General Capital Expenditures in an aggregate amount exceeding \$130,000,000 in any fiscal year of the Company.

**Section 5.18 FEDERAL RESERVE REGULATIONS.** Not use any part of the proceeds of any Loan directly or indirectly (a) to purchase or carry margin stock or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund Indebtedness originally incurred for such purpose or

(b) for any purpose which entails a violation of, or which is inconsistent with, the provisions of Regulations G, U or X.

**Section 5.19 ENVIRONMENTAL MATTERS.** Observe and comply with, and cause each Subsidiary to observe and comply with, all laws, rules, regulations and orders of any government or government agency relating to health, safety, pollution, hazardous materials or other environmental matters to the extent non-compliance could result in a Material Adverse Effect on the Company.

**Section 5.20 PAYMENT OF SUBORDINATED INDEBTEDNESS.** Not, and not permit any Subsidiary to: make any prepayment of principal of, or acquire, redeem or otherwise retire, any Subordinated Indebtedness; make any payment of principal or interest on any Subordinated Indebtedness if an Event of Default or Unmatured Event of Default exists; amend or cancel the subordination provisions thereof; take or omit to take any action whereby the subordination of such indebtedness or any part thereof to the Notes might be terminated, impaired or adversely affected; or omit to give the Banks prompt written notice of any notice received from any holder of Subordinated Indebtedness of any default under any agreement or instrument relating to any Subordinated Indebtedness by reason whereof such Subordinated Indebtedness might become or be declared to be due or payable.

Section 5.21 MINIMUM TANGIBLE NET WORTH. Not at any time permit Tangible Net Worth to be less than the sum of (i) \$275,000,000 PLUS (ii) for each fiscal year of the Company ending after February 26, 1994, fifty percent of the Company's consolidated net income for such fiscal year, if positive, PLUS (iii) one hundred percent of the amount added to the net worth of the Company as a result of the issuance and sale by the Company of additional shares of its capital stock after the Signing Date.

Section 5.22 LEVERAGE RATIO. Not permit the Leverage Ratio at the end of any fiscal year of the Company to exceed 2.50 to 1.00.

Section 5.23 INVENTORY TURNOVER RATIO. Not permit the Inventory Turnover Ratio for (a) the Measurement Period ending November 26, 1994 to be less than 4.25 to 1.00, or (b) any other Measurement Period to be less than 4.50 to 1.00.

Section 5.24 INTEREST COVERAGE RATIO. Not permit the Interest Coverage Ratio for any Measurement Period to be less than 2.00 to 1.00.

Section 5.25 OWNED LAND AND BUILDINGS. Not permit the sum of (a) the aggregate amount of owned land and buildings of the Company PLUS (b) the amount owed by Conquest to the Company in respect of advances by the Company to fund the acquisition or construction by Conquest of land and buildings PLUS (c) without duplication, the amount of any Investments of the type described in Section 5.14(f), to exceed \$100,000,000 at the end of any fiscal quarter.

Section 5.26 NEGATIVE PLEDGES. Not, and not permit any Subsidiary to, enter into any agreement, bond, note or other instrument for the benefit of any Person other than the Agent and the Banks that would prohibit the Company or such Subsidiary from granting, or otherwise limit the ability of the Company or such Subsidiary to grant, any lien on any of its property to the Agent, for the benefit of the Banks, or to lenders providing credit facilities to replace the Commitments or refinance the Obligations, except limitations created in agreements creating Liens on, and applicable only to, property on which a Lien is granted by the Company as permitted in Sections 5.12(e), (f) or (g).

## **ARTICLE VI EVENTS OF DEFAULT AND REMEDIES**

Section 6.01 EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an Event of Default:

(a) the Company shall fail to make when due, whether by acceleration of maturity, required prepayment or otherwise, any payment of

principal of or interest on the Notes, any reimbursement obligation in respect of a draw under a Letter of Credit or any other Obligation required to be paid to the Agent or any Bank pursuant to this Agreement or any other Loan Document, or fails to make, when due, any deposit into the Holding Account required hereunder; or

(b) any representation or warranty made by or on behalf of the Company or any Subsidiary in this Agreement or any other Loan Document or in any certificate, statement, report or document herewith or hereafter furnished to the Agent or any Bank pursuant to this Agreement or any other Loan Document shall prove to have been false or misleading in any material respect on the date as of which the facts set forth are stated or certified; or

(c) the Company shall fail to preserve its corporate existence under the laws of the jurisdiction of its incorporation or shall fail to comply with any term, covenant or agreement contained in Sections 5.11, 5.12, 5.13, 5.14, 5.15, 5.16, 5.17, 5.18, 5.20, 5.21, 5.22, 5.23, 5.24, 5.25 or 5.26; or

(d) the Company shall fail to comply with any other agreement, covenant, condition, provision or term contained in this Agreement (other than those hereinabove set forth in this Section 6.01) or any other Loan Document and such failure to comply shall continue for 30 days after whichever of the following dates is the earliest: (i) the date the Company gives notice of such failure to the Agent, (ii) the date the Company should have given notice of such failure to the Agent pursuant to Section 5.09, or (iii) the date the Agent gives notice of such failure to the Company; or

(e) the Company or any Subsidiary shall become insolvent or shall generally not pay its debts as they mature or shall apply for, shall consent to, or shall acquiesce in the appointment of a custodian, trustee or receiver of the Company or any Subsidiary or for a substantial part of the property of any of them or, in the absence of such application, consent or acquiescence, a custodian, trustee or receiver shall be appointed for the Company or any Subsidiary or for a substantial part of the property of any of them or the Company or any Subsidiary shall make an assignment for the benefit of creditors; or

(f) any bankruptcy, receivership, custodianship, reorganization, debt arrangement or other proceedings under any bankruptcy or insolvency law shall be instituted by or against the Company or any Subsidiary, and, if instituted against the Company or any Subsidiary, shall have been consented to or acquiesced in by the Company or such Subsidiary, as applicable, or shall not have been dismissed within 60 days, or an order for relief shall have been entered against the Company or such Subsidiary, as applicable; or

(g) any dissolution or liquidation proceeding shall be instituted by or against the Company or any Subsidiary and, if instituted against the Company or any Subsidiary, shall be consented to or acquiesced in by the Company or such Subsidiary or shall not have been dismissed within 60 days; or

(h) one or more judgments for the payment of money in an aggregate amount in excess of \$5,000,000 shall be rendered against the Company or any Subsidiary (unless such judgment is covered by insurance and the insurer has offered to defend such judgment or acknowledged, in writing, its liability with respect thereto) and the same shall remain undischarged for a period of 60 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to levy upon assets or properties of the Company or any Subsidiary to enforce any such judgment; or

(i) the Company or any Subsidiary shall (i) fail to pay any principal or interest, regardless of amount, due in respect of Indebtedness in a principal amount aggregating in excess of \$5,000,000, when and as the same shall become due and payable (after giving effect to any applicable grace period specified in the instrument evidencing or governing such Indebtedness) or (ii) fail to observe or perform any other term, covenant or instrument evidencing or governing such Indebtedness in a principal amount aggregating in excess of \$1,000,000 (after giving effect to any applicable grace period specified in the instrument evidencing or governing such Indebtedness) if the effect of any such failure is to cause, or to permit the holder or holders of such Indebtedness or a trustee or other Person acting on behalf of such holder or holders to cause, such Indebtedness to become due prior to its stated maturity or to realize on any collateral given as security for such Indebtedness; PROVIDED, HOWEVER, that any of the foregoing occurrences with respect to any Indebtedness arising from the purchase of goods or services by the Company that is being contested in good faith by appropriate proceedings shall not constitute an Event of Default as long as the Company's or such Subsidiary's title to any substantial part of its property is not materially adversely affected, its use of such property in the ordinary course of its business is not materially interfered with and adequate reserves with respect thereto have been set aside on its books in conformity with GAAP; or

(j) any execution or attachment shall be issued whereby any substantial part of the property of the Company or any Subsidiary shall be taken or attempted to be taken and the same shall not have been vacated or stayed within 60 days after the issuance thereof; or

(k) (i) a Reportable Event as defined in Section 4043(b), subdivision (5), of ERISA shall have occurred with respect to any Plan subject to

Title IV of ERISA (other than any Multiemployer Plan) unless a waiver of the failure to meet minimum funding standards under Section 412 of the Code shall have been timely applied for and shall not have been denied; or

(ii) a Reportable Event as defined in Section 4043(b), subdivision (6), of ERISA shall have occurred with respect to any Plan subject to Title IV of ERISA (other than any Multiemployer Plan); or

(iii) the Company or any ERISA Affiliate shall have engaged in any Prohibited Transaction and either (1) the Prohibited Transaction shall not have been corrected within the correction period applicable to it under Section 502(i) of ERISA or Section 4975(b) of the Code, or (2) an exemption shall not be applicable or have been obtained under Section 408 of ERISA or Section 4975 of the Code; or

(iv) the PBGC shall have terminated any Plan other than any Multiemployer Plan under Title IV of ERISA or the Company or any ERISA Affiliate shall have received notice from the PBGC of the intention of the PBGC to terminate any such Plan or to appoint a Trustee to administer any such Plan, which notice shall not have been withdrawn within 14 days of the date thereof; or

(v) the Company or any ERISA Affiliate shall have voluntarily terminated any Plan subject to Title IV of ERISA (other than a Multiemployer Plan), pursuant to a distress termination under Title IV of ERISA; or

(vi) the Company or any ERISA Affiliate, as an employer under a Multiemployer Plan, shall have made a complete or partial withdrawal from such Multiemployer Plan;

and, upon the occurrence of any of the foregoing, the aggregate amount of the Unfunded Liabilities of all Plans subject to Title IV of ERISA shall exceed in the aggregate \$2,000,000 or the Company shall incur liability in excess of \$2,000,000 in the aggregate.

Section 6.02 REMEDIES. If (x) any Event of Default described in Section 6.01(e) or (f) shall occur, the Commitments shall automatically terminate, the Obligations shall automatically become immediately due and payable, the Company shall automatically become obligated to pay to First Bank, for deposit in the Holding Account, an amount equal to the outstanding Letter of Credit Usage as of such date and the Agent, at the direction of the Majority Banks, may enforce all rights and exercise all remedies of the Agent or the Banks under the Loan Documents and under applicable law, or (y) any other Event of Default shall occur and be

continuing, then, the Agent, at the direction of the Majority Banks, may at any time and from time to time do any or all of the following: (i) declare the Commitments terminated, whereupon the Commitments shall be terminated, (ii) declare the Obligations to be forthwith due and payable, whereupon the Obligations shall immediately become due and payable, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived, anything in this Agreement or the other Loan Documents to the contrary notwithstanding, (iii) demand that the Company pay to First Bank for deposit in the Holding Account an amount equal to the outstanding Letter of Credit Usage as of the date of such demand, whereupon the Company shall pay such amount to First Bank, and (iv) enforce all rights and exercise all remedies of the Agent or the Banks under the Loan Documents and under applicable law.

## **ARTICLE VII THE AGENT**

The following provisions shall govern the relationship of the Agent with the Banks.

**Section 7.01 APPOINTMENT AND AUTHORIZATION.** Each Bank appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such respective powers under the Loan Documents as are delegated to the Agent by the terms thereof, together with such powers as are reasonably incidental thereto. Neither the Agent nor any of its directors, officers or employees shall be liable for any action taken or omitted to be taken by it under or in connection with the Loan Documents, except for its own gross negligence or willful misconduct. The Agent shall act as an independent contractor in performing its obligations as Agent hereunder and nothing herein contained shall be deemed to create any fiduciary relationship among or between the Agent, the Company or the Banks.

**Section 7.02 NOTE HOLDERS.** The Agent may treat the payee of any Note as the holder of the Obligations evidenced thereby until written notice of transfer shall have been filed with it, signed by such payee and in form satisfactory to the Agent.

**Section 7.03 CONSULTATION WITH COUNSEL.** The Agent may consult with legal counsel selected by it and shall not be liable for any action taken or suffered in good faith by it in accordance with the advice of such counsel.

**Section 7.04 LOAN DOCUMENTS.** The Agent shall not be under a duty to examine or pass upon the validity, effectiveness, genuineness or value of any of the Loan Documents or any other instrument or document furnished pursuant thereto, and the Agent shall be entitled to assume that the same are valid, effective and genuine and what they purport to be.



Section 7.05 FIRST BANK AND AFFILIATES. With respect to its Commitment and the Loans made by it, First Bank shall have the same rights and powers under the Loan Documents as any other Bank and may exercise the same as though it were not the Agent consistent with the terms thereof, and First Bank and its affiliates may accept deposits from, lend money to, issue Documentary Letters of Credit for the account of and generally engage in any kind of business with the Company as if it were not the Agent.

Section 7.06 ACTION BY AGENT. Except as may otherwise be expressly stated in this Agreement, the Agent shall be entitled to use its discretion with respect to exercising or refraining from exercising any rights which may be vested in it by, or with respect to taking or refraining from taking any action or actions which it may be able to take under or in respect of, the Loan Documents. The Agent shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Majority Banks, and such instructions shall be binding upon all holders of Notes; PROVIDED, HOWEVER, that the Agent shall not be required to take any action which exposes the Agent to personal liability or which is contrary to the Loan Documents or applicable law. The Agent shall incur no liability under or in respect of any of the Loan Documents by acting upon any notice, consent, certificate, warranty or other paper or instrument believed by it to be genuine or authentic or to be signed by the proper party or parties and to be consistent with the terms of this Agreement.

Section 7.07 CREDIT ANALYSIS. Each Bank has made, and shall continue to make, its own independent investigation or evaluation of the operations, business, property and condition, financial and otherwise, of the Company in connection with entering into this Agreement and has made its own appraisal of the creditworthiness of the Company. Except as explicitly provided herein, the Agent has no duty or responsibility, either initially or on a continuing basis, to provide any Bank with any credit or other information with respect to such operations, business, property, condition or creditworthiness, whether such information comes into its possession on or before the first Event of Default or at any time thereafter.

Section 7.08 NOTICES OF EVENT OF DEFAULT, ETC. In the event that any Bank shall have acquired actual knowledge of any Event of Default or Unmatured Event of Default, other than as a result of its receipt of financial statements delivered to it pursuant to Section 5.01, such Bank shall promptly give notice thereof to the Agent. The Agent shall, promptly upon receipt of any such notice provide a copy thereof to the other Banks. Upon receipt from any Bank of a request that the Agent give notice to the Company of the occurrence of an Event of Default or Unmatured Event of Default, the Agent shall promptly forward such request to the other Banks and will take such action and assert such rights under this

Agreement and the other Loan Documents as the Majority Banks shall direct in writing.

Section 7.09 INDEMNIFICATION. Each Bank agrees to indemnify the Agent, as Agent (to the extent not reimbursed by the Company), according to such Bank's Pro Rata Share, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on or incurred by the Agent in any way relating to or arising out of the Loan Documents or any action taken or omitted by the Agent under the Loan Documents, provided that no Bank shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Agent's gross negligence or willful misconduct. No payment by any Bank under this Section 7.09 shall relieve the Company of any of its obligations under this Agreement.

Section 7.10 PAYMENTS AND COLLECTIONS. All funds received by the Agent in respect of any payments made by the Company on the Notes, Commitment Fees or Letter of Credit Fees shall be distributed by the Agent among the Banks on the date received or deemed received pursuant to Section 2.20, in like currency and funds as received, ratably according to each Bank's Pro Rata Share. If the Agent does not make any distribution on the date any such payment is received or deemed received pursuant to Section 2.20, the Agent will pay interest to each Bank entitled to receive a portion of such distribution on the amount distributable to it at the Federal Funds from such date until the date distribution is made, such interest to be payable with such distribution. After any Event of Default has occurred, all funds received by the Agent, whether as payments by the Company or as realization on collateral or on any guaranties, shall (except as may otherwise be required by law) be distributed by the Agent in the following order: (a) first to the Agent or any Bank who has incurred unreimbursed costs of collection with respect to any Indebtedness of the Company hereunder, ratably to the Agent and each Bank in the proportion that the costs incurred by the Agent or such Bank bear to the total of all such costs incurred by the Agent and all Banks; (b) next to First Bank in payment of any Unpaid Draws outstanding and to satisfy any requirement that the Company make payments to First Bank for deposit in the Holding Account to cover any outstanding Letters of Credit; (c) next to the Banks (in accordance with their respective Pro Rata Shares) for application on the Notes; and (d) last to the Banks (in accordance with their respective Pro Rata Shares) for any unpaid Commitment Fees or Letter of Credit Fees owing by the Company hereunder. To the extent the Agent or any Bank receives any payment on the Obligations, whether from the Company or otherwise, that is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such recovery, the Obligations originally intended to be satisfied by such payment shall be revived and continued in full force and effect as if

such payment had not been received, and each Bank shall purchase from the Agent or such Bank, for cash, at face value and without recourse, such participations in the revived Obligations as shall be necessary to cause such revived Obligations to be shared ratably among all of the Banks. The Agent or such Bank, as the case may be, shall promptly notify the other Banks and, if applicable, the Agent, of any such recovery.

**Section 7.11 SHARING OF PAYMENTS.** If any Bank shall receive and retain any payment, voluntary or involuntary, whether by setoff, application of deposit balance or security, or otherwise, in respect of Indebtedness under this Agreement or the Notes in excess of such Bank's share thereof as determined under this Agreement, then such Bank shall purchase from the other Banks for cash and at face value and without recourse, such participation in the Notes held by such other Banks as shall be necessary to cause such excess payment to be shared ratably as aforesaid with such other Banks; PROVIDED, that if such excess payment or part thereof is thereafter recovered from such purchasing Bank, the related purchases from the other Banks shall be rescinded ratably and the purchase price restored as to the portion of such excess payment so recovered, but without interest.

**Section 7.12 ADVICE TO BANKS.** The Agent shall forward to the Banks copies of all notices, financial reports and other communications received hereunder from the Company by it as Agent, excluding, however, notices, reports and communications which by the terms hereof are to be furnished by the Company directly to each Bank.

**Section 7.13 SUCCESSOR AGENT.** The Agent may resign at any time by giving ten days written notice thereof to the Banks and the Company. The Majority Banks may remove the Agent at any time with or without cause by giving the Agent and the Company ten days written notice thereof. Upon any such resignation or removal, the Majority Banks shall have the right to appoint a successor Agent, which successor Agent shall (unless an Event of Default has occurred and is continuing) be reasonably acceptable to the Company. If no successor Agent shall have been so appointed and shall have accepted such appointment within 30 days after the retiring Agent's giving of notice of its resignation or the removal of the retiring Agent, then the retiring Agent may, on behalf of the Banks, appoint an Agent which shall be a Bank or a commercial bank organized under the laws of the United States of America or of any State thereof and having a combined capital and surplus of at least \$100,000,000, which successor Agent shall (unless an Event of Default has occurred and is continuing) be reasonably acceptable to the Company. Any such resignation or removal shall be effective upon the appointment of a successor Agent. Upon the acceptance of any appointment as the Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations, under this Agreement and the other Loan Documents. After the retiring Agent's resignation

or removal hereunder as the Agent, the provisions of this Article VII shall inure to its benefit as to any actions taken or omitted to be taken by it while it was acting as the Agent under this Agreement and any other Loan Document.

## **ARTICLE VIII MISCELLANEOUS**

### Section 8.01 AMENDMENTS AND WAIVERS; NO WAIVER OF RIGHTS AND REMEDIES.

(a) None of this Agreement, any Loan Document or any provision hereof or thereof may be amended, modified or waived unless the same shall be in writing signed by the Company and the Majority Banks; PROVIDED, that no amendment, waiver or consent shall, unless in writing and signed by all the Banks, do any of the following: (i) reduce the amount of the principal of, or the amount of or rate of interest on, any Note or any Loan or any fees or other amount payable hereunder, (ii) postpone any date fixed for any payment of principal of, or interest on, the Loans or any fees or other amounts payable hereunder, (iii) amend the definition of "Pro Rata Share" or "Majority Banks", (iv) amend Section 3.01 or Section 3.02, or (v) amend this Section 8.01(a); PROVIDED, FURTHER, that, in addition to the foregoing requirements, (A) no amendment, waiver or consent shall, unless in writing and signed by the Agent in addition to the requisite Banks indicated above to take such action, affect the rights or duties of the Agent under this Agreement, (B) no amendment may increase any Bank's Commitment Amount unless it is in writing and signed by such Bank, and (C) no amendment, waiver or consent shall reduce the amount payable with respect to, or postpone any date fixed for any payment with respect to, any draw under any Letter of Credit, or amend or modify Section 2.08, 2.09, 2.10, 2.11, 2.12 or 2.13, unless it is in writing and signed by First Bank. Any such amendment, modification or waiver or any other consent to any departure from any such provision by the Company shall in any event be effective only in the specific instance or for the specific purpose for which given. No notice to, or demand on, the Company in any case shall entitle the Company to any other or further notice or demand in similar or other circumstances.

(b) No failure or delay on the part of the Agent or any Bank in exercising, and no course of dealing with respect to, any right, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or privilege, or any abandonment or discontinuance of the enforcement thereof, preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of the Agent and the Banks hereunder and under any other Loan Document are

cumulative and not exclusive of any right or remedy which the Agent or any Bank otherwise has.

**Section 8.02 NOTICES.** Except as otherwise specifically provided for herein, all notices, requests, demands, instructions, consents, directions and other communications provided for herein shall be in writing (including teletransmission communication) and (unless otherwise required by applicable law) shall be teletransmitted, mailed or delivered to the intended recipient at the "Address for Notices" specified below its name on the signature pages hereof; or at such other address as shall be designated by such party in a notice to the other parties. All notices and other communications shall be effective when transmitted by telecopier, delivered to the telegraph or cable office or personally delivered or, in the case of a mailed notice or notice sent by overnight courier, upon receipt thereof as conclusively evidenced by the signed receipt therefor, in each case given or addressed as aforesaid, except that notices to the Agent, First Bank or any Bank under the provisions of Article II shall not be effective until received by the Agent, First Bank or such Bank.

**Section 8.03 COSTS AND EXPENSES.** The Company agrees to pay on demand: (a) all out-of-pocket costs, expenses and fees incurred by the Agent in connection with the negotiation, preparation, approval and execution and delivery of the Loan Documents, including, without limitation, the reasonable fees and expenses of Dorsey & Whitney, special counsel to the Agent, in connection with the negotiation, preparation, execution and delivery of this Agreement and the other Loan Documents, the commitments relating thereto, the transactions contemplated hereby and thereby and the satisfaction and attempted satisfaction of conditions precedent hereunder, (b) the reasonable fees and expenses of counsel for the Agent in connection with any amendment, modification or waiver of any of the terms of this Agreement or any of the other Loan Documents and (c) all reasonable costs and expenses of the Agent and the Banks (including reasonable counsels' fees) in connection with the enforcement (whether through negotiations, legal proceedings or otherwise) of this Agreement and the other Loan Documents.

**Section 8.04 SURVIVAL OF AGREEMENT.** All representations, warranties, covenants and agreements made by the Company or any of its Subsidiaries herein, in the other Loan Documents or in any certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be deemed to have been relied upon by the Banks and shall survive the making of the Loans by the Banks and the execution and delivery to the Banks by the Company of the Notes, regardless of any investigation made by or on behalf of the Banks, and shall continue in full force and effect as long as any Letter of Credit or Obligation is outstanding and undrawn or unpaid and so long as the Commitments have not expired or been terminated; PROVIDED, that the obligations and agreements of the Company under Sections 2.11, 2.13, 2.23, 2.25, 2.26, 8.03, 8.06 and 8.09 shall survive payment in full of the Obligations, the expiration of or other

discharge of First Bank's liability with respect to the Letters of Credit and the expiration or termination of the Commitments. The obligations of the Banks under Section 2.12 shall remain in effect, notwithstanding the termination of the Commitments (except with respect to any Bank that determines not to extend its Commitment pursuant to Section 2.29, to the extent its Commitment terminates prior to the "Termination Date" with respect to Banks that do not make such a determination) and the payment in full of the Obligations (other than contingent Obligations with respect to outstanding Letters of Credit), until the Letters of Credit have expired or First Bank's liability with respect thereto has otherwise been discharged; PROVIDED, that if the amount on deposit in the Holding Account at any time equals the aggregate undrawn face amount of all outstanding Letters of Credit, the obligations of the Banks under Section 2.12 shall terminate; PROVIDED, FURTHER, that the obligations of the Banks under Section 2.12 shall be reinstated if, and to the extent, First Bank is required to return or repay any payment received by it in respect of any draw under a Letter of Credit, or First Bank's Lien on or right of setoff with respect to any amount on deposit into the Holding Account is avoided or enjoined, by reason of (i) any judgment, decree or order of any court or administrative body or (ii) any settlement or compromise of any claim for such return, avoidance or injunction effected by First Bank.<sup>59</sup>

Section 8.05 BINDING EFFECT; ASSIGNMENTS AND PARTICIPATIONS.

(a) Whenever in this Agreement or any other Loan Agreement any of the parties hereto or thereto is referred to, such reference shall be deemed to refer to the successors and any permitted assigns of such party and this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of each party hereto and the respective successors and assigns of each of them, except that the Company may not assign its rights or delegate its obligations hereunder or under any other Loan Document without the prior written consent of the Majority Banks.

(b) Any Bank may (i) with the prior written consent of the Agent, assign its rights and delegate its obligations under this Agreement and any other Loan Document, including, without limitation, all or any portion of its Commitment, its Note, its Loans and any other Obligation owned by it, to one or more banks, financial institutions, corporate lenders or other sophisticated investors, and (ii) sell participations therein to one or more banks, financial institutions, corporate lenders or other sophisticated investors. Any such assignee under clause (i) of the preceding sentence, to the extent of such assignment (unless otherwise provided therein), shall have all the rights and obligations of a Bank hereunder and the assigning Bank shall be released from its duties and obligations under this Agreement to the extent of such assignment. Upon any assignment and delegation as contemplated in clause (i) of the second preceding sentence, (A) the Agent shall revise Schedule 1.01

to reflect such assignment and delegation and distribute such revised Schedule 1.01 to the Company and the Banks, (B) the Company shall, at the request of either the assignor or assignee Bank, execute and deliver new Notes to the assignor Bank (if it retains a Commitment following such assignment) and the assignee Bank, in the principal amount of their respective Commitments, and (C) the assignor Bank shall pay to the Agent an assignment fee in the amount of \$5,000. Upon the delivery of such new Notes, the assignor Bank shall return to the Company its Note in effect prior to such assignment and delegation. No assignment under clause (i) of the fourth preceding sentence may assign to the assignee Bank a percentage of the Aggregate Base Commitment Amount that is greater or less than the percentage of the Aggregate Seasonal Commitment so assigned.

Notwithstanding the sale of any such participation under clause (ii) of the fifth preceding sentence, (x) no such participant shall be deemed to be or have the rights and obligations of a Bank hereunder except that any such participant shall have a right of setoff under Section 2.28 as if it were a Bank and the amount of its participation were owing directly to such participant by the Company obligated thereon and (y) each Bank, in connection with selling any such participation, shall not condition its rights in connection with consenting to amendments or granting waivers concerning any matter under any Loan Document upon obtaining the consent of such participant other than on matters relating to (1) any reduction in the amount of any principal of, or the amount of or rate of interest or fee in connection with, its Commitment or any Obligation, or (2) any extension of the termination of its Commitment or the maturity of any principal of or interest on any Obligation.

Section 8.06 TAXES. The Company agrees to pay, and save the Agent and the Banks harmless from all liability for, any stamp or other taxes which may be payable with respect to the execution or delivery of this Agreement or the issuance of the Notes.

Section 8.07 SEVERABILITY OF PROVISIONS. Whenever possible, each provision of this Agreement and the other Loan Documents and any other statement, instrument or transaction contemplated hereby or thereby or relating hereto or thereto shall be interpreted in such manner as to be effective and valid under applicable law, but, if any provision of this Agreement or any other Loan Document or any other statement, instrument or transaction contemplated hereby or thereby or relating hereto or thereto shall be held to be prohibited or invalid in any jurisdiction under such applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or the other Loan Documents and any other statement, instrument or transaction contemplated hereby or thereby or relating hereto or thereto and shall not be effective to affect the enforceability of such provision in any other jurisdiction.

Section 8.08 GOVERNING LAW AND CONSTRUCTION. THE VALIDITY, CONSTRUCTION AND ENFORCEABILITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF MINNESOTA, WITHOUT GIVING EFFECT TO CONFLICT OF LAWS PRINCIPLES THEREOF, BUT GIVING EFFECT TO FEDERAL LAWS OF THE UNITED STATES APPLICABLE TO NATIONAL BANKS.

Section 8.09 CONSENT TO JURISDICTION. THE COMPANY HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY MINNESOTA STATE OR FEDERAL COURT SITTING IN MINNEAPOLIS, MINNESOTA OR ST. PAUL, MINNESOTA OVER ANY ACTION OR PROCEEDING COMMENCED BY THE AGENT OR ANY BANK ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND THE COMPANY HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH MINNESOTA STATE OR FEDERAL COURT. THE COMPANY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING. THE COMPANY AGREES THAT A JUDGMENT, FINAL BY APPEAL OR EXPIRATION OF TIME TO APPEAL WITHOUT AN APPEAL BEING TAKEN, IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS SECTION 8.09 SHALL AFFECT THE RIGHT OF THE AGENT OR ANY BANK TO BRING ANY ACTION OR PROCEEDING AGAINST THE COMPANY OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTIONS.

Section 8.10 CAPTIONS. The captions or headings herein and any table of contents hereto are for convenience only and in no way define, limit or describe the scope or intent of any provision of this Agreement.

Section 8.11 ENTIRE AGREEMENT; NO THIRD PARTY BENEFICIARIES. This Agreement and the other Loan Documents embody the entire agreement and understanding between the Company, the Agent and the Banks with respect to the subject matter hereof and thereof. This Agreement supersedes all prior agreements and understandings relating to the subject matter hereof. Nothing contained in this Agreement or in any other Loan Document, expressed or implied is intended to confer upon any Person other than the parties hereto and thereto any rights, remedies, obligations or liabilities hereunder or thereunder.

Section 8.12 COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall constitute an original but all of which when taken together shall constitute but one contract which shall become effective



when the Agent shall have received counterparts hereof signed on behalf of the Company, the Agent and each Bank.

Section 8.13 COMPANY ACKNOWLEDGEMENTS. The Company hereby acknowledges that (a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents, (b) neither the Agent nor any Bank has any fiduciary relationship to the Company, the relationship being solely that of borrower and lender, (c) no joint venture exists among or between the Company and the Agent or any Bank, and (d) the Agent and the Banks undertake no responsibility to the Company to review or inform the Company of any matter in connection with any phase of the business or operations of the Company and the Company shall rely entirely upon its own judgment with respect to its business, and any review, inspection or supervision of, or information supplied to the Company by the Agent or any Bank is for the protection of the Agent and the Banks and neither the Company nor any third party is entitled to rely thereon.

Section 8.14 HIGHEST LAWFUL RATE. Anything herein to the contrary notwithstanding, the Obligations shall be subject to the limitation that payments of interest thereon shall not be required, for any period for which interest is computed hereunder, to the extent that contracting for or receipt thereof would be contrary to provisions of any law applicable to any Bank limiting the highest rate of interest which may be lawfully contracted for, charged or received by such Bank.

IN WITNESS WHEREOF, the parties hereto have caused this Credit Agreement to be executed as of the date first above written.

**BEST BUY CO., INC.**

By /s/ Robert C. Fox

-----  
Print Name Robert C. Fox

-----  
Title Senior Vice President  
-----

**Address for Notices:**

P.O. Box 9312  
Minneapolis, Minnesota 55440-9312  
Attention: Robert C. Fox  
Telecopy: 612/947-2706

with a copy to:

Elliot S. Kaplan  
Robins, Kaplan, Miller & Ciresi  
800 LaSalle Avenue  
Minneapolis, Minnesota 55402  
Telecopy: 612/339-4181

**FIRST BANK NATIONAL ASSOCIATION**

By /s/ John D. Gatzlaff

-----  
Print Name John D. Gatzlaff

-----  
Title Vice President  
-----

**Address for Notices:**

First Bank Place  
601 Second Avenue South  
Minneapolis, Minnesota 55402  
Attention: John D. Gatzlaff  
Telecopy: 612/973-0821

**BANK ONE, DAYTON, NATIONAL ASSOCIATION**

*By /s/ John B. Middelberg*

-----  
*Print Name     John B. Middelberg*

-----  
*Title     Vice President*

**Address for Notices:**

400 North Main Street  
Kettering Tower - 3rd Floor  
Dayton, Ohio 45402  
Attention: John Middelberg  
Telecopy: 513/449-4885

**THE MITSUBISHI BANK, LIMITED  
(CHICAGO BRANCH)**

*By /s/ Jeffrey R. Arnold*

-----  
*Print Name     Jeffrey R. Arnold*

-----  
*Title     Vice President*

**Address for Notices:**

5100 Norwest Center  
90 South Seventh Street  
Minneapolis, Minnesota 55402  
Attention: Jeffrey R. Arnold  
Telecopy: 612/333-3735

**FIRST UNION NATIONAL BANK OF NORTH CAROLINA**

*By /s/ William H. Grier, III*

-----  
*Print Name William H. Grier, III*

*Title Vice President*  
-----

**Address for Notices:**

301 South College Street  
Charlotte, NC 28288  
Attention: William H. Grier, III  
Telecopy: 704/374-2802

**THE LONG TERM CREDIT BANK OF JAPAN, LTD.**

*By /s/ Armund J. Schoen, Jr.*

-----  
*Print Name Armund J. Schoen, Jr.*

*Title Vice President and Deputy  
General Manager*  
-----

**Address for Notices:**

190 South LaSalle Street, Suite 800  
Chicago, IL 60603  
Attention: Armund Schoen  
Telecopy: 312/704-8505

**THE BANK OF NOVA SCOTIA**

By /s/ F.C.H. Ashby

-----  
Print Name F.C.H. Ashby

-----  
Title Senior Manager Loan Operations  
-----

**Address for Notices:**

600 Peachtree Street N.E., Suite 2700  
Atlanta, Georgia 30308  
Attention: Shannon Law  
Telecopy: 404/888-8998

**YASUDA TRUST AND BANKING CO., LTD.**

By /s/ Koichiro Inoue

-----  
Print Name Koichiro Inoue

-----  
Title Joint General Manager  
-----

**Address for Notices:**

181 West Madison, Suite 4500  
Chicago, IL 60602  
Attention: Doug Warren  
Telecopy: 312/683-3899

**THE BANK OF TOKYO, LTD.  
CHICAGO BRANCH**

By /s/ Joseph P. Howard

-----  
Print Name Joseph P. Howard

-----  
Title Vice President  
-----

**Address for Notices:**

69 West Washington Street - 9th Floor  
Chicago, IL 60602  
Attention: Joseph P. Howard  
Telecopy: 312/236-8268

**THE DAIWA BANK, LIMITED**

By /s/ John W. Howard, Jr.

-----  
Print Name John W. Howard, Jr.

-----  
Title Vice President  
-----

And /s/ Michael J. Philippe

-----  
Print Name Michael J. Philippe

-----  
Title Vice President and Manager  
-----

**Address for Notices:**

233 South Wacker Drive  
Suite 5400  
Chicago, IL 60606  
Attn: R. Michael Shehorn,  
Sr. Vice President  
Telecopy: 312/876-1983

**With a Copy to:**

4135 Multifoods Tower  
33 South Sixth Street  
Minneapolis, MN 55402  
Attention: John W. Howard  
Telecopy: 612/332-6745

**CREDIT LYONNAIS CHICAGO BRANCH**

By /s/ Attila Koc

-----  
Print Name Attila Koc

-----  
Title Vice President and Corporate  
Group Head  
-----

**Address for Notices:**

227 West Monroe Street, Suite 3800  
Chicago, IL 60606  
Attention: Marcus Katz  
Telecopy: 312/641-0527

**CREDIT LYONNAIS CAYMAN ISLAND BRANCH**

By /s/ Attila Koc

-----  
Print Name Attila Koc

-----  
Title Authorized Signature  
-----

**Address for Notices:**

227 West Monroe Street, Suite 3800  
Chicago, IL 60606  
Attention: Marcus Katz  
Telecopy: 312/641-0527

**MERCANTILE BANK OF ST. LOUIS  
NATIONAL ASSOCIATION**

By /s/ Edward A. Cheney

-----  
Print Name Edward A. Cheney

-----  
Title Vice President  
-----

**Address for Notices:**

One Mercantile Center  
Eighth and Locust  
St. Louis, Missouri 63166  
Attention: Ed Cheney  
Telecopy: 314/425-2162

**COMERICA BANK**

By /s/ David A. Woods

-----  
Print Name David A. Woods

-----  
Title Assistant Vice President  
-----

**Address for Notices:**

One Detroit Center - 9th Floor  
500 Woodward Avenue  
Detroit, Michigan 48226  
Attention: David A. Woods  
Telefax: 313/222-3330



**TRUST COMPANY BANK**

By /s/ Jennifer P. Harrelson

-----  
Print Name Jennifer P. Harrelson

-----  
Title Group Vice President  
-----

And /s/ Christina T. Lavoy

-----  
Print Name Christina T. Lavoy

-----  
Title Banking Officer  
-----

**Address for Notices:**

25 Park Place  
24th Floor  
Atlanta, Georgia 30303  
Attention: Christine LaVoy  
Telecopy: 404/827-6270

**WELLS FARGO BANK**

By /s/ Laila S. Partridge

-----  
Print Name Laila S. Partridge

-----  
Title Vice President  
-----

**Address for Notices:**

420 Montgomery Street  
9th Floor  
San Francisco, California 94163  
Attention: Laila S. Partridge  
Telecopy: 415/421-1352

## **EXHIBITS**

A Form of Borrowing Base Certificate

B Form of Compliance Certificate

C Form of Notice of Borrowing, Continuation or Conversion

D Form of Note

E Matters to be Covered by Opinion of Counsel to the Company

## **SCHEDULES**

1.01(a)	Commitment Amounts
1.01(b)	Eligible Inventory (Product Classes)
2.08	Outstanding Letters of Credit
2.17(a)	Facility Fees
4.06	Litigation
4.19	Subsidiaries
5.12	Existing Liens
5.13	Existing Indebtedness
5.14(a)	Existing Investments
5.14(c)	Investment Objectives and Policies
5.15	Existing Guaranties

## BEST BUY CO., INC.

## COMPUTATION OF EARNINGS PER COMMON SHARE

(\$ in 000, except per share amounts)

(unaudited)

	Three Months Ended		Six Months Ended	
	August 27, 1994	August 28, 1993	August 27, 1994	August 28, 1993
Earnings:				
Earnings before cumulative effect of change in accounting principle	\$7,600	\$7,594	\$11,841	\$ 9,110
Cumulative effect of change in accounting for income taxes	-----	-----	-----	(425)
Net earnings available to common shares	\$7,600	\$7,594	\$11,841	\$ 8,685
Shares (000):				
Weighted average common shares outstanding	41,946	41,574	41,864	38,371
Adjustments:				
Assumed issuance of shares purchased under stock option plans	1,262	918	1,362	921
Total common equivalent shares	43,208	42,492	43,226	39,292
Earnings per common share:				
Earnings before cumulative effect of change in accounting principle	\$ .18	\$ .18	\$ .27	\$ .23
Cumulative effect of change in accounting for income taxes	-----	-----	-----	(.01)
Net earnings per common share	\$ .18	\$ .18	\$ .27	\$ .22

Note: The computation of earnings per common share assuming full dilution is substantially the same as set forth above.

## ARTICLE 5

The schedule contains summary financial information extracted from the financial statements for the periods indicated and is qualified in its entirety by reference to such financial statements.

MULTIPLIER: 1,000

PERIOD TYPE	6 MOS
FISCAL YEAR END	FEB 25 1995
PERIOD END	AUG 27 1994
CASH	47,427
SECURITIES	0
RECEIVABLES	75,823
ALLOWANCES	0
INVENTORY	863,500
CURRENT ASSETS	1,018,846
PP&E	312,412
DEPRECIATION	77,286
TOTAL ASSETS	1,270,905
CURRENT LIABILITIES	700,359
BONDS	211,013
COMMON	4,207
PREFERRED MANDATORY	0
PREFERRED	0
OTHER SE	323,439
TOTAL LIABILITY AND EQUITY	1,270,905
SALES	1,782,575
TOTAL REVENUES	1,782,575
CGS	1,531,439
TOTAL COSTS	1,531,439
OTHER EXPENSES	221,791
LOSS PROVISION	0
INTEREST EXPENSE	9,775
INCOME PRETAX	19,570
INCOME TAX	7,729
INCOME CONTINUING	11,841
DISCONTINUED	0
EXTRAORDINARY	0
CHANGES	0
NET INCOME	11,841
EPS PRIMARY	0.27
EPS DILUTED	0.27

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