

## SECURITIES AND EXCHANGE COMMISSION

Washington, D. C. 20549

FORM 10-Q

Quarterly Report Under Section 13 or 15(d)  
of the Securities Exchange Act of 1934

For the Quarter April 30, 1998 Commission File Number 0-8675

OIL-DRI CORPORATION OF AMERICA  
-----

(Exact name of registrant as specified in its charter)

DELAWARE  
-----36-2048898  
-----(State or other jurisdiction of  
Incorporation or organization)(I.R.S. Employer  
Identification No.)410 North Michigan Avenue  
Chicago, Illinois  
-----60611  
-----

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code (312) 321-1515

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 and (2) has been subject to such filing requirements for  
at least the past 90 days.Yes X  
---No  
---Indicate the number of shares outstanding of each of the issuer's classes of  
common stock, as of the close of the period covered by this report.

Common Stock - 5,440,630 Shares (Including 982,760 Treasury Shares)

Class B Stock - 1,794,888 Shares (Including 342,241 Treasury Shares)

OIL-DRI CORPORATION OF AMERICA & SUBSIDIARIES  
 CONSOLIDATED BALANCE SHEETS  
 (IN THOUSANDS OF DOLLARS)  
 (UNAUDITED)

ASSETS	APRIL 30 1998 -----	JULY 31 1997 -----
<b>CURRENT ASSETS</b>		
Cash and Cash Equivalents	\$ 9,962	\$ 9,997
Investment Securities	1,161	1,544
Accounts Receivable	22,739	20,341
Allowance for Doubtful Accounts	(414)	(261)
Inventories	12,150	10,604
Prepaid Expenses and Taxes	6,592	4,685
	-----	-----
TOTAL CURRENT ASSETS	52,190	46,910
	-----	-----
<b>PROPERTY, PLANT AND EQUIPMENT - AT COST</b>		
Cost	115,736	114,533
Less Accumulated Depreciation and	(61,669)	58,737
	-----	-----
Amortization		
TOTAL PROPERTY, PLANT	54,067	55,796
AND EQUIPMENT, NET	-----	-----
<b>OTHER ASSETS</b>		
Investment in Subsidiary	13,791	0
Goodwill (Net of Accumulated Amortization)	3,942	4,040
Deferred Income Taxes	2,434	2,446
Other	4,574	5,366
	-----	-----
TOTAL OTHER ASSETS	24,741	11,852
	-----	-----
<b>TOTAL ASSETS</b>	<b>\$130,998</b> =====	<b>\$114,558</b> =====

The accompanying notes are an integral part of the consolidated financial statements.

OIL-DRI CORPORATION OF AMERICA & SUBSIDIARIES  
CONSOLIDATED BALANCE SHEETS  
(IN THOUSANDS OF DOLLARS)  
(UNAUDITED)

	APRIL 30 1998	JULY 31 1997
LIABILITIES & STOCKHOLDERS' EQUITY	-----	-----
<b>CURRENT LIABILITIES</b>		
Current Maturities of Notes Payable	\$ 92	\$ 1,946
Accounts Payable	4,225	4,050
Dividends Payable	444	475
Accrued Expenses	7,966	9,274
Restructuring Reserve	734	0
	-----	-----
TOTAL CURRENT LIABILITIES	\$ 13,461	\$ 15,745
	-----	-----
<b>NONCURRENT LIABILITIES</b>		
Notes Payable	41,972	17,052
Deferred Compensation	2,801	2,750
Other	1,910	1,681
	-----	-----
TOTAL NONCURRENT LIABILITIES	46,683	21,483
	-----	-----
TOTAL LIABILITIES	60,144	37,228
	-----	-----
<b>STOCKHOLDERS' EQUITY</b>		
Common and Class B Stock	724	724
Paid-In Capital in Excess of Par Value	7,698	7,686
Restricted Unearned Stock Compensation	(37)	(18)
Retained Earnings	84,044	82,243
Cumulative Translation Adjustment	(980)	(907)
	-----	-----
	91,449	89,728
Less Treasury Stock, At Cost	(20,595)	(12,398)
	-----	-----
TOTAL STOCKHOLDERS' EQUITY	70,854	77,330
	-----	-----
TOTAL LIABILITIES & STOCKHOLDERS' EQUITY	\$130,998	\$114,558
	=====	=====

The accompanying notes are an integral part of the consolidated financial statements.

OIL-DRI CORPORATION OF AMERICA & SUBSIDIARIES  
 CONSOLIDATED STATEMENTS OF INCOME AND RETAINED EARNINGS  
 (IN THOUSANDS OF DOLLARS, EXCEPT FOR PER SHARE AMOUNTS)  
 (UNAUDITED)

	FOR THE NINE MONTHS ENDED APRIL 30	
	1998	1997
NET SALES	\$ 118,995	\$ 119,319
Cost Of Sales	81,615	83,328
GROSS PROFIT	37,380	35,991
Selling, General And Administrative Expenses	28,550	27,372
Restructuring Expense	3,129	0
INCOME FROM OPERATIONS	5,701	8,619
OTHER INCOME (EXPENSE)		
Interest Expense	(1,253)	(1,349)
Interest Income	307	456
Other, Net	(329)	(232)
TOTAL OTHER EXPENSE, NET	(1,275)	(1,125)
INCOME BEFORE INCOME TAXES	4,426	7,494
Income Taxes	1,261	2,136
NET INCOME	3,165	5,358
RETAINED EARNINGS		
Balance at Beginning of Year	82,243	77,386
Less Cash Dividends Declared	1,364	1,465
RETAINED EARNINGS - APRIL 30	\$ 84,044	\$ 81,279
AVERAGE SHARES OUTSTANDING	6,231,626	6,644,428
NET INCOME PER SHARE	\$ 0.51	\$ 0.81

The accompanying notes are an integral part of the consolidated financial statements.

OIL-DRI CORPORATION OF AMERICA & SUBSIDIARIES  
 CONSOLIDATED STATEMENTS OF INCOME AND RETAINED EARNINGS  
 (IN THOUSANDS OF DOLLARS, EXCEPT FOR PER SHARE AMOUNTS)  
 (UNAUDITED)

	----- FOR THE THREE MONTHS ENDED APRIL 30 -----	
	1998	1997
	-----	-----
NET SALES	\$ 38,334	\$ 36,002
Cost Of Sales	26,148	25,938
	-----	-----
GROSS PROFIT	12,186	10,064
Selling, General And Administrative Expenses	9,850	8,047
	-----	-----
INCOME FROM OPERATIONS	2,336	2,017
OTHER INCOME (EXPENSE)		
Interest Expense	(452)	(432)
Interest Income	90	155
Other, Net	(32)	(112)
	-----	-----
TOTAL OTHER EXPENSE, NET	(394)	(389)
INCOME BEFORE INCOME TAXES	1,942	1,628
Income Taxes	553	464
	-----	-----
NET INCOME	1,389	1,164
AVERAGE SHARES OUTSTANDING	6,070,282	6,582,374
	=====	=====
NET INCOME PER SHARE	\$ 0.23	\$ 0.18
	=====	=====

The accompanying notes are an integral part of the consolidated financial statements.

OIL-DRI CORPORATION OF AMERICA & SUBSIDIARIES  
CONSOLIDATED STATEMENTS OF CASH FLOWS  
(IN THOUSANDS OF DOLLARS)  
(UNAUDITED)

	FOR THE NINE MONTHS ENDED APRIL 30	
	1998	1997
CASH FLOWS FROM OPERATING ACTIVITIES	-----	-----
NET INCOME	\$ 3,165	\$ 5,358
Adjustments to Reconcile Net Income to Net Cash		
Provided by Operating Activities:		
Depreciation and Amortization	5,676	5,670
Restructuring Reserve	3,129	0
Provision for bad debts	264	25
(Increase) Decrease in:		
Accounts Receivable	(2,509)	1,494
Inventories	(1,546)	1,346
Prepaid Expenses and Taxes	(1,907)	(944)
Other Assets	(27)	(308)
Increase (Decrease) in:		
Accounts Payable	175	(1,710)
Accrued Expenses	(1,308)	(129)
Deferred Compensation	51	122
Restructuring Reserve	(2,395)	0
Other	229	230
TOTAL ADJUSTMENTS	----- (168)	----- 5,796
NET CASH PROVIDED BY OPERATING ACTIVITIES	----- 2,997	----- 11,154
CASH FLOWS FROM INVESTING ACTIVITIES		
Investment in Subsidiary	(13,791)	0
Capital Expenditures	(4,528)	(4,141)
Proceeds from sale of property, plant and equipment	4	555
Dispositions of Non-Performing Assets	781	0
Purchases of Investment Securities	(528)	(315)
Dispositions of Investment Securities	911	400
Proceeds from sale of Investments	709	0
Other	(18)	(145)
NET CASH USED IN INVESTING ACTIVITIES	----- (16,460)	----- (3,646)
CASH FLOWS FROM FINANCING ACTIVITIES		
Proceeds from issuance of Long-Term Debt	25,000	0
Principal Payments on Long-Term Debt	(1,934)	(1,627)
Dividends Paid	(1,395)	(1,485)
Purchases of Treasury Stock	(8,238)	(3,804)
Other	(5)	43
NET CASH PROVIDED BY (USED IN) FINANCING ACTIVITIES	----- 13,428	----- (6,873)
NET (DECREASE) INCREASE IN CASH AND CASH EQUIVALENTS	(35)	635
CASH AND CASH EQUIVALENTS, BEGINNING OF YEAR	9,997	10,114
CASH AND CASH EQUIVALENTS, APRIL 30	=====	=====
	\$ 9,962	\$ 10,749
	=====	=====

The accompanying notes are an integral part of the consolidated financial statements.

OIL-DRI CORPORATION OF AMERICA & SUBSIDIARIES  
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
 (UNAUDITED)

1. BASIS OF STATEMENT PRESENTATION

The financial statements and the related notes are condensed and should be read in conjunction with the consolidated financial statements and related notes for the year ended July 31, 1997, included in the Company's Annual Report on Form 10-K filed with the Securities and Exchange Commission.

The consolidated financial statements include the accounts of the Company and its subsidiaries. All significant intercompany transactions are eliminated.

The unaudited financial information reflects all adjustments which are, in the opinion of management, necessary for a fair presentation of the statements contained herein.

2. INVENTORIES

The composition of inventories is as follows (in thousands):

	APRIL 30 (UNAUDITED)	JULY 31 (UNAUDITED)
	----- 1998 -----	----- 1997 -----
Finished goods	\$7,489	\$6,684
Packaging	3,958	3,168
Other	703	752
	----- \$12,150 =====	----- \$10,604 =====

Inventories are valued at the lower of cost or market. Cost is determined by the first-in, first-out method.

3. RESTRUCTURING RESERVE

As previously disclosed, the Company divested its transportation business effective November 22, 1997. In conjunction with the divestiture, the Company recorded during the second quarter a pre-tax restructuring charge of \$3,129,000 to cover the costs of exiting the transportation business (\$1,443,000) and to write off certain other non-performing assets, primarily manufacturing machinery and equipment (\$905,000). At April 30, 1998, \$734,000 of the restructuring charges remained in Current Liabilities. A summary of the restructuring activity is presented below (in thousands):

1998 Restructuring charge	\$3,129
1998 Activity:	
Machinery and equipment	781
Transportation business exit costs	821
Obsolete Inventory	300
Other	498
	-----
Balance at April 30, 1998	\$ 734 =====

#### 4. NEW ACCOUNTING PRONOUNCEMENTS

The Company adopted Statement of Financial Accounting Standards No. 128, "Earnings Per Share" during the second quarter of 1998. The statement simplifies the standards for computing earnings per share ("EPS") previously defined in Accounting Principles Board Opinion No. 15, "Earnings Per Share" (APB 15) and makes them comparable to international EPS standards. It replaces the presentation of primary EPS with a presentation of basic EPS.

Basic EPS excludes dilution and is computed by dividing net income available to common stockholders (numerator) by the weighted-average number of common shares outstanding (denominator) for the period. Diluted EPS is computed similarly to fully diluted EPS under APB 15. A reconciliation of the numerator and denominator of the basic EPS computation to the numerator and denominator of the diluted EPS computation is presented in Exhibit 11 of this document.

In June 1997, SFAS No. 130, "Reporting Comprehensive Income" and SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information" were issued. SFAS No. 130 establishes standards for the reporting of comprehensive income and its components in a financial statement presentation. SFAS No. 130 separates comprehensive income into net income and other comprehensive income, but does not change the measurement and presentation of net income. Other comprehensive income includes certain changes in the equity of the Company which are currently recognized and presented separately in the Consolidated Statements of Stockholder's Equity, such as the change in the Translation Adjustment account. SFAS No. 130 is effective for the Company beginning in fiscal 1999.

SFAS No. 131 establishes new standards for the way companies report information about operating segments and requires that those enterprises report selected information about operating segments in the interim financial reports issued to shareholders. SFAS No. 131 is effective for the Company beginning in fiscal 1999.

#### 5. ACQUISITION

On April 20, 1998, the Company completed the purchase of the Fuller's Earth absorbent business of American Colloid Co., a wholly owned subsidiary of Amcol International, for an amount approximating \$13,865,000. The purchase includes a production plant and mineral reserves in Mounds, Illinois ("Mounds Production Company"), and mineral reserves located in Paris, Tennessee, and Silver Springs, Nevada. This absorbent business has annual sales approximating \$15,000,000. The Company financed the acquisition through a fixed rate private debt placement. The acquisition will be accounted for as a purchase; accordingly, the purchase price will be allocated to the underlying assets and liabilities based upon their estimated fair values as soon as they are determinable.



MANAGEMENT DISCUSSION AND ANALYSIS OF  
FINANCIAL CONDITION AND RESULTS OF OPERATIONS

NINE MONTHS ENDED APRIL 30, 1998 COMPARED TO NINE  
MONTHS ENDED APRIL 30, 1997

RESULTS OF OPERATIONS

Total Company net sales for the nine months ended April 30, 1998 were \$118,995,000, a decrease of 0.3% from net sales of \$119,319,000 in the first nine months of fiscal 1997. This decrease was primarily due to exiting the transportation business. Transportation sales for the first nine months of fiscal 1997 were \$5,837,000 compared to \$2,372,000 in the first nine months of the current year. Excluding transportation, sales increased 2.8% in the first nine months of fiscal 1998 versus fiscal 1997. Net income for the first nine months of fiscal 1998 was \$3,165,000 or \$0.51 per share, compared to \$5,358,000 or \$0.81 per share earned in the first nine months of fiscal 1997. The decrease was primarily due to a restructuring charge recorded in the second quarter of fiscal 1998. The restructuring charge, which covered the costs of exiting the transportation business and writing off certain non-performing assets, reduced income before income taxes by \$3,129,000, net income by \$2,237,000, and earnings per share by \$0.36 for the nine months ended April 30, 1998.

Net sales of cat box absorbents increased \$1,869,000, or 2.6% from prior year amounts. Net sales of agricultural and fluids purification products increased \$1,320,000 or 4.7%, from the comparable period in fiscal 1997. The higher sales resulted from an increased demand for fluids purification products in the United Kingdom. Net sales of industrial and environmental sorbents were comparable to prior year levels. Net sales of transportation services decreased \$3,465,000 or 59.4% from prior year levels due to the exiting from this business in November 1997.

Consolidated gross profit as a percentage of net sales for the nine months ended April 30, 1998 increased to 31.4% from 30.2% in the comparable period of fiscal 1997. Changes in sales mix, a Company-wide effort to reduce costs and exiting the transportation business contributed to this increase.

Operating expenses as a percentage of net sales increased to 26.6% in the first nine months of fiscal 1998 from 22.9% in the same period of fiscal 1997. This increase is primarily due to a pre-tax charge of \$3,129,000 recorded in the second quarter of fiscal 1998 for the restructuring reserve.

Interest expense decreased \$96,000 and interest income decreased \$149,000.

The Company's effective tax rate was 28.5% of pre-tax income in the first nine months of both fiscal 1998 and fiscal 1997.

The assets of the Company increased \$16,440,000, or 14.4%, during the first nine months of fiscal 1998, primarily due to the acquisition of Mounds Production Company. Current assets increased \$5,280,000, or 11.3%, from fiscal 1997 year end balances primarily due to increased accounts receivable, prepaid expenses, and inventories, partially offset by lower investment securities. Property, plant and equipment, net of accumulated depreciation, decreased \$1,729,000 during the first nine months due to the write-off of non-performing assets against the restructuring reserve and depreciation expense exceeding capital expenditures.

Total liabilities in the nine months ended April 30, 1998 increased \$22,916,000, or 61.6%, due primarily to increased notes payable related to the purchase of Mounds Production Company. Current liabilities decreased \$2,284,000 or 14.5% from July 31, 1997 balances,

primarily due to a reduction in the current maturities of notes payable as well as accrued expenses, partially offset by increased accounts payable and the balance of the restructuring reserve recorded in the second quarter.

#### EXPECTATIONS

The Company anticipates sales during the remainder of fiscal 1998 will be at higher levels than sales in the comparable period of fiscal 1997 due to incremental sales of cat box absorbents, agricultural carriers and industrial sorbents resulting from the April 20, 1998 acquisition of Mounds Production Co. These incremental sales will offset the loss of approximately \$2 million per quarter of backhaul revenue previously generated by the Company's transportation business (exited in the second quarter of the current fiscal year) and the approximately \$1.5 million per quarter of sales to Sam's Club, which recently decided to discontinue carrying the Company's cat litter product. However, sales growth of cat box absorbents is subject to continuing competition for shelf space in the grocery, mass merchandiser and club markets. Demand for AGSORB(R) carriers and Pure-Flo(R) fluids purification products are expected to show slight improvement through the remainder of the fiscal year.

The foregoing statements under this heading are "forward looking statements" within the meaning of that term in the Securities Exchange Act of 1934, as amended. Actual results may be lower than those reflected in these forward-looking statements, due primarily to: continued vigorous competition in the grocery, mass merchandiser and club markets; the level of success of new products; integration of recent acquisitions; and the cost of new product introductions and promotions in consumer markets. These forward-looking statements also involve the risk of changes in market conditions in the overall economy and, for the agricultural and fluids purification division, in the planting activity, crop quality and overall agricultural demand, including export demand.

#### LIQUIDITY AND CAPITAL RESOURCES

The current ratio increased to 3.9 at April 30, 1998 from 3.0 at July 31, 1997. Working capital increased \$7,564,000 during the nine months ended April 30, 1998 to \$38,729,000. Cash provided by operations continues to be the Company's primary source of funds to finance ordinary investing needs and financing activities. During the nine months ended April 30, 1998, the balances of cash, cash equivalents and other investments decreased \$418,000. Cash on hand at the beginning of the year of \$9,997,000, cash provided by operating activities of \$2,996,000 and \$25,000,000 of fixed rate financing secured during the third quarter were used to fund the purchase of Mounds Production Company (\$13,865,000), the purchase of the Company's common stock (\$8,238,000), capital expenditures (\$4,528,000), principal payments on long term debt (\$1,934,000) and dividend payments (\$1,395,000). The fixed rate financing was completed at 6.55%, and consists of 15-year notes having an average life of ten years. Total cash and investment balances held by the Company's foreign subsidiaries at April 30, 1998 and July 31, 1997 were \$2,600,000 and \$2,803,000 respectively.

THREE MONTHS ENDED APRIL 30, 1998 COMPARED TO  
THREE MONTHS ENDED APRIL 30, 1997

Consolidated net sales for the three months ended April 30, 1998 were \$38,334,000, an increase of \$2,332,000 or 6.5%, over net sales of \$36,002,000 in the third quarter of fiscal 1997. Excluding transportation sales, which were \$1,970,000 in the third quarter of last year, sales increased 12.6% in the third quarter of fiscal 1998 versus fiscal 1997. Net income for the three months ended April 30, 1998 was \$1,389,000 or \$0.23 per share, an increase of 19.3% from \$1,164,000, or \$0.18 per share, earned in last year's quarter.

Net sales of cat box absorbents increased \$3,311,000 or 16.4% from prior year amounts. Net sales of agricultural and fluids purification products increased \$916,000, or 10.3% from the comparable period in fiscal 1997. The higher sales resulted from increased demand for PURE-FLO(R) Supreme fluids purification products in the United Kingdom. Net sales of industrial and environmental sorbents increased \$70,000 or 1.4% from last year's third quarter.

Consolidated gross profit as a percentage of net sales for the three months ended April 30, 1998 increased to 31.8% from 28.0% in the comparable period of fiscal 1997. Changes in sales mix, a Company-wide effort to reduce costs and exiting the transportation business contributed to this increase.

Operating expenses as a percentage of net sales increased to 25.7% in the third quarter of fiscal 1998 from 22.4% in the same quarter of the prior year.

Interest expense increased \$20,000 while interest income decreased \$65,000.

The Company's effective tax rate was 28.5% of pre-tax income in the third quarter of both fiscal 1998 and fiscal 1997.

#### FOREIGN OPERATIONS

Net sales by the Company's foreign subsidiaries for the nine months ended April 30, 1998 were \$10,257,000, or 8.6% of total Company sales. This represents an increase of \$1,221,000 or 13.5% from the same period of fiscal 1997, in which foreign subsidiary sales were \$9,036,000, or 7.6% of total Company sales. Net income of the foreign subsidiaries for the first nine months of fiscal 1998 was \$465,000 compared with \$431,000 in the same period of fiscal 1997. Identifiable assets of the Company's foreign subsidiaries as of April 30, 1998, were \$11,692,000, an increase of \$1,826,000 from \$9,866,000 as of July 31, 1997. The increase is primarily due to higher fixed assets, prepaid expenses, inventories, and cash and cash equivalents.

Net sales by the Company's foreign subsidiaries for the quarter ended April 30, 1998 were \$3,776,000 or 9.9% of total Company sales. This represents an increase of \$860,000, or 29.5% from the same quarter in fiscal 1997, in which foreign subsidiary sales were \$2,916,000, or 8.1% of total Company sales. Net income of the foreign subsidiaries for the second quarter of fiscal 1998 was \$144,000 and was flat in the same period of fiscal 1997.

6. (a) EXHIBITS: The following documents are an exhibit to this report.

	Exhibit Index -----
Exhibit 11: Statement Re: Computation of per share earnings	14
Exhibit 27: Financial Data Schedule	15
Exhibit (10)(m): \$25,000,000 Note Purchase Agreement dated as of April 15, 1998, between the Company and Teachers Insurance and Annuity Association of America and CIGNA Investments, Inc.	16-78

(b) On May 7, 1998, the Company filed a Report on Form 8-K announcing that the Company completed the purchase of the Fuller's Earth absorbent business of American Colloid Company pursuant to an Asset Purchase Agreement dated as of April 20, 1998.

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.

OIL-DRI CORPORATION OF AMERICA  
(Registrant)

BY /s/ Michael L. Goldberg

-----

Michael L. Goldberg  
Executive Vice President and Chief Financial Officer

BY /s/ Daniel S. Jaffee

-----

Daniel S. Jaffee  
President and Chief Executive Officer

Dated: June 12, 1998

=====

OIL-DRI CORPORATION OF AMERICA

\$25,000,000

6.55% Senior Notes due April 15, 2013

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NOTE PURCHASE AGREEMENT  
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Dated as of April 15, 1998

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## TABLE OF CONTENTS

SECTION	HEADING	PAGE
SECTION 1.	AUTHORIZATION OF NOTES.....	1
SECTION 2.	SALE AND PURCHASE OF NOTES.....	1
SECTION 3.	CLOSING.....	1
SECTION 4.	CONDITIONS TO CLOSING.....	2
Section 4.1.	Representations and Warranties.....	2
Section 4.2.	Performance; No Default.....	2
Section 4.3.	Compliance Certificates.....	2
Section 4.4.	Opinions of Counsel.....	2
Section 4.5.	Purchase Permitted by Applicable Law, Etc.....	3
Section 4.6.	Related Transactions.....	3
Section 4.7.	Payment of Special Counsel Fees.....	3
Section 4.8.	Private Placement Number.....	3
Section 4.9.	Changes in Corporate Structure.....	3
Section 4.10.	Proceedings and Documents.....	3
SECTION 5.	REPRESENTATIONS AND WARRANTIES OF THE COMPANY.....	4
Section 5.1.	Organization; Power and Authority.....	4
Section 5.2.	Authorization, Etc.....	4
Section 5.3.	Disclosure.....	4
Section 5.4.	Organization and Ownership of Shares of Subsidiaries.....	4
Section 5.5.	Financial Statements.....	5
Section 5.6.	Compliance with Laws, Other Instruments, Etc.....	5
Section 5.7.	Governmental Authorizations, Etc.....	6
Section 5.8.	Litigation; Observance of Agreements, Statutes and Orders.....	6
Section 5.9.	Taxes.....	6
Section 5.10.	Title to Property; Leases.....	6
Section 5.11.	Licenses, Permits, etc.....	7
Section 5.12.	Compliance with ERISA.....	7
Section 5.13.	Private Offering by the Company.....	8
Section 5.14.	Use of Proceeds; Margin Regulations.....	8
Section 5.15.	Existing Indebtedness and Investments; Future Liens.....	8
Section 5.16.	Foreign Assets Control Regulations, Etc.....	9
Section 5.17.	Status under Certain Statutes.....	9
Section 5.18.	Environmental Matters.....	9
SECTION 6.	REPRESENTATIONS OF THE PURCHASER.....	10
Section 6.1.	Purchase for Investment.....	10

Section 6.2.	Source of Funds.....	10
SECTION 7.	INFORMATION AS TO COMPANY; STATUS OF SUBSIDIARIES.....	11
Section 7.1.	Financial and Business Information.....	11
Section 7.2.	Officer's Certificate.....	14
Section 7.3.	Inspection.....	15
Section 7.4.	Change in Status of Subsidiaries.....	15
SECTION 8.	PREPAYMENT OF THE NOTES.....	15
Section 8.1.	Required Prepayments.....	15
Section 8.2.	Optional Prepayments with Make-Whole Amount.....	16
Section 8.3.	Allocation of Partial Prepayments.....	16
Section 8.4.	Maturity; Surrender, Etc.....	16
Section 8.5.	Purchase of Notes.....	16
Section 8.6.	Make-Whole Amount.....	16
SECTION 9.	AFFIRMATIVE COVENANTS.....	18
Section 9.1.	Compliance with Law.....	18
Section 9.2.	Insurance.....	18
Section 9.3.	Maintenance of Properties.....	18
Section 9.4.	Payment of Taxes and Claims.....	19
Section 9.5.	Corporate Existence, etc.....	19
Section 9.6.	Ranking.....	19
SECTION 10.	NEGATIVE COVENANTS.....	19
Section 10.1	Fixed Charges Coverage Ratio.....	19
Section 10.2	Consolidated Debt.....	19
Section 10.3	Debt of Restricted Subsidiaries.....	19
Section 10.4	Consolidated Adjusted Net Worth.....	20
Section 10.5	Liens.....	21
Section 10.6	Mergers and Consolidations.....	23
Section 10.7	Sale of Assets; Sale of Stock.....	23
Section 10.8	Nature of Business.....	25
Section 10.9	Transactions with Affiliates.....	25
SECTION 11.	EVENTS OF DEFAULT.....	25
SECTION 12.	REMEDIES ON DEFAULT, ETC.....	27
Section 12.1.	Acceleration.....	27
Section 12.2.	Other Remedies.....	28
Section 12.3.	Rescission.....	28
Section 12.4.	No Waivers or Election of Remedies, Expenses, Etc.....	28
SECTION 13.	REGISTRATION; EXCHANGE; SUBSTITUTION OF NOTES.....	28



Section 13.1.	Registration of Notes.....	28
Section 13.2.	Transfer and Exchange of Notes.....	29
Section 13.3.	Replacement of Notes.....	29
SECTION 14.	PAYMENTS ON NOTES.....	30
Section 14.1.	Place of Payment.....	30
Section 14.2.	Home Office Payment.....	30
SECTION 15.	EXPENSES, ETC.....	30
Section 15.1.	Transaction Expenses.....	30
Section 15.2.	Survival.....	31
SECTION 16.	SURVIVAL OF REPRESENTATIONS AND WARRANTIES; ENTIRE AGREEMENT.....	31
SECTION 17.	AMENDMENT AND WAIVER.....	31
Section 17.1.	Requirements.....	31
Section 17.2.	Solicitation of Holders of Notes.....	31
Section 17.3.	Binding Effect, Etc.....	32
Section 17.4.	Notes Held by Company, Etc.....	32
SECTION 18.	NOTICES.....	32
SECTION 19.	REPRODUCTION OF DOCUMENTS.....	33
SECTION 20.	CONFIDENTIAL INFORMATION.....	33
SECTION 21.	SUBSTITUTION OF PURCHASER.....	34
SECTION 22.	MISCELLANEOUS.....	35
Section 22.1.	Successors and Assigns.....	35
Section 22.2.	Payments Due on Non-Business Days.....	35
Section 22.3.	Severability.....	35
Section 22.4.	Construction.....	35
Section 22.5.	Counterparts.....	35
Section 22.6.	Governing Law.....	35
SCHEDULE A	-- INFORMATION RELATING TO PURCHASERS	
SCHEDULE B	-- DEFINED TERMS	
SCHEDULE 4.9	-- Changes in Corporate Structure	

SCHEDULE 5.3	--	Disclosure Materials
SCHEDULE 5.4	--	Subsidiaries of the Company and Ownership of Subsidiary Stock
SCHEDULE 5.5	--	Financial Statements
SCHEDULE 5.8	--	Certain Litigation
SCHEDULE 5.11	--	Patents, etc.
SCHEDULE 5.14	--	Use of Proceeds
SCHEDULE 5.15	--	Existing Debt, Investments and Liens
SCHEDULE 8.1	--	Required Prepayments
EXHIBIT 1	--	Form of 6.55% Senior Note due April 15, 2013
EXHIBIT 4.4(a)	--	Form of Opinion of Special Counsel for the Company
EXHIBIT 4.4(b)	--	Form of Opinion of Special Counsel for the Purchasers

OIL-DRI CORPORATION OF AMERICA  
410 NORTH MICHIGAN AVENUE  
CHICAGO, ILLINOIS 60611

6.55% Senior Notes due April 15, 2013

Dated as of  
April 15, 1998

TO THE PURCHASERS LISTED IN  
THE ATTACHED SCHEDULE A:

Ladies and Gentlemen:

Oil-Dri Corporation of America, a Delaware corporation (the "Company"), agrees with the Purchasers listed in the attached Schedule A (the "Purchasers") as follows:

SECTION 1. AUTHORIZATION OF NOTES.

The Company will authorize the issue and sale of \$25,000,000 aggregate principal amount of its 6.55% Senior Notes due April 15, 2013 (the "Notes", such term to include any such notes issued in substitution therefor pursuant to Section 13 of this Agreement (as hereinafter defined)). The Notes shall be substantially in the form set out in Exhibit 1, with such changes therefrom, if any, as may be approved by each Purchaser and the Company. Certain capitalized terms used in this Agreement are defined in Schedule B; references to a "Schedule" or an "Exhibit" are, unless otherwise specified, to a Schedule or an Exhibit attached to this Agreement.

## SECTION 2. SALE AND PURCHASE OF NOTES.

Subject to the terms and conditions of this Agreement, the Company will issue and sell to each Purchaser and each Purchaser will purchase from the Company, at the Closing provided for in Section 3, Notes in the principal amount specified opposite such Purchaser's name in Schedule A at the purchase price of 100% of the principal amount thereof. The obligations of each Purchaser hereunder are several and not joint obligations and each Purchaser shall have no obligation and no liability to any Person for the performance or nonperformance by any other Purchaser hereunder.

## SECTION 3. CLOSING.

The sale and purchase of the Notes to be purchased by each Purchaser shall occur at the offices of Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603, at 10:00 A.M. Chicago time, at a closing (the "Closing") on April 23, 1998 or on such other Business Day thereafter on or prior to May 15, 1998 as may be agreed upon by the Company and the Purchasers. At the Closing the Company will deliver to each Purchaser the Notes to be purchased by such Purchaser in the form of a single Note (or such greater number of Notes in denominations of at least \$500,000 as such Purchaser may request) dated the date of the Closing and registered in such Purchaser's name (or in the name of such Purchaser's nominee), against delivery by such Purchaser to the Company or its order of immediately available funds in the amount of the purchase price therefor by wire transfer of immediately available funds for the account of the Company to account number 367-985-9, Harris Trust & Savings Bank, ABA #071000288, Chicago, Illinois. If at the Closing the Company shall fail to tender such Notes to any Purchaser as provided above in this Section 3, or any of the conditions specified in Section 4 shall not have been fulfilled to any Purchaser's satisfaction, such Purchaser shall, at such Purchaser's election, be relieved of all further obligations under this Agreement, without thereby waiving any rights such Purchaser may have by reason of such failure or such nonfulfillment.

## SECTION 4. CONDITIONS TO CLOSING.

The obligation of each Purchaser to purchase and pay for the Notes to be sold to such Purchaser at the Closing is subject to the fulfillment to such Purchaser's satisfaction, prior to or at the Closing, of the following conditions:

Section 4.1. Representations and Warranties. The representations and warranties of the Company in this Agreement shall be correct when made and at the time of the Closing.

Section 4.2. Performance; No Default. The Company shall have performed and complied with all agreements and conditions contained in this Agreement required to be performed or complied with by it prior to or at the Closing, and after giving effect to the issue and sale of the Notes (and

the application of the proceeds thereof as contemplated by Schedule 5.14), no Default or Event of Default shall have occurred and be continuing.

#### Section 4.3. Compliance Certificates.

(a) Officer's Certificate. The Company shall have delivered to such Purchaser an Officer's Certificate, dated the date of the Closing, certifying that the conditions specified in Sections 4.1, 4.2 and 4.9 have been fulfilled.

(b) Secretary's Certificate. The Company shall have delivered to such Purchaser a certificate certifying as to the resolutions attached thereto and other corporate proceedings relating to the authorization, execution and delivery of the Notes and this Agreement.

Section 4.4. Opinions of Counsel. Such Purchaser shall have received opinions in form and substance satisfactory to such Purchaser, dated the date of the Closing (a) from Sonnenschein Nath & Rosenthal, counsel for the Company, covering the matters set forth in Exhibit 4.4(a) and covering such other matters incident to the transactions contemplated hereby as such Purchaser or such Purchaser's counsel may reasonably request (and the Company hereby instructs its counsel to deliver such opinion to such Purchaser) and (b) from Chapman and Cutler, the Purchaser's special counsel in connection with such transactions, covering the matters set forth in Exhibit 4.4(b) and covering such other matters incident to such transactions as such Purchaser may reasonably request.

Section 4.5. Purchase Permitted by Applicable Law, Etc. On the date of the Closing each purchase of Notes shall (a) be permitted by the laws and regulations of each jurisdiction to which each Purchaser is subject, without recourse to provisions (such as Section 1405(a)(8) of the New York Insurance Law) permitting limited investments by insurance companies without restriction as to the character of the particular investment, (b) not violate any applicable law or regulation (including, without limitation, Regulation T, U or X of the Board of Governors of the Federal Reserve System) and (c) not subject any Purchaser to any tax, penalty or liability under or pursuant to any applicable law or regulation, which law or regulation was not in effect on the date hereof. If requested by any Purchaser, such Purchaser shall have received an Officer's Certificate certifying as to such matters of fact as such Purchaser may reasonably specify to enable such Purchaser to determine whether such purchase is so permitted.

Section 4.6. Related Transactions. The Company shall have consummated the sale of the entire principal amount of the Notes scheduled to be sold on the date of Closing pursuant to this Agreement.

Section 4.7. Payment of Special Counsel Fees. Without limiting the provisions of Section 15.1, the Company shall have paid on or before the Closing the fees, charges and disbursements of the Purchasers' special counsel referred to in Section 4.4 to the extent reflected in a statement of such counsel rendered to the Company at least one Business Day prior to the Closing.

Section 4.8. Private Placement Number. A Private Placement Number issued by Standard & Poor's CUSIP Service Bureau (in cooperation with the Securities Valuation Office of the National Association of Insurance Commissioners) shall have been obtained for the Notes.

Section 4.9. Changes in Corporate Structure. Except as specified in Schedule 4.9, the Company shall not have changed its jurisdiction of incorporation or been a party to any merger or consolidation and shall not have succeeded to all or any substantial part of the liabilities of any other entity, at any time following the date of the most recent financial statements referred to in Schedule 5.5.

Section 4.10. Proceedings and Documents. All corporate and other proceedings in connection with the transactions contemplated by this Agreement and all documents and instruments incident to such transactions shall be satisfactory to such Purchaser and such Purchaser's special counsel, and such Purchaser and such Purchaser's special counsel shall have received all such counterpart originals or certified or other copies of such documents as such Purchaser or such Purchaser's special counsel may reasonably request.

#### SECTION 5. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to each Purchaser that:

Section 5.1. Organization; Power and Authority. The Company is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, and is duly qualified as a foreign corporation and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company has the corporate power and authority to own or hold under lease the properties it purports to own or hold under lease, to transact the business it transacts and proposes to transact, to execute and deliver this Agreement and the Notes and to perform the provisions hereof and thereof.

Section 5.2. Authorization, Etc. This Agreement and the Notes have been duly authorized by all necessary corporate action on the part of the Company, and this Agreement constitutes, and upon execution and delivery thereof each Note will constitute, a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by (a) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

Section 5.3. Disclosure. The Company, through its agent, BancAmerica Robertson Stephens has delivered to each Purchaser a copy of a Confidential Private Placement Memorandum, dated March, 1998 (the "Memorandum"), relating to the transactions contemplated hereby. The Memorandum fairly describes, in all material respects, the general nature of the business and

principal properties of the Company and its Restricted Subsidiaries. Except as disclosed in Schedule 5.3, this Agreement, the Memorandum, the documents, certificates or other writings delivered to you by or on behalf of the Company in connection with the transactions contemplated hereby and the financial statements listed in Schedule 5.5, taken as a whole, do not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made. Except as disclosed in the Memorandum or as expressly described in Schedule 5.3, or in one of the documents, certificates or other writings identified therein, or in the financial statements listed in Schedule 5.5, since July 31, 1997, there has been no change in the financial condition, operations, business, properties or prospects of the Company or any of its Restricted Subsidiaries except changes that individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect.

Section 5.4. Organization and Ownership of Shares of Subsidiaries. (a) Schedule 5.4 contains (except as noted therein) a complete and correct list (i) of the Company's Subsidiaries, showing, as to each Subsidiary, its status (whether a Restricted or Unrestricted Subsidiary), the correct name thereof, the jurisdiction of its organization, and the percentage of shares of each class of its capital stock or similar equity interests outstanding owned by the Company and each other Subsidiary, (ii) of the Company's Affiliates, other than Subsidiaries, and (iii) of the Company's directors and senior officers.

(b) All of the outstanding shares of capital stock or similar equity interests of each Restricted Subsidiary shown in Schedule 5.4 as being owned by the Company and its Subsidiaries have been validly issued, are fully paid and nonassessable and are owned by the Company or another Subsidiary free and clear of any Lien (except as otherwise disclosed in Schedule 5.4).

(c) Each Restricted Subsidiary identified in Schedule 5.4 is a corporation or other legal entity duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, and is duly qualified as a foreign corporation or other legal entity and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each such Restricted Subsidiary has the corporate or other power and authority to own or hold under lease the properties it purports to own or hold under lease and to transact the business it transacts and proposes to transact.

(d) No Restricted Subsidiary is a party to, or otherwise subject to any legal restriction or any Material agreement (other than this Agreement, the agreements listed on Schedule 5.4 and customary limitations imposed by corporate law statutes) restricting the ability of such Restricted Subsidiary to pay dividends out of profits or make any other similar distributions of profits to the Company or any of its Restricted Subsidiaries that owns outstanding shares of capital stock or similar equity interests of such Restricted Subsidiary.

Section 5.5. Financial Statements. The Company has delivered to each Purchaser copies of the financial statements of the Company and its Subsidiaries listed on Schedule 5.5. All of said financial statements (including in each case the related schedules and notes) fairly present in all material respects the consolidated financial position of the Company and its Subsidiaries as of the respective dates specified in such financial statements and the consolidated results of their operations and cash flows for the respective periods so specified and have been prepared in accordance with GAAP consistently applied throughout the periods involved except as set forth in the notes thereto (subject, in the case of any interim financial statements, to normal year-end adjustments).

Section 5.6. Compliance with Laws, Other Instruments, Etc. The execution, delivery and performance by the Company of this Agreement and the Notes will not (a) contravene, result in any breach of, or constitute a default under, or result in the creation of any Lien in respect of any property of the Company or any Restricted Subsidiary under, any indenture, mortgage, deed of trust, loan, purchase or credit agreement, lease, corporate charter or by-laws, or any other agreement or instrument to which the Company or any Restricted Subsidiary is bound or by which the Company or any Restricted Subsidiary or any of their respective properties may be bound or affected, (b) conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any court, arbitrator or Governmental Authority applicable to the Company or any Restricted Subsidiary or (c) violate any provision of any statute or other rule or regulation of any Governmental Authority applicable to the Company or any Restricted Subsidiary.

Section 5.7. Governmental Authorizations, Etc. No consent, approval or authorization of, or registration, filing or declaration with, any Governmental Authority is required in connection with the execution, delivery or performance by the Company of this Agreement or the Notes.

Section 5.8. Litigation; Observance of Agreements, Statutes and Orders. (a) Except as disclosed in Schedule 5.8, there are no actions, suits or proceedings pending or, to the knowledge of the Company, threatened against or affecting the Company or any Restricted Subsidiary or any property of the Company or any Restricted Subsidiary in any court or before any arbitrator of any kind or before or by any Governmental Authority that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(b) Neither the Company nor any Restricted Subsidiary is in default under any term of any agreement or instrument to which it is a party or by which it is bound, or any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority or is in violation of any applicable law, ordinance, rule or regulation (including without limitation Environmental Laws) of any Governmental Authority, which default or violation, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.9. Taxes. The Company and its Restricted Subsidiaries have filed all tax returns that are required to have been filed in any jurisdiction, and have paid all taxes shown to be due and payable on such returns and all other taxes and assessments levied upon them or their properties, assets, income or franchises, to the extent such taxes and assessments have become due and



payable and before they have become delinquent, except for any taxes and assessments (a) the amount of which is not individually or in the aggregate Material or (b) the amount, applicability or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which the Company or a Restricted Subsidiary, as the case may be, has established adequate reserves in accordance with GAAP. The Company knows of no basis for any other tax or assessment that could reasonably be expected to have a Material Adverse Effect. The charges, accruals and reserves on the books of the Company and its Restricted Subsidiaries in respect of Federal, state or other taxes for all fiscal periods are adequate. The Federal income tax liabilities of the Company and its Restricted Subsidiaries have been determined by the Internal Revenue Service and paid for all fiscal years up to and including the fiscal year ended July 31, 1994.

Section 5.10. Title to Property; Leases. The Company and its Restricted Subsidiaries have good and sufficient title to their respective properties that individually or in the aggregate are Material, including all such properties reflected in the most recent audited balance sheet referred to in Schedule 5.5 or purported to have been acquired by the Company or any Restricted Subsidiary after said date (except as sold or otherwise disposed of in the ordinary course of business), in each case free and clear of Liens prohibited by this Agreement. All leases that individually or in the aggregate are Material are valid and subsisting and are in full force and effect in all material respects.

Section 5.11. Licenses, Permits, etc. Except as disclosed in Schedule 5.11,

(a) the Company and its Restricted Subsidiaries own or possess all licenses, permits, franchises, authorizations, patents, copyrights, service marks, trademarks and trade names, or rights thereto, that individually or in the aggregate are Material, without known conflict with the rights of others;

(b) to the best knowledge of the Company, no product of the Company or any Restricted Subsidiary infringes in any Material respect any license, permit, franchise, authorization, patent, copyright, service mark, trademark, trade name or other right owned by any other Person; and

(c) to the best knowledge of the Company, there is no Material violation by any Person of any right of the Company or any of its Restricted Subsidiaries with respect to any patent, copyright, service mark, trademark, trade name or other right owned or used by the Company or any of its Restricted Subsidiaries.

Section 5.12. Compliance with ERISA. (a) The Company and each ERISA Affiliate have operated and administered each Plan in compliance with all applicable laws except for such instances of noncompliance as have not resulted in and could not reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any ERISA Affiliate has incurred any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in Section 3 of ERISA), and no event, transaction or condition has occurred or exists that could reasonably be expected to result in the incurrence

of any such liability by the Company or any ERISA Affiliate, or in the imposition of any Lien on any of the rights, properties or assets of the Company or any ERISA Affiliate, in either case pursuant to Title I or IV of ERISA or to such penalty or excise tax provisions or to Section 401(a)(29) or 412 of the Code, other than such liabilities or Liens as would not be individually or in the aggregate Material.

(b) The present value of the aggregate benefit liabilities under each of the Plans (other than Multiemployer Plans), determined as of the end of such Plan's most recently ended plan year on the basis of the actuarial assumptions specified for funding purposes in such Plan's most recent actuarial valuation report, did not exceed the aggregate current value of the assets of such Plan allocable to such benefit liabilities. The term "benefit liabilities" has the meaning specified in Section 4001 of ERISA and the terms "current value" and "present value" have the meanings specified in Section 3 of ERISA.

(c) The Company and its ERISA Affiliates have not incurred withdrawal liabilities (and are not subject to contingent withdrawal liabilities) under Section 4201 or 4204 of ERISA in respect of Multiemployer Plans that individually or in the aggregate are Material.

(d) The expected postretirement benefit obligation (determined as of the last day of the Company's most recently ended fiscal year in accordance with Financial Accounting Standards Board Statement No. 106, without regard to liabilities attributable to continuation coverage mandated by Section 4980B of the Code) of the Company and its Subsidiaries is not Material.

(e) The execution and delivery of this Agreement and the issuance and sale of the Notes hereunder will not involve any transaction that is subject to the prohibitions of Section 406 of ERISA or in connection with which a tax could be imposed pursuant to Section 4975(c)(1)(A)-(D) of the Code. The representation by the Company in the first sentence of this Section 5.12(e) is made in reliance upon and subject to the accuracy of each Purchaser's representation in Section 6.2 as to the sources of the funds to be used to pay the purchase price of the Notes to be purchased by such Purchaser.

Section 5.13. Private Offering by the Company. Neither the Company nor anyone acting on its behalf has offered the Notes or any similar securities for sale to, or solicited any offer to buy any of the same from, or otherwise approached or negotiated in respect thereof with, any Person other than the Purchasers and not more than 35 other Institutional Investors, each of which has been offered the Notes at a private sale for investment. Neither the Company nor anyone acting on its behalf has taken, or will take, any action that would subject the issuance or sale of the Notes to the registration requirements of Section 5 of the Securities Act.

Section 5.14. Use of Proceeds; Margin Regulations. The Company will apply the proceeds of the sale of the Notes as set forth in Schedule 5.14. No part of the proceeds from the sale of the Notes hereunder will be used, directly or indirectly, for the purpose of buying or carrying any margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System (12 CFR 221), or for the purpose of buying or carrying or trading in any securities under

such circumstances as to involve the Company in a violation of Regulation X of said Board (12 CFR 224) or to involve any broker or dealer in a violation of Regulation T of said Board (12 CFR 220). Margin stock does not constitute more than 0.0% of the value of the consolidated assets of the Company and its Subsidiaries and the Company does not have any present intention that margin stock will constitute more than 0.0% of the value of such assets. As used in this Section, the terms "margin stock" and "purpose of buying or carrying" shall have the meanings assigned to them in said Regulation U.

Section 5.15. Existing Indebtedness and Investments; Future Liens. (a) Except as described therein, Schedule 5.15 sets forth a complete and correct list of all outstanding Debt and Investments of the Company and its Restricted Subsidiaries as of January 31, 1998, since which date there has been no Material change in the amounts, interest rates, sinking funds, installment payments or maturities of the Debt or Investments of the Company or its Restricted Subsidiaries, as the case may be. Neither the Company nor any Restricted Subsidiary is in default and no waiver of default is currently in effect, in the payment of any principal or interest on any Debt of the Company or such Restricted Subsidiary and no event or condition exists with respect to any Debt of the Company or any Restricted Subsidiary that would permit (or that with notice or the lapse of time, or both, would permit) one or more Persons to cause such Debt to become due and payable before its stated maturity or before its regularly scheduled dates of payment.

(b) Except as disclosed in Schedule 5.15, neither the Company nor any Restricted Subsidiary has agreed or consented to cause or permit in the future (upon the happening of a contingency or otherwise) any of its property, whether now owned or hereafter acquired, to be subject to a Lien not permitted by Section 10.5.

Section 5.16. Foreign Assets Control Regulations, Etc. Neither the sale of the Notes by the Company hereunder nor its use of the proceeds thereof will violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto.

Section 5.17. Status under Certain Statutes. Neither the Company nor any Restricted Subsidiary is an "investment company" registered or required to be registered under the Investment Company Act of 1940, as amended, or is subject to regulation under the Public Utility Holding Company Act of 1935, as amended, the ICC Termination Act of 1995, as amended, or the Federal Power Act, as amended.

Section 5.18. Environmental Matters. Neither the Company nor any Restricted Subsidiary has knowledge of any claim or has received any notice of any claim, and no proceeding has been instituted raising any claim against the Company or any of its Restricted Subsidiaries or any of their respective real properties now or formerly owned, leased or operated by any of them or other assets, alleging any damage to the environment or violation of any Environmental Laws, except, in each case, such as could not reasonably be expected to result in a Material Adverse Effect. Further:

(a) neither the Company nor any Restricted Subsidiary has knowledge of any facts which would give rise to any claim, public or private, of violation of Environmental Laws or damage to the environment emanating from, occurring on or in any way related to real properties now or formerly owned, leased or operated by any of them or to other assets or their use, except, in each case, such as could not reasonably be expected to result in a Material Adverse Effect;

(b) neither the Company nor any of its Restricted Subsidiaries has stored any Hazardous Materials on real properties now or formerly owned, leased or operated by any of them and has not disposed of any Hazardous Materials in a manner contrary to any Environmental Laws in each case in any manner that could reasonably be expected to result in a Material Adverse Effect; and

(c) all buildings on all real properties now owned, leased or operated by the Company or any of its Restricted Subsidiaries are in compliance with applicable Environmental Laws, except where failure to comply could not reasonably be expected to result in a Material Adverse Effect.

#### SECTION 6. REPRESENTATIONS OF THE PURCHASER.

Section 6.1. Purchase for Investment. Each Purchaser represents that it is purchasing the Notes for its own account or for one or more separate accounts maintained by it or for the account of one or more pension or trust funds (in each case, for which such Purchaser has the exclusive power to make investment decisions) and not with a view to the distribution thereof, provided that the disposition of such Purchaser's or such pension or trust funds' property shall at all times be within such Purchaser's or such pension or trust funds' control. Each Purchaser understands that the Notes have not been registered under the Securities Act and may be resold only if registered pursuant to the provisions of the Securities Act or if an exemption from registration is available, except under circumstances where neither such registration nor such an exemption is required by law, and that the Company is not required to register the Notes.

Section 6.2. Source of Funds. Each Purchaser represents that at least one of the following statements is an accurate representation as to each source of funds (a "Source") to be used by it to pay the purchase price of the Notes to be purchased by it hereunder:

(a) the Source is an "insurance company general account" within the meaning of Department of Labor Prohibited Transaction Exemption ("PTE") 95-60 (issued July 12, 1995) and there is no employee benefit plan, treating as a single plan, all plans maintained by the same employer or employee organization, with respect to which the amount of the general account reserves and liabilities for all contracts held by or on behalf of such plan, exceeds ten percent (10%) of the total reserves and liabilities of such general account (exclusive of separate account liabilities) plus surplus, as set forth in the NAIC Annual Statement filed with such Purchaser's state of domicile; or

(b) the Source is either (i) an insurance company pooled separate account, within the meaning of PTE 90-1 (issued January 29, 1990), or (ii) a bank collective investment fund, within the meaning of the PTE 91-38 (issued July 12, 1991) and, except as such Purchaser has disclosed to the Company in writing pursuant to this paragraph (b), no employee benefit plan or group of plans maintained by the same employer or employee organization beneficially owns more than 10% of all assets allocated to such pooled separate account or collective investment fund; or

(c) the Source constitutes assets of an "investment fund" (within the meaning of Part V of the QPAM Exemption) managed by a "qualified professional asset manager" or "QPAM" (within the meaning of Part V of the QPAM Exemption), no employee benefit plan's assets that are included in such investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Section V(c)(1) of the QPAM Exemption) of such employer or by the same employee organization and managed by such QPAM, exceed 20% of the total client assets managed by such QPAM, the conditions of Part I(c) and (g) of the QPAM Exemption are satisfied, neither the QPAM nor a person controlling or controlled by the QPAM (applying the definition of "control" in Section V(e) of the QPAM Exemption) owns a 5% or more interest in the Company and (i) the identity of such QPAM and (ii) the names of all employee benefit plans whose assets are included in such investment fund have been disclosed to the Company in writing pursuant to this paragraph (c); or

(d) the Source is a governmental plan; or

(e) the Source is one or more employee benefit plans, or a separate account or trust fund comprised of one or more employee benefit plans, each of which has been identified to the Company in writing pursuant to this paragraph (e); or

(f) the Source does not include assets of any employee benefit plan, other than a plan exempt from the coverage of ERISA.

If any Purchaser or any subsequent transferee of the Notes indicates that such Purchaser or such transferee is relying on any representation contained in paragraph (b), (c) or (e) above, the Company shall deliver on the date of Closing and on the date of any applicable transfer a certificate, which shall either state that (i) it is neither a party in interest nor a "disqualified person" (as defined in Section 4975(e)(2) of the Code) with respect to any plan identified pursuant to paragraphs (b) or (e) above, or (ii) with respect to any plan, identified pursuant to paragraph (c) above, neither it nor any "affiliate" (as defined in Section V(c) of the QPAM Exemption) has at such time, and during the immediately preceding one year, exercised the authority to appoint or terminate said QPAM as manager of any plan identified in writing pursuant to paragraph (c) above or to negotiate the terms of said QPAM's management agreement on behalf of any such identified plan. As used in this Section 6.2, the terms "employee benefit plan", "governmental plan", "party in interest" and "separate account" shall have the respective meanings assigned to such terms in Section 3 of ERISA.

## SECTION 7. INFORMATION AS TO COMPANY; STATUS OF SUBSIDIARIES.

Section 7.1. Financial and Business Information. The Company shall deliver to each holder of Notes that is an Institutional Investor:

(a) Quarterly Statements -- within 45 days after the end of each quarterly fiscal period in each fiscal year of the Company (other than the last quarterly fiscal period of each such fiscal year), duplicate copies of,

(i) a consolidated balance sheet of the Company and its Subsidiaries as at the end of such quarter, and

(ii) consolidated statements of income and cash flows of the Company and its Subsidiaries, for such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter,

setting forth in each case in comparative form the figures for the corresponding periods in the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP applicable to quarterly financial statements generally, and certified by a Senior Financial Officer as fairly presenting, in all material respects, the financial position of the companies being reported on and their results of operations and cash flows, subject to changes resulting from year-end adjustments, provided that delivery within the time period specified above of copies of the Company's Quarterly Report on Form 10-Q prepared in compliance with the requirements therefor and filed with the Securities and Exchange Commission shall be deemed to satisfy the requirements of this Section 7.1(a);

(b) Annual Statements -- within 90 days after the end of each fiscal year of the Company, duplicate copies of,

(i) a consolidated balance sheet of the Company and its Subsidiaries, as at the end of such year, and

(ii) consolidated statements of income, changes in stockholders' equity and cash flows of the Company and its Subsidiaries, for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP, and accompanied by an opinion thereon of Blackman Kallick Bartelstein, LLP, or of independent certified public accountants of recognized national standing, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of the companies being reported upon and their results of operations and cash flows and have been prepared in conformity with GAAP, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such

opinion in the circumstances, provided that the delivery within the time period specified above of the Company's Annual Report on Form 10-K for such fiscal year (together with the Company's annual report to stockholders, if any, prepared pursuant to Rule 14a-3 under the Exchange Act) prepared in compliance with the requirements therefor and filed with the Securities and Exchange Commission shall be deemed to satisfy the requirements of this Section 7.1(b);

(c) Additional Financial Statements -- if as of the end of any quarterly fiscal period of the Company, the total assets of the Unrestricted Subsidiaries exceed 10% of Consolidated Assets or the total revenues of the Unrestricted Subsidiaries exceed 10% of Consolidated Revenues for the four fiscal quarters then ending, the financial statements required to be provided under Section 7.1(a) or (b), as the case may be, shall be accompanied by:

(i) a consolidated balance sheet of the Unrestricted Subsidiaries as at the end of such quarter or fiscal year, as the case may be, together with a consolidating balance sheet for the Company and its Subsidiaries, and

(ii) consolidated statements of income, changes in stockholders' equity and cash flows of the Unrestricted Subsidiaries, for such quarter (and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter) or fiscal year, as the case may be, together with consolidating statements of income, changes in stockholders' equity (annual only) and cash flows of the Company and its Subsidiaries for such period,

all in reasonable detail, prepared in accordance with GAAP applicable to quarterly or annual financial statements, as the case may be, generally, and certified by a Senior Financial Officer as fairly presenting, in all material respects, the financial position of the companies being reported on and their results of operations and cash flows, subject in the case of quarterly financial statements to changes resulting from year-end adjustments.

(d) SEC and Other Reports -- promptly upon their becoming available, one copy of (i) each financial statement, report, notice or proxy statement sent by the Company or any Subsidiary to public securities holders generally, and (ii) each regular or periodic report, each registration statement that shall have become effective (without exhibits except as expressly requested by such holder), and each final prospectus and all amendments thereto filed by the Company or any Subsidiary with the Securities and Exchange Commission and of all press releases and other statements made available generally by the Company or any Subsidiary to the public concerning developments that are Material;

(e) Notice of Default or Event of Default -- promptly, and in any event within five days after a Responsible Officer becoming aware of the existence of any Default or Event of Default or that any Person has given any notice or taken any action

with respect to a claimed default hereunder or that any Person has given any notice or taken any action with respect to a claimed default of the type referred to in Section 11(f), a written notice specifying the nature and period of existence thereof and what action the Company is taking or proposes to take with respect thereto;

(f) ERISA Matters -- promptly, and in any event within five days after a Responsible Officer becoming aware of any of the following, a written notice setting forth the nature thereof and the action, if any, that the Company or an ERISA Affiliate proposes to take with respect thereto:

(i) with respect to any Plan, any reportable event, as defined in Section 4043(b) of ERISA and the regulations thereunder, for which notice thereof has not been waived pursuant to such regulations as in effect on the date hereof; or

(ii) the taking by the PBGC of steps to institute, or the threatening by the PBGC of the institution of, proceedings under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by the Company or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by the PBGC with respect to such Multiemployer Plan; or

(iii) any event, transaction or condition that could result in the incurrence of any liability by the Company or any ERISA Affiliate pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, or in the imposition of any Lien on any of the rights, properties or assets of the Company or any ERISA Affiliate pursuant to Title I or IV of ERISA or such penalty or excise tax provisions, if such liability or Lien, taken together with any other such liabilities or Liens then existing, could reasonably be expected to have a Material Adverse Effect; and

(g) Notices from Governmental Authority -- promptly, and in any event within 30 days of receipt thereof, copies of any notice to the Company or any Subsidiary from any Federal or state Governmental Authority relating to any order, ruling, statute or other law or regulation that could reasonably be expected to have a Material Adverse Effect; and

(h) Requested Information -- with reasonable promptness, such other data and information relating to the business, operations, affairs, financial condition, assets or properties of the Company or any of its Subsidiaries or relating to the ability of the Company to perform its obligations hereunder and under the Notes as from time to time may be reasonably requested by any such holder of Notes.

Section 7.2. Officer's Certificate. Each set of financial statements delivered to a holder of Notes pursuant to Section 7.1(a) or Section 7.1(b) hereof shall be accompanied by a certificate of a Senior Financial Officer setting forth:



(a) Covenant Compliance -- the information (including detailed calculations) required in order to establish whether the Company was in compliance with the requirements of Section 10.1 through Section 10.5 hereof, inclusive, and of Section 10.7 hereof, during the quarterly or annual period covered by the statements then being furnished (including with respect to each such Section, where applicable, the calculations of the maximum or minimum amount, ratio or percentage, as the case may be, permissible under the terms of such Sections, and the calculation of the amount, ratio or percentage then in existence); and

(b) Event of Default -- a statement that such officer has reviewed the relevant terms hereof and has made, or caused to be made, under his or her supervision, a review of the transactions and conditions of the Company and its Subsidiaries from the beginning of the quarterly or annual period covered by the statements then being furnished to the date of the certificate and that such review shall not have disclosed the existence during such period of any condition or event that constitutes a Default or an Event of Default or, if any such condition or event existed or exists (including, without limitation, any such event or condition resulting from the failure of the Company or any Subsidiary to comply with any Environmental Law), specifying the nature and period of existence thereof and what action the Company shall have taken or proposes to take with respect thereto.

Section 7.3. Inspection. The Company shall permit the representatives of each holder of Notes that is an Institutional Investor:

(a) No Default -- if no Default or Event of Default then exists, at the expense of such holder and upon reasonable prior notice to the Company, to visit the principal executive office of the Company, to discuss the affairs, finances and accounts of the Company and its Subsidiaries with the Company's officers, and (with the consent of the Company, which consent will not be unreasonably withheld) its independent public accountants, and (with the consent of the Company, which consent will not be unreasonably withheld) to visit the other offices and properties of the Company and each Subsidiary, all at such reasonable times and as often as may be reasonably requested in writing; and

(b) Default -- if a Default or Event of Default then exists, at the expense of the Company, to visit and inspect any of the offices or properties of the Company or any Subsidiary, to examine all their respective books of account, records, reports and other papers, to make copies and extracts therefrom, and to discuss their respective affairs, finances and accounts with their respective officers and independent public accountants (and by this provision the Company authorizes said accountants to discuss the affairs, finances and accounts of the Company and its Subsidiaries), all at such times and as often as may be requested.

Section 7.4. Change in Status of Subsidiaries. So long as no Default or Event of Default shall have occurred and be continuing, the Company may at any time and from time to time, upon not

less than 30 days' prior written notice given to each Holder, designate a previously Restricted Subsidiary as an Unrestricted Subsidiary or a previously Unrestricted Subsidiary as a Restricted Subsidiary, provided that immediately after such designation and after giving effect thereto no Default or Event of Default shall have occurred and be continuing, and provided further that the status of such Subsidiary had not been changed more than twice.

#### SECTION 8. PREPAYMENT OF THE NOTES.

Section 8.1. Required Prepayments. On April 15, 2003 and on each April 15 thereafter to and including April 15, 2012 the Company will prepay the principal amount set forth opposite such date on Schedule 8.1 (or such lesser principal amount as shall then be outstanding) of the Notes at 100% of the principal amount so prepaid and without payment of the Make-Whole Amount or any premium, provided that upon any partial prepayment of the Notes pursuant to Section 8.2 the principal amount of each required prepayment of the Notes becoming due under this Section 8.1 on and after the date of such prepayment shall be reduced in the same proportion as the aggregate unpaid principal amount of the Notes is reduced as a result of such prepayment.

Section 8.2. Optional Prepayments with Make-Whole Amount. The Company may, at its option, upon notice as provided below, prepay at any time all, or from time to time any part of, the Notes, in a principal amount of not less than \$500,000 in the case of a partial prepayment, at 100% of the principal amount so prepaid, together with interest accrued thereon to the date of such prepayment, plus the Make-Whole Amount determined for the prepayment date with respect to such principal amount. The Company will give each holder of Notes written notice of each optional prepayment under this Section 8.2 not less than 30 days and not more than 60 days prior to the date fixed for such prepayment. Each such notice shall specify such date, the aggregate principal amount of the Notes to be prepaid on such date, the principal amount of each Note held by such holder to be prepaid (determined in accordance with Section 8.3), and the interest to be paid on the prepayment date with respect to such principal amount being prepaid, and shall be accompanied by a certificate of a Senior Financial Officer as to the estimated Make-Whole Amount due in connection with such prepayment (calculated as if the date of such notice were the date of the prepayment), setting forth the details of such computation. Two Business Days prior to such prepayment, the Company shall deliver to each holder of Notes a certificate of a Senior Financial Officer specifying the calculation of such Make-Whole Amount as of the specified prepayment date.

Section 8.3. Allocation of Partial Prepayments. In the case of each partial prepayment of the Notes, the principal amount of the Notes to be prepaid shall be allocated among all of the Notes at the time outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof not theretofore called for prepayment.

Section 8.4. Maturity; Surrender, Etc. In the case of each prepayment of Notes pursuant to this Section 8, the principal amount of each Note to be prepaid shall mature and become due and payable on the date fixed for such prepayment, together with interest on such principal amount accrued to such date and the applicable Make-Whole Amount, if any. From and after such date, unless the Company shall fail to pay such principal amount when so due and payable, together

with the interest and Make-Whole Amount, if any, as aforesaid, interest on such principal amount shall cease to accrue. Any Note paid or prepaid in full shall be surrendered to the Company and cancelled and shall not be reissued, and no Note shall be issued in lieu of any prepaid principal amount of any Note.

Section 8.5. Purchase of Notes. The Company will not and will not permit any Restricted Subsidiary or Affiliate to purchase, redeem, prepay or otherwise acquire, directly or indirectly, any of the outstanding Notes except upon the payment or prepayment of the Notes in accordance with the terms of this Agreement, and the Notes. The Company will promptly cancel all Notes acquired by it, any Restricted Subsidiary or any Affiliate pursuant to any payment, prepayment or purchase of Notes pursuant to any provision of this Agreement and no Notes may be issued in substitution or exchange for any such Notes.

Section 8.6. Make-Whole Amount. The term "Make-Whole Amount" means, with respect to any Note, an amount equal to the excess, if any, of the Discounted Value of the Remaining Scheduled Payments with respect to the Called Principal of such Note over the amount of such Called Principal, provided that the Make-Whole Amount shall in no event be less than zero. For the purposes of determining the Make-Whole Amount, the following terms have the following meanings:

"Called Principal" means, with respect to any Note, the principal of such Note that is to be prepaid pursuant to Section 8.2 or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

"Discounted Value" means, with respect to the Called Principal of any Note, the amount obtained by discounting all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (applied on the same periodic basis as that on which interest on the Notes is payable) equal to the Reinvestment Yield with respect to such Called Principal.

"Reinvestment Yield" means, with respect to the Called Principal of any Note, 0.50% plus the yield to maturity implied by (i) the yields reported, as of 10:00 A.M. (New York City time) on the second Business Day preceding the Settlement Date with respect to such Called Principal, on the display designated as "Gov't PX" on the Bloomberg Financial Market Services (or such other display as may replace such display on the Bloomberg Financial Market Services) for actively traded U.S. Treasury securities having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date, or (ii) if such yields are not reported as of such time or the yields reported as of such time are not ascertainable, the Treasury Constant Maturity Series Yields reported, for the latest day for which such yields have been so reported as of the second Business Day preceding the Settlement Date with respect to such Called Principal, in Federal Reserve Statistical Release H.15 (519) (or any comparable successor publication) for actively traded U.S. Treasury securities having a constant maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. Such

implied yield will be determined, if necessary, by (a) converting U.S. Treasury bill quotations to bond-equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between (1) the on the run U.S. Treasury security with the maturity closest to and greater than the Remaining Average Life and (2) the on the run U.S. Treasury security with the maturity closest to and less than the Remaining Average Life.

"Remaining Average Life" means, with respect to any Called Principal, the number of years (calculated to the nearest one-twelfth year) obtained by dividing (i) such Called Principal into (ii) the sum of the products obtained by multiplying (a) the principal component of each Remaining Scheduled Payment with respect to such Called Principal by (b) the number of years (calculated to the nearest one-twelfth year) that will elapse between the Settlement Date with respect to such Called Principal and the scheduled due date of such Remaining Scheduled Payment.

"Remaining Scheduled Payments" means, with respect to the Called Principal of any Note, all payments of such Called Principal and interest thereon that would be due after the Settlement Date with respect to such Called Principal if no payment of such Called Principal were made prior to its scheduled due date, provided that if such Settlement Date is not a date on which interest payments are due to be made under the terms of the Notes, then the amount of the next succeeding scheduled interest payment will be reduced by the amount of interest accrued to such Settlement Date and required to be paid on such Settlement Date pursuant to Section 8.2 or 12.1.

"Settlement Date" means, with respect to the Called Principal of any Note, the date on which such Called Principal is to be prepaid pursuant to Section 8.2 or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

#### SECTION 9. AFFIRMATIVE COVENANTS.

The Company covenants that so long as any of the Notes are outstanding:

Section 9.1. Compliance with Law. The Company will and will cause each of its Restricted Subsidiaries to comply with all laws, ordinances or governmental rules or regulations to which each of them is subject, including, without limitation, Environmental Laws, and will obtain and maintain in effect all licenses, certificates, permits, franchises and other governmental authorizations necessary to the ownership of their respective properties or to the conduct of their respective businesses, in each case to the extent necessary to ensure that non-compliance with such laws, ordinances or governmental rules or regulations or failures to obtain or maintain in effect such licenses, certificates, permits, franchises and other governmental authorizations could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 9.2. Insurance. The Company will and will cause each of its Restricted Subsidiaries to maintain, with financially sound and reputable insurers, insurance with respect to their respective properties and businesses against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurance and self-insurance, if adequate reserves are maintained with respect thereto) as is customary in the case of entities of established reputations engaged in the same or a similar business and similarly situated.

Section 9.3. Maintenance of Properties. The Company will and will cause each of its Restricted Subsidiaries to maintain and keep, or cause to be maintained and kept, their respective properties in good repair, working order and condition (other than ordinary wear and tear), so that the business carried on in connection therewith may be properly conducted at all times, provided that this Section shall not prevent the Company or any Restricted Subsidiary from discontinuing the operation and the maintenance of any of its properties if such discontinuance is desirable in the conduct of its business and the Company has concluded that such discontinuance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 9.4. Payment of Taxes and Claims. The Company will and will cause each of its Subsidiaries to file all tax returns required to be filed in any jurisdiction and to pay and discharge all taxes shown to be due and payable on such returns and all other taxes, assessments, governmental charges, or levies imposed on them or any of their properties, assets, income or franchises, to the extent such taxes and assessments have become due and payable and before they have become delinquent and all claims for which sums have become due and payable that have or might become a Lien on properties or assets of the Company or any Subsidiary, provided that neither the Company nor any Subsidiary need pay any such tax or assessment or claims if (i) the amount, applicability or validity thereof is contested by the Company or such Subsidiary on a timely basis in good faith and in appropriate proceedings, and the Company or a Subsidiary has established adequate reserves therefor in accordance with GAAP on the books of the Company or such Subsidiary or (ii) the nonpayment of all such taxes, assessments and claims in the aggregate could not reasonably be expected to have a Material Adverse Effect.

Section 9.5. Corporate Existence, etc. The Company will at all times preserve and keep in full force and effect its corporate existence, except as otherwise permitted by Section 10.6. The Company will at all times preserve and keep in full force and effect the corporate existence of each of its Restricted Subsidiaries (unless merged into the Company or another Restricted Subsidiary) and all rights and franchises of the Company and its Restricted Subsidiaries unless, in the good faith judgment of the Company, the termination of or failure to preserve and keep in full force and effect such corporate existence, right or franchise could not, individually or in the aggregate, have a Material Adverse Effect.

Section 9.6. Ranking. The Company will ensure that, at all times, all liabilities of the Company under the Notes will rank in right of payment either pari passu or senior to all other Debt of the Company except for Debt which is preferred as a result of being secured as permitted by Section 10.5 (but then only to the extent of such security).

## SECTION 10. NEGATIVE COVENANTS.

The Company covenants that so long as any of the Notes are outstanding:

Section 10.1 Fixed Charges Coverage Ratio. The Company will not, at any time, permit the Fixed Charges Coverage Ratio to be less than 1.5 to 1.

Section 10.2 Consolidated Debt. The Company will not permit Consolidated Debt to exceed 55% of Consolidated Total Capitalization, as calculated on the last day of each fiscal quarter of the Company.

Section 10.3 Debt of Restricted Subsidiaries. The Company will not at any time permit any Restricted Subsidiary to, directly or indirectly, create, incur, assume, guarantee, have outstanding, or otherwise become or remain directly or indirectly liable with respect to, any Debt other than:

(a) Debt of a Restricted Subsidiary outstanding on the date hereof and disclosed in Schedule 5.15, provided that such Debt may not be extended, renewed or refunded except as otherwise permitted by this Agreement;

(b) Debt of a Restricted Subsidiary owed to the Company or another Restricted Subsidiary; and

(c) Debt of a Restricted Subsidiary outstanding at the time such Restricted Subsidiary becomes a Subsidiary, provided that,

(i) such Debt shall not have been incurred in contemplation of such Restricted Subsidiary becoming a Subsidiary, and

(ii) immediately after such Restricted Subsidiary becomes a Subsidiary no Default or Event of Default shall exist,

and any extension, renewal or refunding thereof, provided that the principal amount thereof outstanding immediately before giving effect to such extension, renewal or refunding is not increased and no Default or Event of Default exists at the time of such extension, renewal or refunding; and

(d) Debt of a Restricted Subsidiary in addition to that otherwise permitted by the foregoing provisions of this Section 10.3, provided that on the date the Restricted Subsidiary incurs or otherwise becomes liable with respect to any such additional Debt and immediately after giving effect thereto and the concurrent retirement of any other Debt,

(i) no Default or Event of Default exists, and

(ii) Priority Debt does not exceed 20% of Consolidated Total Capitalization,

provided that Debt of Restricted Subsidiaries in respect of industrial revenue bonds, secured by Liens permitted by Section 10.5(h) and guaranteed by the Company shall not be included in Priority Debt for purposes of determining compliance with this Section 10.3(d).

Any Person which becomes a Restricted Subsidiary after the date hereof shall for all purposes of this Section 10.3 be deemed to have created, assumed or incurred at the time it becomes a Restricted Subsidiary all Debt of such corporation existing immediately after it becomes a Restricted Subsidiary.

Section 10.4 Consolidated Adjusted Net Worth. The Company will not, at any time, permit Consolidated Adjusted Net Worth to be less than the sum of (a) \$50,000,000, plus (b) an aggregate amount equal to 25% of its Consolidated Net Income (but, in each case, only if a positive number) for each completed fiscal quarter beginning with the fiscal quarter ended October 31, 1998.

Section 10.5 Liens. The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly create, incur, assume or permit to exist (upon the happening of a contingency or otherwise) any Lien on or with respect to any property or asset (including, without limitation, any document or instrument in respect of goods or accounts receivable) of the Company or any such Restricted Subsidiary, whether now owned or held or hereafter acquired, or any income or profits therefrom, or assign or otherwise convey any right to receive income or profits, except:

(a) Liens for taxes, assessments or other governmental charges which are not yet due and payable or the payment of which is not at the time required by Section 9.4;

(b) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, materialmen and other similar Liens, in each case, incurred in the ordinary course of business for sums not yet due and payable;

(c) Liens (other than any Lien imposed by ERISA) incurred or deposits made in the ordinary course of business (i) in connection with workers' compensation, unemployment insurance and other types of social security or retirement benefits, or (ii) to secure (or to obtain letters of credit that secure) the performance of tenders, statutory obligations, surety bonds, appeal bonds, bids, leases (other than Capital Leases), performance bonds, purchase, construction or sales contracts and other similar obligations, in each case not incurred or made in connection with the borrowing of money, the obtaining of advances or credit or the payment of the deferred purchase price of property;

(d) any attachment or judgment Lien, unless the judgment it secures shall not, within 60 days after the entry thereof, have been discharged or execution thereof stayed pending appeal, or shall not have been discharged within 60 days after the expiration of any such stay;

(e) leases or subleases granted to others, easements, rights-of-way, restrictions and other similar charges or encumbrances, in each case incidental to, and not interfering with, the ordinary conduct of the business of the Company or any of its Restricted Subsidiaries, provided that such Liens do not, in the aggregate, materially detract from the value of such property;

(f) Liens on property or assets of the Company or any of its Restricted Subsidiaries securing Debt owing to the Company or to another Restricted Subsidiary;

(g) Liens existing on the date of Closing and securing the Debt of the Company and its Restricted Subsidiaries and described in Schedule 5.15;

(h) any Lien created to secure all or any part of the purchase price, or to secure Debt incurred or assumed to pay all or any part of the purchase price or cost of construction, of property (or any improvement thereon) acquired or constructed by the Company or a Restricted Subsidiary after the date of the Closing, provided that,

(i) any such Lien shall extend solely to the item or items of such property (or improvement thereon) so acquired or constructed and, if required by the terms of the instrument originally creating such Lien, other property (or improvement thereon) which is an improvement to or is acquired for specific use in connection with such acquired or constructed property (or improvement thereon) or which is real property being improved by such acquired or constructed property (or improvement thereon),

(ii) the principal amount of the Debt secured by any such Lien shall at no time exceed an amount equal to the lesser of (A) the cost to the Company or such Restricted Subsidiary of the property (or improvement thereon) so acquired or constructed and (B) the fair market value (as determined in good faith by the board of directors of the Company) of such property (or improvement thereon) at the time of such acquisition or construction, and

(iii) any such Lien shall be created contemporaneously with, or within 180 days after, the acquisition or construction of such property;

(i) any Lien existing on property of a Person immediately prior to its being consolidated with or merged into the Company or a Restricted Subsidiary or its becoming a Restricted Subsidiary, or any Lien existing on any property acquired by the Company or any Restricted Subsidiary at the time such property is so acquired (whether or not the Debt secured thereby shall have been assumed), provided that (y) no such Lien shall have



been created or assumed in contemplation of such consolidation or merger or such Person's becoming a Restricted Subsidiary or such acquisition of property, and (z) each such Lien shall extend solely to the item or items of property so acquired and, if required by the terms of the instrument originally creating such Lien, other property which is an improvement to or is acquired for specific use in connection with such acquired property;

(j) any Lien renewing, extending or refunding any Lien permitted by paragraphs (g), (h) or (i) of this Section 10.5, provided that (i) the principal amount of Debt secured by such Lien immediately prior to such extension, renewal or refunding is not increased or the maturity thereof reduced, (ii) such Lien is not extended to any other property, and (iii) immediately after such extension, renewal or refunding no Default or Event of Default would exist;

(k) other Liens securing the Debt of the Company or any Restricted Subsidiary not otherwise permitted by paragraphs (a) through (j), provided that at the time the Company or such Restricted Subsidiary incurs or otherwise becomes liable for such Debt, Priority Debt does not exceed 20% of Consolidated Total Capitalization, provided further that Debt of Restricted Subsidiaries in respect of industrial revenue bonds secured by Liens permitted by Section 10.5(h) and guaranteed by the Company shall not be included in Priority Debt for purposes of determining compliance with this Section 10.5(k).

Section 10.6 Mergers and Consolidations. The Company will not, and will not permit any Restricted Subsidiary to, consolidate with or be a party to a merger with any other Person; provided, however, that:

(a) any Restricted Subsidiary may merge or consolidate with or into the Company or any other Restricted Subsidiary so long as in any merger or consolidation involving the Company, the Company shall be the surviving or continuing corporation; and

(b) the Company may consolidate or merge with any other corporation if (i) the surviving entity is a solvent corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, (ii) the surviving entity (if other than the Company) expressly assumes in writing the Company's obligation under the Notes and this Agreement, (iii) the surviving entity delivers to the holders of the Notes an opinion of nationally recognized independent counsel to the effect that all agreements or instruments effecting such assumption are enforceable in accordance with their terms and comply with the terms hereof, and (iv) at the time of such consolidation or merger and after giving effect thereto no Default or Event of Default shall have occurred and be continuing.

Section 10.7 Sale of Assets; Sale of Stock. (a) The Company will not, and will not permit any Restricted Subsidiary to, sell, lease, transfer, abandon or otherwise dispose of assets (except

assets sold for fair market value (x) in the ordinary course of business or (y) in a Sale and Leaseback Transaction); provided that the foregoing restrictions do not apply to:

(1) the sale, lease, transfer or other disposition of assets of a Restricted Subsidiary to the Company or a Wholly-Owned Restricted Subsidiary;

(2) the sale of assets for cash or other property to a Person or Persons if all of the following conditions are met:

(i) such assets (valued at net book value at the time of such sale) do not, together with all other assets of the Company and its Restricted Subsidiaries previously disposed of (valued at net book value at the time of such disposition) (other than in the ordinary course of business or in a Sale and Leaseback Transaction) during the same fiscal year exceed 15% of Consolidated Assets (which Consolidated Assets shall be determined as of the last day of the fiscal year ending on, or most recently ended prior to, such sale); and

(ii) in the opinion of the Company's Board of Directors, the sale is for fair market value and is in the best interests of the Company.

provided, however, that for purposes of the foregoing calculation, there shall not be included any assets the proceeds of which were or are applied within 180 days of the date of sale of such assets to either (A) the acquisition of fixed assets useful and intended to be used in the operation of the business of the Company and its Restricted Subsidiaries within the limitations of Section 10.8 and having a fair market value (as determined in good faith by the Board of Directors of the Company) at least equal to that of the assets so disposed of, or (B) the prepayment at any applicable prepayment premium, of Debt of the Company or its Restricted Subsidiaries selected by the Company (other than Debt owing to the Company, any of its Subsidiaries or any Affiliate and Debt in respect of any revolving credit or similar credit facility providing the Company or any of its Restricted Subsidiaries with the right to obtain loans or other extensions of credit from time to time, except to the extent that in connection with such payment of Debt the availability of credit under such credit facility is permanently reduced by an amount not less than the amount of such proceeds applied to the payment of such Debt). It is understood and agreed by the Company that any such proceeds paid and applied to the prepayment of the Notes as hereinabove provided shall be prepaid as and to the extent provided in Section 8.2.

(b) The Company will not permit any Restricted Subsidiary to issue or sell any shares of stock of any class (including as "stock" for the purposes of this Section 10.7, any warrants, rights or options to purchase or otherwise acquire stock or other Securities exchangeable for or convertible into stock) of such Restricted Subsidiary to any Person other than the Company or a Wholly-Owned Restricted Subsidiary, except for the purpose of qualifying directors, or except in satisfaction of the validly pre-existing preemptive rights of minority stockholders in connection with the simultaneous issuance of stock to the Company and/or a Restricted Subsidiary whereby

the Company and/or such Restricted Subsidiary maintain their same proportionate interest in such Restricted Subsidiary.

(c) The Company will not sell, transfer or otherwise dispose of any shares of stock of any Restricted Subsidiary (except to qualify directors) or any Debt of any Restricted Subsidiary, and will not permit any Restricted Subsidiary to sell, transfer or otherwise dispose of (except to the Company or a Wholly-Owned Restricted Subsidiary) any shares of stock or any Debt of any other Restricted Subsidiary, unless:

(1) simultaneously with such sale, transfer, or disposition, all shares of stock and all Debt of such Restricted Subsidiary at the time owned by the Company and by every other Restricted Subsidiary shall be sold, transferred or disposed of as an entirety;

(2) said shares of stock and Debt are sold, transferred or otherwise disposed of to a Person, for a cash consideration and on terms reasonably deemed by the Board of Directors of the Company to be adequate and satisfactory;

(3) the Restricted Subsidiary being disposed of shall not have any continuing investment in the Company or any other Restricted Subsidiary not being simultaneously disposed of; and

(4) such sale or other disposition is permitted by Section 10.7(a).

Section 10.8 Nature of Business. Neither the Company nor any Restricted Subsidiary will engage in any business if, as a result, the general nature of the business, taken on a consolidated basis, which would then be engaged in by the Company and its Restricted Subsidiaries would be substantially changed from the general nature of the business engaged in by the Company and its Restricted Subsidiaries on the date of Closing.

Section 10.9 Transactions with Affiliates. The Company will not and will not permit any Restricted Subsidiary to enter into directly or indirectly any transaction or group of related transactions (including without limitation the purchase, lease, sale or exchange of properties of any kind or the rendering of any service) with any Affiliate, except in the ordinary course and pursuant to the reasonable requirements of the Company's or such Restricted Subsidiary's business and upon fair and reasonable terms no less favorable to the Company or such Restricted Subsidiary than would be obtainable in a comparable arm's-length transaction with a Person not an Affiliate.

#### SECTION 11. EVENTS OF DEFAULT.

An "Event of Default" shall exist if any of the following conditions or events shall occur and be continuing:

(a) the Company defaults in the payment of any principal or Make-Whole Amount, if any, on any Note when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration or otherwise; or

(b) the Company defaults in the payment of any interest on any Note for more than five Business Days after the same becomes due and payable; or

(c) the Company defaults in the performance of or compliance with any term contained in Section 10; or

(d) the Company defaults in the performance of or compliance with any term contained herein (other than those referred to in paragraphs (a), (b) and (c) of this Section 11) and such default is not remedied within 30 days after the earlier of (i) a Responsible Officer obtaining actual knowledge of such default and (ii) the Company receiving written notice of such default from any holder of a Note (any such written notice to be identified as a "notice of default" and to refer specifically to this paragraph (d) of Section 11); or

(e) any representation or warranty made in writing by or on behalf of the Company or by any officer of the Company in this Agreement or in any writing furnished in connection with the transactions contemplated hereby proves to have been false or incorrect in any Material respect on the date as of which made; or

(f) (i) the Company or any Significant Subsidiary is in default (as principal or as guarantor or other surety) in the payment of any principal of or premium or make-whole amount or interest on any Indebtedness that is outstanding in an aggregate principal amount of at least \$5,000,000 beyond any period of grace provided with respect thereto, or (ii) the Company or any Significant Subsidiary is in default in the performance of or compliance with any term of any evidence of any Indebtedness in an aggregate outstanding principal amount of at least \$5,000,000 or of any mortgage, indenture or other agreement relating thereto or any other condition exists, and as a consequence of such default or condition such Indebtedness has become, or has been declared (or one or more Persons are entitled to declare such Indebtedness to be), due and payable before its stated maturity or before its regularly scheduled dates of payment; or

(g) the Company or any Significant Subsidiary (i) is generally not paying, or admits in writing its inability to pay, its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, (v) is adjudicated as insolvent or to be liquidated, or (vi) takes corporate action for the purpose of any of the foregoing; or

(h) a court or Governmental Authority of competent jurisdiction enters an order appointing, without consent by the Company or any of its Significant Subsidiaries, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Company or any of its Significant Subsidiaries, or any such petition shall be filed against the Company or any of its Significant Subsidiaries and such petition shall not be dismissed within 60 days; or

(i) a final judgment or judgments for the payment of money aggregating in excess of \$5,000,000 are rendered against one or more of the Company and its Significant Subsidiaries and which judgments are not, within 60 days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within 60 days after the expiration of such stay; or

(j) If (i) any Plan shall fail to satisfy the minimum funding standards of ERISA or the Code for any plan year or part thereof or a waiver of such standards or extension of any amortization period is sought or granted under Section 412 of the Code, (ii) a notice of intent to terminate any Plan shall have been or is reasonably expected to be filed with the PBGC or the PBGC shall have instituted proceedings under Section 4042 of ERISA to terminate or appoint a trustee to administer any Plan or the PBGC shall have notified the Company or any ERISA Affiliate that a Plan may become a subject of any such proceedings, (iii) the aggregate "amount of unfunded benefit liabilities" (within the meaning of Section 4001(a)(18) of ERISA) under all Plans, determined in accordance with Title IV of ERISA, shall exceed 5% of Consolidated Net Worth, (iv) the Company or any ERISA Affiliate shall have incurred or is reasonably expected to incur any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, (v) the Company or any ERISA Affiliate withdraws from any Multiemployer Plan, or (vi) the Company or any Subsidiary establishes or amends any employee welfare benefit plan that provides post-employment welfare benefits in a manner that would increase the liability of the Company or any Subsidiary thereunder; and any such event or events described in clauses (i) through (vi) above, either individually or together with any other such event or events, could reasonably be expected to have a Material Adverse Effect.

As used in Section 11(j), the terms "employee benefit plan" and "employee welfare benefit plan" shall have the respective meanings assigned to such terms in Section 3 of ERISA.

## SECTION 12. REMEDIES ON DEFAULT, ETC.

Section 12.1. Acceleration. (a) If an Event of Default with respect to the Company described in paragraph (g) or (h) of Section 11 (other than an Event of Default described in clause (i) of paragraph (g) or described in clause (vi) of paragraph (g) by virtue of the fact that such clause

encompasses clause (i) of paragraph (g)) has occurred, all the Notes then outstanding shall automatically become immediately due and payable.

(b) If any other Event of Default has occurred and is continuing, the Required Holders may at any time at their option, by notice or notices to the Company, declare all the Notes then outstanding to be immediately due and payable.

(c) If any Event of Default described in paragraph (a) or (b) of Section 11 has occurred and is continuing, any holder or holders of Notes at the time outstanding affected by such Event of Default may at any time, at its or their option, by notice or notices to the Company, declare all the Notes held by it or them to be immediately due and payable.

Upon any Note's becoming due and payable under this Section 12.1, whether automatically or by declaration, such Note will forthwith mature and the entire unpaid principal amount of such Note, plus (i) all accrued and unpaid interest thereon and (ii) the Make-Whole Amount determined in respect of such principal amount (to the full extent permitted by applicable law), shall all be immediately due and payable, in each and every case without presentment, demand, protest or further notice, all of which are hereby waived. The Company acknowledges, and the parties hereto agree, that each holder of a Note has the right to maintain its investment in the Notes free from repayment by the Company (except as herein specifically provided for) and that the provision for payment of a Make-Whole Amount by the Company in the event that the Notes are prepaid or are accelerated as a result of an Event of Default, is intended to provide compensation for the deprivation of such right under such circumstances.

Section 12.2. Other Remedies. If any Default or Event of Default has occurred and is continuing, and irrespective of whether any Notes have become or have been declared immediately due and payable under Section 12.1, the holder of any Note at the time outstanding may proceed to protect and enforce the rights of such holder by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein or in any Note, or for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise.

Section 12.3. Rescission. At any time after any Notes have been declared due and payable pursuant to clause (b) or (c) of Section 12.1, the Required Holders, by written notice to the Company, may rescind and annul any such declaration and its consequences if (a) the Company has paid all overdue interest on the Notes, all principal of and Make-Whole Amount, if any, on any Notes that are due and payable and are unpaid other than by reason of such declaration, and all interest on such overdue principal and Make-Whole Amount, if any, and (to the extent permitted by applicable law) any overdue interest in respect of the Notes, at the Default Rate, (b) all Events of Default and Defaults, other than non-payment of amounts that have become due solely by reason of such declaration, have been cured or have been waived pursuant to Section 17, and (c) no judgment or decree has been entered for the payment of any monies due pursuant hereto or to the Notes. No rescission and annulment under this Section 12.3 will extend to or affect any subsequent Event of Default or Default or impair any right consequent thereon.

Section 12.4. No Waivers or Election of Remedies, Expenses, Etc. No course of dealing and no delay on the part of any holder of any Note in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice such holder's rights, powers or remedies. No right, power or remedy conferred by this Agreement or by any Note upon any holder thereof shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise. Without limiting the obligations of the Company under Section 15, the Company will pay to the holder of each Note on demand such further amount as shall be sufficient to cover all costs and expenses of such holder incurred in any enforcement or collection under this Section 12, including, without limitation, reasonable attorneys' fees, expenses and disbursements.

#### SECTION 13. REGISTRATION; EXCHANGE; SUBSTITUTION OF NOTES.

Section 13.1. Registration of Notes. The Company shall keep at its principal executive office a register for the registration and registration of transfers of Notes. The name and address of each holder of one or more Notes, each transfer thereof and the name and address of each transferee of one or more Notes shall be registered in such register. Prior to due presentment for registration of transfer, the Person in whose name any Note shall be registered shall be deemed and treated as the owner and holder thereof for all purposes hereof, and the Company shall not be affected by any notice or knowledge to the contrary. The Company shall give to any holder of a Note that is an Institutional Investor promptly upon request therefor, a complete and correct copy of the names and addresses of all registered holders of Notes.

Section 13.2. Transfer and Exchange of Notes. Upon surrender of any Note at the principal executive office of the Company for registration of transfer or exchange (and in the case of a surrender for registration of transfer, duly endorsed or accompanied by a written instrument of transfer duly executed by the registered holder of such Note or its attorney duly authorized in writing and accompanied by the address for notices of each transferee of such Note or part thereof), the Company shall execute and deliver, at the Company's expense (except as provided below), one or more new Notes (as requested by the holder thereof) in exchange therefor, in an aggregate principal amount equal to the unpaid principal amount of the surrendered Note. Each such new Note shall be payable to such Person as such holder may request and shall be substantially in the form of Exhibit 1. Each such new Note shall be dated and bear interest from the date to which interest shall have been paid on the surrendered Note or dated the date of the surrendered Note if no interest shall have been paid thereon. The Company may require payment of a sum sufficient to cover any stamp tax or governmental charge imposed in respect of any such transfer of Notes. Notes shall not be transferred in denominations of less than \$500,000, provided that if necessary to enable the registration of transfer by a holder of its entire holding of Notes, one Note may be in a denomination of less than \$500,000. Any transferee, by its acceptance of a Note registered in its name (or the name of its nominee), shall be deemed to have made the representation set forth in Section 6.2.

Section 13.3. Replacement of Notes. Upon receipt by the Company of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Note

(which evidence shall be, in the case of an Institutional Investor, notice from such Institutional Investor of such ownership and such loss, theft, destruction or mutilation), and

(a) in the case of loss, theft or destruction, of indemnity reasonably satisfactory to it (provided that if the holder of such Note is, or is a nominee for, an original Purchaser or another holder of a Note with a minimum net worth of at least \$100,000,000, such Person's own unsecured agreement of indemnity shall be deemed to be satisfactory), or

(b) in the case of mutilation, upon surrender and cancellation thereof,

the Company at its own expense shall execute and deliver, in lieu thereof, a new Note, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

#### SECTION 14. PAYMENTS ON NOTES.

Section 14.1. Place of Payment. Subject to Section 14.2, payments of principal, Make-Whole Amount, if any, and interest becoming due and payable on the Notes shall be made in Chicago, Illinois at the principal office of the Company in such jurisdiction. The Company may at any time, by notice to each holder of a Note, change the place of payment of the Notes so long as such place of payment shall be either the principal office of the Company in such jurisdiction or the principal office of a bank or trust company in such jurisdiction.

Section 14.2. Home Office Payment. So long as any Purchaser or such Purchaser's nominee shall be the holder of any Note, and notwithstanding anything contained in Section 14.1 or in such Note to the contrary, the Company will pay all sums becoming due on such Note for principal, Make-Whole Amount, if any, and interest by the method and at the address specified for such purpose on Schedule A to this Agreement, or by such other method or at such other address as such Purchaser shall have from time to time specified to the Company in writing for such purpose, without the presentation or surrender of such Note or the making of any notation thereon, except that upon written request of the Company made concurrently with or reasonably promptly after payment or prepayment in full of any Note, such Purchaser shall surrender such Note for cancellation, reasonably promptly after any such request, to the Company at its principal executive office or at the place of payment most recently designated by the Company pursuant to Section 14.1. Prior to any sale or other disposition of any Note held by any Purchaser or such Purchaser's nominee such Purchaser will, at its election, either endorse thereon the amount of principal paid thereon and the last date to which interest has been paid thereon or surrender such Note to the Company in exchange for a new Note or Notes pursuant to Section 13.2. The Company will afford the benefits of this Section 14.2 to any Institutional Investor that is the direct or indirect transferee of any Note purchased by any Purchaser under this Agreement and that has made the same agreement relating to such Note as such Purchaser has made in this Section 14.2.



## SECTION 15. EXPENSES, ETC.

Section 15.1. Transaction Expenses. Whether or not the transactions contemplated hereby are consummated, the Company will pay all costs and expenses (including reasonable attorneys' fees of a single special counsel representing the Purchasers as a group and, if reasonably required, local or other counsel) incurred by the Purchasers and/or holders of Notes in connection with such transactions and in connection with any amendments, waivers or consents under or in respect of this Agreement or the Notes (whether or not such amendment, waiver or consent becomes effective), including, without limitation: (a) the costs and expenses incurred in enforcing or defending (or determining whether or how to enforce or defend) any rights under this Agreement or the Notes or in responding to any subpoena or other legal process or informal investigative demand issued in connection with this Agreement or the Notes, or by reason of being a holder of any Note, and (b) the costs and expenses, including financial advisors' fees, incurred in connection with the insolvency or bankruptcy of the Company or any Subsidiary or in connection with any work-out or restructuring of the transactions contemplated hereby and by the Notes. The Company will pay, and will save each Purchaser and each other holder of a Note harmless from, all claims in respect of any fees, costs or expenses if any, of brokers and finders (other than those retained by such Purchaser or holder).

Section 15.2. Survival. The obligations of the Company under this Section 15 will survive the payment or transfer of any Note, the enforcement, amendment or waiver of any provision of this Agreement or the Notes, and the termination of this Agreement.

## SECTION 16. SURVIVAL OF REPRESENTATIONS AND WARRANTIES; ENTIRE AGREEMENT.

All representations and warranties contained herein shall survive the execution and delivery of this Agreement and the Notes, the purchase or transfer by any Purchaser of any Note or portion thereof or interest therein and the payment of any Note, and may be relied upon by any subsequent holder of a Note, regardless of any investigation made at any time by or on behalf of such Purchaser or any other holder of a Note. All statements contained in any certificate or other instrument delivered by or on behalf of the Company pursuant to this Agreement shall be deemed representations and warranties of the Company under this Agreement. Subject to the preceding sentence, this Agreement and the Notes embody the entire agreement and understanding between each Purchaser and the Company and supersede all prior agreements and understandings relating to the subject matter hereof.

## SECTION 17. AMENDMENT AND WAIVER.

Section 17.1. Requirements. This Agreement and the Notes may be amended, and the observance of any term hereof or of the Notes may be waived (either retroactively or prospectively), with (and only with) the written consent of the Company and the Required Holders, except that (a) no amendment or waiver of any of the provisions of Section 1, 2, 3, 4, 5, 6 or 21 hereof, or any defined term (as it is used therein), will be effective as to any Purchaser unless consented to by such Purchaser in writing, and (b) no such amendment or waiver may, without the written

consent of the holder of each Note at the time outstanding affected thereby, (i) subject to the provisions of Section 12 relating to acceleration or rescission, change the amount or time of any prepayment or payment of principal of, or reduce the rate or change the time of payment or method of computation of interest or of the Make-Whole Amount on, the Notes, (ii) change the percentage of the principal amount of the Notes the holders of which are required to consent to any such amendment or waiver, or (iii) amend any of Sections 8, 11(a), 11(b), 12, 17 or 20.

#### Section 17.2. Solicitation of Holders of Notes.

(a) Solicitation. The Company will provide each holder of the Notes (irrespective of the amount of Notes then owned by it) with sufficient information, sufficiently far in advance of the date a decision is required, to enable such holder to make an informed and considered decision with respect to any proposed amendment, waiver or consent in respect of any of the provisions hereof or of the Notes. The Company will deliver executed or true and correct copies of each amendment, waiver or consent effected pursuant to the provisions of this Section 17 to each holder of outstanding Notes promptly following the date on which it is executed and delivered by, or receives the consent or approval of, the requisite holders of Notes.

(b) Payment. The Company will not directly or indirectly pay or cause to be paid any remuneration, whether by way of supplemental or additional interest, fee or otherwise, or grant any security, to any holder of Notes as consideration for or as an inducement to the entering into by any holder of Notes of any waiver or amendment of any of the terms and provisions hereof unless such remuneration is concurrently paid, or security is concurrently granted, on the same terms, ratably to each holder of Notes then outstanding even if such holder did not consent to such waiver or amendment.

Section 17.3. Binding Effect, Etc. Any amendment or waiver consented to as provided in this Section 17 applies equally to all holders of Notes and is binding upon them and upon each future holder of any Note and upon the Company without regard to whether such Note has been marked to indicate such amendment or waiver. No such amendment or waiver will extend to or affect any obligation, covenant, agreement, Default or Event of Default not expressly amended or waived or impair any right consequent thereon. No course of dealing between the Company and the holder of any Note nor any delay in exercising any rights hereunder or under any Note shall operate as a waiver of any rights of any holder of such Note. As used herein, the term "this Agreement" and references thereto shall mean this Agreement as it may from time to time be amended or supplemented.

Section 17.4. Notes Held by Company, Etc. Solely for the purpose of determining whether the holders of the requisite percentage of the aggregate principal amount of Notes then outstanding approved or consented to any amendment, waiver or consent to be given under this Agreement or the Notes, or have directed the taking of any action provided herein or in the Notes to be taken upon the direction of the holders of a specified percentage of the aggregate principal amount of Notes then outstanding, Notes directly or indirectly owned by the Company or any of its Affiliates or any Restricted Subsidiary shall be deemed not to be outstanding.

## SECTION 18. NOTICES.

All notices and communications provided for hereunder shall be in writing and sent (a) by telefacsimile if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), or (b) by registered or certified mail with return receipt requested (postage prepaid), or (c) by a recognized overnight delivery service (with charges prepaid). Any such notice must be sent:

(i) if to a Purchaser or such Purchaser's nominee, to such Purchaser or such Purchaser's nominee at the address specified for such communications on Schedule A to this Agreement, or at such other address as such Purchaser or such Purchaser's nominee shall have specified to the Company in writing,

(ii) if to any other holder of any Note, to such holder at such address as such other holder shall have specified to the Company in writing, or

(iii) if to the Company, to the Company at its address set forth at the beginning hereof to the attention of Chief Financial Officer, or at such other address as the Company shall have specified to the holder of each Note in writing.

Notices under this Section 18 will be deemed given only when actually received.

## SECTION 19. REPRODUCTION OF DOCUMENTS.

This Agreement and all documents relating thereto, including, without limitation, (a) consents, waivers and modifications that may hereafter be executed, (b) documents received by each Purchaser at the Closing (except the Notes themselves), and (c) financial statements, certificates and other information previously or hereafter furnished to each Purchaser, may be reproduced by such Purchaser by any photographic, photostatic, microfilm, microcard, miniature photographic or other similar process and such Purchaser may destroy any original document so reproduced. The Company agrees and stipulates that, to the extent permitted by applicable law, any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by such Purchaser in the regular course of business) and any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence. This Section 19 shall not prohibit the Company or any other holder of Notes from contesting any such reproduction to the same extent that it could contest the original, or from introducing evidence to demonstrate the inaccuracy of any such reproduction.

## SECTION 20. CONFIDENTIAL INFORMATION.

For the purposes of this Section 20, "Confidential Information" means information delivered to any Purchaser by or on behalf of the Company or any Subsidiary in connection with the transactions contemplated by or otherwise pursuant to this Agreement that is proprietary in

nature and that was clearly marked or labeled or otherwise adequately identified when received by such Purchaser as being confidential information of the Company or such Subsidiary, provided that such term does not include information that (a) was publicly known or otherwise known to such Purchaser prior to the time of such disclosure, (b) subsequently becomes publicly known through no act or omission by such Purchaser or any Person acting on such Purchaser's behalf, (c) otherwise becomes known to such Purchaser other than through disclosure by the Company or any Subsidiary or (d) constitutes financial statements delivered to such Purchaser under Section 7.1 that are otherwise publicly available. Each Purchaser will maintain the confidentiality of such Confidential Information in accordance with procedures adopted by such Purchaser in good faith to protect confidential information of third parties delivered to such Purchaser, provided that such Purchaser may deliver or disclose Confidential Information to (i) such Purchaser's directors, trustees, officers, employees, agents, attorneys and affiliates (to the extent such disclosure reasonably relates to the administration of the investment represented by such Purchaser's Notes), (ii) such Purchaser's financial advisors and other professional advisors who agree to hold confidential the Confidential Information substantially in accordance with the terms of this Section 20, (iii) any other holder of any Note, (iv) any Institutional Investor to which such Purchaser sells or offers to sell such Note or any part thereof or any participation therein (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by the provisions of this Section 20), (v) any Person from which such Purchaser offers to purchase any security of the Company (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by the provisions of this Section 20), (vi) any federal or state regulatory authority having jurisdiction over such Purchaser, (vii) the National Association of Insurance Commissioners or any similar organization, or any nationally recognized rating agency that requires access to information about such Purchaser's investment portfolio, or (viii) any other Person to which such delivery or disclosure may be necessary or appropriate (w) to effect compliance with any law, rule, regulation or order applicable to such Purchaser, (x) in response to any subpoena or other legal process, (y) in connection with any litigation to which such Purchaser is a party or (z) if an Event of Default has occurred and is continuing, to the extent such Purchaser may reasonably determine such delivery and disclosure to be necessary or appropriate in the enforcement or for the protection of the rights and remedies under such Purchaser's Notes and this Agreement. Each holder of a Note, by its acceptance of a Note, will be deemed to have agreed to be bound by and to be entitled to the benefits of this Section 20 as though it were a party to this Agreement. On reasonable request by the Company in connection with the delivery to any holder of a Note of information required to be delivered to such holder under this Agreement or requested by such holder (other than a holder that is a party to this Agreement or its nominee), such holder will enter into an agreement with the Company embodying the provisions of this Section 20.

#### SECTION 21. SUBSTITUTION OF PURCHASER.

Each Purchaser shall have the right to substitute any one of such Purchaser's Affiliates as the purchaser of the Notes that such Purchaser has agreed to purchase hereunder, by written notice to the Company, which notice shall be signed by both such Purchaser and such Purchaser's Affiliate, shall contain such Affiliate's agreement to be bound by this Agreement and shall contain a confirmation by such Affiliate of the accuracy with respect to it of the representations

set forth in Section 6. Upon receipt of such notice, wherever the word "Purchaser" is used in this Agreement (other than in this Section 21), such word shall be deemed to refer to such Affiliate in lieu of such Purchaser. In the event that such Affiliate is so substituted as a purchaser hereunder and such Affiliate thereafter transfers to such Purchaser all of the Notes then held by such Affiliate, upon receipt by the Company of notice of such transfer, wherever the word "Purchaser" is used in this Agreement, such word shall no longer be deemed to refer to such Affiliate, but shall refer to such Purchaser, and such Purchaser shall have all the rights of an original holder of the Notes under this Agreement.

## SECTION 22. MISCELLANEOUS.

Section 22.1. Successors and Assigns. All covenants and other agreements contained in this Agreement by or on behalf of any of the parties hereto bind and inure to the benefit of their respective successors and assigns (including, without limitation, any subsequent holder of a Note) whether so expressed or not.

Section 22.2. Payments Due on Non-Business Days. Anything in this Agreement or the Notes to the contrary notwithstanding, any payment of principal of or Make-whole Amount or interest on any Note that is due on a date other than a Business Day shall be made on the next succeeding Business Day without including the additional days elapsed in the computation of the interest payable on such next succeeding Business Day.

Section 22.3. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall (to the full extent permitted by law) not invalidate or render unenforceable such provision in any other jurisdiction.

Section 22.4. Construction. Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

Section 22.5. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto.

Section 22.6. Governing Law. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of Illinois excluding choice-of-law principles of the law of such State that would require the application of the laws of a jurisdiction other than such State.

\* \* \* \* \*

The execution hereof by the Purchasers shall constitute a contract among the Company and the Purchasers for the uses and purposes hereinabove set forth. This Agreement may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one agreement.

Very truly yours,

OIL-DRI CORPORATION OF AMERICA

By  
Its

Accepted as of April 15, 1998

TEACHERS INSURANCE AND ANNUITY  
ASSOCIATION OF AMERICA

By

Its

-----

CONNECTICUT GENERAL LIFE  
INSURANCE COMPANY

By CIGNA Investments, Inc.

By \_\_\_\_\_  
Its \_\_\_\_\_

NAME AND ADDRESS  
OF PURCHASERS

PRINCIPAL AMOUNT OF  
NOTES TO BE PURCHASED

TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA  
730 Third Avenue  
New York, New York 10017-3263

\$14,000,000

Payments

All payments on account of the Notes shall be made in immediately available funds at the opening of business on the due date by electronic funds transfer through the Automated Clearing House System to:

Chase Manhattan Bank  
New York, New York  
ABA No. 021-000-021  
Account Number: 900-9-000200  
For Further Credit to the TIAA Account Number: G07040  
Reference: PPN: 677864 A@9; Oil-Dri Corporation of America;  
Maturity Date: April 15, 2013; Interest Rate: 6.55%  
per annum; P&I breakdown

Address for Notices Related to Payment

Contemporaneous with the above electronic funds transfer, mail or send by facsimile written confirmation of each such payment to be addressed as set forth below including the following information: (1) the full name, private placement number, interest rate, maturity date of the Notes; (2) the allocation of payment between principal, interest, Make-Whole Amount and any special payment; and (3) the name and address of the bank from which such electronic funds transfer was sent, to:



Teachers Insurance and Annuity Association of America  
 730 Third Avenue  
 New York, NY 10017  
 Attention: Securities Accounting Division  
 Telephone Number: (212) 916-4188  
 Facsimile Number: (212) 916-6955

Addresses for all other Notices:

Teachers Insurance and Annuity Association of America  
 730 Third Avenue  
 New York, New York 10017  
 Attention: Diane Hom, Securities Division, Private Placements  
 Telephone Number: (212) 916-6748 or (212) 490-9000 (general number)  
 Facsimile Number: (212) 916-6667

Name of Nominee in which Notes are to be issued: None

Taxpayer I.D. Number: 13-1624203

NAME AND ADDRESS OF PURCHASERS	PRINCIPAL AMOUNT OF NOTES TO BE PURCHASED
CONNECTICUT GENERAL LIFE INSURANCE COMPANY	\$5,000,000
c/o CIGNA Investments, Inc.	\$3,000,000
900 Cottage Grove Road	\$3,000,000
Hartford, Connecticut 06152-2307	
Attention: Private Securities	
Division - S-307	
Fax: 860-726-7203	

Payments

All payments on or in respect of the Notes to be by Federal Funds Wire Transfer to:

Chase NYC/CTR/  
 BNF=CIGNA Private Placements/AC=9009001802  
 ABA #021000021  
 OBI=Oil-Dri Corporation of America, Senior Notes, 6.55%, due April 15,  
 2013, PPN 677864 A@ 9 (as among principal, premium and interest of the  
 payment being made); contact name and phone.

## Address for Notices Related to Payments:

CIG & Co.  
c/o CIGNA Investments, Inc.  
Attention: Securities Processing S-309  
900 Cottage Grove Road  
Hartford, Connecticut 06152-2309

CIG & Co.  
c/o CIGNA Investments, Inc.  
Attention: Private Securities - S-307  
Operations Group  
900 Cottage Grove Road  
Hartford, Connecticut 06152-2307  
Fax: 860-726-7203

with a copy to:

Chase Manhattan Bank, N.A.  
Private Placement Servicing  
P. O. Box 1508  
Bowling Green Station  
New York, New York 10081  
Attention: CIGNA Private Placements  
Fax: 212-552-3107/1005

## Address for All Other Notices:

CIG & Co.  
c/o CIGNA Investments, Inc.  
Attention: Private Securities Division - S-307  
900 Cottage Grove Road  
Hartford, Connecticut 06152-2307  
Fax: 860-726-7203

Name of Nominee in which Notes are to be issued: CIG & Co.

Taxpayer I.D. Number for CIG & Co.: 13-3574027

Taxpayer I.D. Number for Connecticut General Life Insurance Company: 06-0303370

## DEFINED TERMS

As used herein, the following terms have the respective meanings set forth below or set forth in the Section hereof following such term:

"Affiliate" means any Person (other than a Restricted Subsidiary) (i) which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the Company, (ii) which beneficially owns or holds 10% or more of any class of the Voting Stock of the Company, (iii) 10% or more of the Voting Stock (or in the case of a Person which is not a corporation, 10% or more of the equity interest) of which is beneficially owned or held by the Company or a Subsidiary or (iv) any officer or director of such Person. As used in this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. Unless the context otherwise clearly requires, any reference to an "Affiliate" is a reference to an Affiliate of the Company.

"Business Day" means (a) for the purposes of Section 8.6 only, any day other than a Saturday, a Sunday or a day on which commercial banks in New York City are required or authorized to be closed, and (b) for the purposes of any other provision of this Agreement, any day other than a Saturday, a Sunday or a day on which commercial banks in the City of New York, New York or Chicago, Illinois are required or authorized to be closed.

"Capital Lease" means, at any time, a lease with respect to which the lessee is required concurrently to recognize the acquisition of an asset and the incurrence of a liability in accordance with GAAP.

"Capital Lease Obligation" means, with respect to any Person and a Capital Lease, the amount of the obligation of such Person as the lessee under such Capital Lease which would, in accordance with GAAP, appear as a liability on a balance sheet of such Person.

"Closing" is defined in Section 3.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

"Company" means Oil-Dri Corporation of America, a Delaware corporation.

"Confidential Information" is defined in Section 20.

"Consolidated Adjusted Net Worth" means, at any time, (a) Consolidated Net Worth, minus (b) the excess, if any, of (i) the aggregate amount of all outstanding Restricted Investments over (ii) 20% of Consolidated Net Worth.

"Consolidated Assets" means, at any time, the total assets of the Company and its Restricted Subsidiaries which would be shown as assets on a consolidated balance sheet of the Company and its Restricted Subsidiaries as of such time prepared in accordance with GAAP, after eliminating all amounts properly attributable to minority interests, if any, in the stock and surplus of Restricted Subsidiaries.

SCHEDULE 4.9  
(to Note Purchase Agreement)

"Consolidated Debt" means, as of any date of determination, the total of all Debt of the Company and its Restricted Subsidiaries outstanding on such date, after eliminating all offsetting debits and credits between the Company and its Restricted Subsidiaries and all other items required to be eliminated in the course of the preparation of consolidated financial statements of the Company and its Restricted Subsidiaries in accordance with GAAP.

"Consolidated Income Available for Fixed Charges" means, with respect to any period, Consolidated Net Income for such period plus all amounts deducted in the computation thereof on account of (a) Fixed Charges and (b) taxes imposed on or measured by income or excess profits.

"Consolidated Net Income" means, with reference to any period, the net income (or loss) of the Company and its Restricted Subsidiaries for such period (taken as a cumulative whole), as determined in accordance with GAAP, after eliminating all offsetting debits and credits between the Company and its Restricted Subsidiaries and all other items required to be eliminated in the course of the preparation of consolidated financial statements of the Company and its Restricted Subsidiaries in accordance with GAAP, provided that there shall be excluded:

(a) the income (or loss) of any Person accrued prior to the date it becomes a Restricted Subsidiary or is merged into or consolidated with the Company or a Restricted Subsidiary, and the income (or loss) of any Person, substantially all of the assets of which have been acquired in any manner, realized by such other Person prior to the date of acquisition,

(b) the income (or loss) of any Person (other than a Restricted Subsidiary) in which the Company or any Restricted Subsidiary has an ownership interest, except to the extent that any such income has been actually received by the Company or such Restricted Subsidiary in the form of cash dividends or similar cash distributions,

(c) the undistributed earnings of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such Subsidiary,

(d) any restoration to income of any contingency reserve (excluding a contingency reserve established in the ordinary course of business, such as reserves for uncollectable accounts), except to the extent that provision for such reserve was made out of income accrued during such period,

(e) any aggregate net gain (but not any aggregate net loss) during such period arising from the sale, conversion, exchange or other disposition of capital assets (such term to include, without limitation, (i) all non-current assets and, without duplication, (ii)

SCHEDULE 4.9  
(to Note Purchase Agreement)

the following, whether or not current: all fixed assets, whether tangible or intangible, all inventory sold in conjunction with the disposition of fixed assets, and all Securities),

(f) any gains resulting from any write-up of any assets (but not any loss resulting from any write-down of any assets),

(g) any net gain from the collection of the proceeds of life insurance policies,

(h) any gain arising from the acquisition of any Security, or the extinguishment, under GAAP, of any Debt, of the Company or any Subsidiary,

(i) any net income or gain (but not any net loss) during such period from (i) any change in accounting principles in accordance with GAAP, (ii) any prior period adjustments resulting from any change in accounting principles in accordance with GAAP, (iii) any extraordinary items, or (iv) any discontinued operations or the disposition thereof,

(j) any deferred credit representing the excess of equity in any Restricted Subsidiary at the date of acquisition over the cost of the investment in such Restricted Subsidiary,

(k) in the case of a successor to the Company by consolidation or merger or as a transferee of its assets, any earnings of the successor corporation prior to such consolidation, merger or transfer of assets, and

(l) any portion of such net income that cannot be freely converted into United States Dollars.

"Consolidated Net Worth" means, at any time,

(a) the sum of (i) the par value (or value stated on the books of the corporation) of the capital stock (but excluding treasury stock and capital stock subscribed and unissued) of the Company and its Restricted Subsidiaries plus (ii) the amount of the paid-in capital and retained earnings of the Company and its Restricted Subsidiaries, in each case as such amounts would be shown on a consolidated balance sheet of the Company and its Restricted Subsidiaries as of such time prepared in accordance with GAAP, minus

(b) to the extent included in clause (a), all amounts properly attributable to minority interests, if any, in the stock and surplus of Restricted Subsidiaries.

"Consolidated Revenues" means, for any period, the total revenues of the Company and its Restricted Subsidiaries determined in accordance with GAAP.

SCHEDULE 4.9  
(to Note Purchase Agreement)

"Consolidated Total Capitalization means, at any time, the sum of Consolidated Adjusted Net Worth and Consolidated Debt.

"Debt" means, with respect to any Person, without duplication,

(a) its liabilities for borrowed money;

(b) its liabilities for the deferred purchase price of property acquired by such Person (excluding accounts payable arising in the ordinary course of business but including, without limitation, all liabilities created or arising under any conditional sale or other title retention agreement with respect to any such property);

(c) its Capital Lease Obligations;

(d) all liabilities for borrowed money secured by any Lien with respect to any property owned by such Person (whether or not it has assumed or otherwise become liable for such liabilities); and

(e) any Guaranty of such Person with respect to liabilities of a type described in any of clauses (a) through (d) hereof.

Debt of any Person shall include all obligations of such Person of the character described in clauses (a) through (e) to the extent such Person remains legally liable in respect thereof notwithstanding that any such obligation is deemed to be extinguished under GAAP.

"Default" means an event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

"Default Rate" means 8.55% per annum.

"Environmental Laws" means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including but not limited to those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that is treated as a single employer together with the Company under Section 414 of the Code.

SCHEDULE 4.9  
(to Note Purchase Agreement)

"Event of Default" is defined in Section 11.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Fixed Charges" means, with respect to any period, the sum of (a) Interest Charges for such period and (b) Lease Rentals for such period.

"Fixed Charges Coverage Ratio" means, at any time, the ratio of (a) Consolidated Income Available for Fixed Charges for the period of four consecutive fiscal quarters ending on, or most recently ended prior to, such time to (b) Fixed Charges for such period of four consecutive fiscal quarters.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States of America.

"Governmental Authority" means

(a) the government of

(i) the United States of America or any State or other political subdivision thereof, or

(ii) any jurisdiction in which the Company or any Subsidiary conducts all or any part of its business, or which asserts jurisdiction over any properties of the Company or any Subsidiary, or

(b) any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government.

"Guaranty" means, with respect to any Person, any obligation (except the endorsement in the ordinary course of business of negotiable instruments for deposit or collection) of such Person guaranteeing or in effect guaranteeing any indebtedness, dividend or other obligation of any other Person in any manner, whether directly or indirectly, including (without limitation) obligations incurred through an agreement, contingent or otherwise, by such Person:

(a) to purchase such indebtedness or obligation or any property constituting security therefor;

(b) to advance or supply funds (i) for the purchase or payment of such indebtedness or obligation, or (ii) to maintain any working capital or other balance sheet condition or any income statement condition of any other Person or otherwise to advance or make available funds for the purchase or payment of such indebtedness or obligation;

SCHEDULE 4.9  
(to Note Purchase Agreement)

(c) to lease properties or to purchase properties or services primarily for the purpose of assuring the owner of such indebtedness or obligation of the ability of any other Person to make payment of the indebtedness or obligation; or

(d) otherwise to assure the owner of such indebtedness or obligation against loss in respect thereof.

In any computation of the indebtedness or other liabilities of the obligor under any Guaranty, the indebtedness or other obligations that are the subject of such Guaranty shall be assumed to be direct obligations of such obligor.

"Hazardous Material" means any and all pollutants, toxic or hazardous wastes or any other substances that might pose a hazard to health or safety, the removal of which may be required or the generation, manufacture, refining, production, processing, treatment, storage, handling, transportation, transfer, use, disposal, release, discharge, spillage, seepage, or filtration of which is or shall be restricted, prohibited or penalized by any applicable law (including, without limitation, asbestos, urea formaldehyde foam insulation and polychlorinated biphenyls).

"Holder" or "holder" means, with respect to any Note, the Person in whose name such Note is registered in the register maintained by the Company pursuant to Section 13.1.

"Indebtedness" with respect to any Person means, at any time, without duplication,

(a) its liabilities for borrowed money and its redemption obligations in respect of mandatorily redeemable Preferred Stock;

(b) its liabilities for the deferred purchase price of property acquired by such Person (excluding accounts payable arising in the ordinary course of business but including all liabilities created or arising under any conditional sale or other title retention agreement with respect to any such property);

(c) all liabilities appearing on its balance sheet in accordance with GAAP in respect of Capital Leases;

(d) all liabilities for borrowed money secured by any Lien with respect to any property owned by such Person (whether or not it has assumed or otherwise become liable for such liabilities);

(e) all its liabilities in respect of letters of credit or instruments serving a similar function issued or accepted for its account by banks and other financial institutions (whether or not representing obligations for borrowed money);

(f) Swaps of such Person; and

SCHEDULE 4.9  
(to Note Purchase Agreement)



(g) any Guaranty of such Person with respect to liabilities of a type described in any of clauses (a) through (f) hereof.

Indebtedness of any Person shall include all obligations of such Person of the character described in clauses (a) through (g) to the extent such Person remains legally liable in respect thereof notwithstanding that any such obligation is deemed to be extinguished under GAAP.

"Interest Charges" means, with respect to any period, the sum (without duplication) of the following (in each case, eliminating all offsetting debits and credits between the Company and its Restricted Subsidiaries and all other items required to be eliminated in the course of the preparation of consolidated financial statements of the Company and its Restricted Subsidiaries in accordance with GAAP): (a) all interest in respect of Debt of the Company and its Restricted Subsidiaries (including imputed interest on Capital Lease Obligations) deducted in determining Consolidated Net Income for such period, less interest income of the Company and its Restricted Subsidiaries included in Consolidated Net Income for such period and (b) all debt discount and expense amortized or required to be amortized in the determination of Consolidated Net Income for such period.

"Investment" means any investment, made in cash or by delivery of property, by the Company or any of its Restricted Subsidiaries (i) in any Person, whether by acquisition of stock, Debt or other obligation or Security, or by loan, Guaranty, advance, capital contribution or otherwise, or (ii) in any property.

"Institutional Investor" means (a) any original purchaser of a Note, (b) any holder of a Note holding more than 5% of the aggregate principal amount of the Notes then outstanding, and (c) any bank, trust company, savings and loan association or other financial institution, any pension plan, any investment company, any insurance company, any broker or dealer, or any other similar financial institution or entity, regardless of legal form.

"Lease Rentals" means, with respect to any period, the sum of the minimum amount of rental and other obligations required to be paid during such period by the Company or any Restricted Subsidiary as lessee under all leases of real or personal property (other than Capital Leases), excluding any amounts required to be paid by the lessee (whether or not therein designated as rental or additional rental) (a) which are on account of maintenance and repairs, insurance, taxes, assessments, water rates and similar charges, or (b) which are based on profits, revenues or sales realized by the lessee from the leased property or otherwise based on the performance of the lessee.

"Lien" means, with respect to any Person, any mortgage, lien, pledge, charge, security interest or other encumbrance, or any interest or title of any vendor, lessor, lender or other secured party to or of such Person under any conditional sale or other title retention agreement or Capital Lease, upon or with respect to any property or asset of such Person (including in the case of stock, stockholder agreements, voting trust agreements and all similar arrangements).

SCHEDULE 4.9  
(to Note Purchase Agreement)

"Make-Whole Amount" is defined in Section 8.6.

"Material" means material in relation to the business, operations, affairs, financial condition, assets, properties or prospects of the Company and its Restricted Subsidiaries taken as a whole.

"Material Adverse Effect" means a material adverse effect on (a) the business, operations, affairs, financial condition, assets or properties of the Company and its Restricted Subsidiaries taken as a whole, or (b) the ability of the Company to perform its obligations under this Agreement and the Notes, or (c) the validity or enforceability of this Agreement or the Notes.

"Memorandum" is defined in Section 5.3.

"Multiemployer Plan" means any Plan that is a "multiemployer plan" (as such term is defined in Section 4001(a)(3) of ERISA).

"Notes" is defined in Section 1.

"Officer's Certificate" means a certificate of a Senior Financial Officer or of any other officer of the Company whose responsibilities extend to the subject matter of such certificate.

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA or any successor thereto.

"Person" means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or a government or agency or political subdivision thereof.

"Plan" means an "employee benefit plan" (as defined in Section 3(3) of ERISA) that is or, within the preceding five years, has been established or maintained, or to which contributions are or, within the preceding five years, have been made or required to be made, by the Company or any ERISA Affiliate or with respect to which the Company or any ERISA Affiliate may have any liability.

"Preferred Stock" means any class of capital stock of a corporation that is preferred over any other class of capital stock of such corporation as to the payment of dividends or the payment of any amount upon liquidation or dissolution of such corporation.

"Priority Debt" means, without duplication, the sum of (a) all Debt of the Company secured by any Lien permitted under Section 10.5(k), and (b) all Debt of Restricted Subsidiaries (except Debt held by the Company or a Wholly-Owned Restricted Subsidiary).

SCHEDULE 4.9  
(to Note Purchase Agreement)

"property" or "properties" means, unless otherwise specifically limited, real or personal property of any kind, tangible or intangible, choate or inchoate.

"Purchasers" is defined in the introductory paragraph in this Agreement.

"QPAM Exemption" means Prohibited Transaction Class Exemption 84-14 issued by the United States Department of Labor.

"Required Holders" means, at any time, the holders of at least a majority in principal amount of the Notes at the time outstanding (exclusive of Notes then owned by the Company or any of its Affiliates or any Restricted Subsidiary).

"Responsible Officer" means any Senior Financial Officer and any other officer of the Company with responsibility for the administration of the relevant portion of this Agreement.

"Restricted Investments" means all Investments except the following:

(a) property to be used in the ordinary course of business of the Company and its Restricted Subsidiaries;

(b) current assets arising from the sale of goods and services in the ordinary course of business of the Company and its Restricted Subsidiaries;

(c) Investments in one or more Restricted Subsidiaries or any Person that concurrently with such Investment becomes a Restricted Subsidiary;

(d) Investments existing on the date of Closing and disclosed in Schedule 5.15;

(e) Investments in direct obligations of the United States of America or any agency or instrumentality of the United States of America, the payment or guarantee of which constitutes a full faith and credit obligation of the United States of America, in either case, maturing within three years from the date of acquisition thereof;

(f) Investments in tax-exempt obligations of any state of the United States of America, or any municipality of any such state, in each case rated "AA" or better by S&P, or "Aa2" or better by Moody's or an equivalent rating by any other credit rating agency of recognized national standing, provided that such obligations mature within 365 days from the date of acquisition thereof;

(g) Investments in certificates of deposit and bankers' acceptances maturing within one year from the date of issuance thereof, issued by a bank or trust company

SCHEDULE 4.9  
(to Note Purchase Agreement)

organized under the laws of the United States of America or any State thereof having capital, surplus and undivided profits aggregating at least \$200,000,000; provided that at the time of acquisition thereof by the Company or a Restricted Subsidiary, the senior unsecured long-term debt of such bank or trust company or of the holding company of such bank or trust company is rated "AA" or better by S&P or "Aa2" or better by Moody's or an equivalent rating by any other credit rating agency of recognized national standing;

(h) Investments in commercial paper of corporations organized under the laws of the United States of America or any state thereof maturing in 270 days or less from the date of issuance which, at the time of acquisition by the Company or any Restricted Subsidiary, is accorded a rating of "A-1" or better by S&P or "P-1" by Moody's or an equivalent rating by any other credit rating agency of recognized national standing;

(i) Investments in publicly traded shares of any open-ended mutual fund, the aggregate asset value of which "marked to market" is at least \$225,000,000, which is managed by a fund manager of recognized national standing, and which invests not less than 90% of its assets in obligations described in clauses (e) through (h) hereof; provided that any such Investments will be classified as current assets in accordance with GAAP; and

(j) treasury stock of the Company.

As of any date of determination, each Restricted Investment shall be valued at the greater of:

(x) the amount at which such Restricted Investment is shown on the books of the Company or any of its Restricted Subsidiaries (or zero if such Restricted Investment is not shown on any such books); and

(y) either

(i) in the case of any Guaranty of the obligation of any Person, the amount which the Company or any of its Restricted Subsidiaries has paid on account of such obligation less any recoupment by the Company or such Restricted Subsidiary of any such payments, or

(ii) in the case of any other Restricted Investment, the excess of (x) the greater of (A) the amount originally entered on the books of the Company or any of its Restricted Subsidiaries with respect thereto and (B) the cost thereof to the Company or its Restricted Subsidiary over (y) any return of capital (after income taxes applicable thereto) upon such Restricted Investment through the sale or other liquidation thereof or part thereof or otherwise.

SCHEDULE 4.9  
(to Note Purchase Agreement)

As used in this definition of "Restricted Investments": "Moody's" means Moody's Investors Service, Inc. and "S&P" means Standard & Poor's Ratings Group, a division of McGraw-Hill, Inc.

In valuing any Investments for the purpose of any determination of "Consolidated Net Worth", (i) at any time when an entity becomes a Restricted Subsidiary, all Investments of such entity at such time shall be deemed to have been made by such entity, as a Restricted Subsidiary, at such time and (ii) all Investments of the Company and its Restricted Subsidiaries in a Restricted Subsidiary which is redesignated as an Unrestricted Subsidiary pursuant to Section 7.4 of this Agreement shall be deemed to have been made immediately after such redesignation.

"Restricted Subsidiary" means any Subsidiary which is not an Unrestricted Subsidiary.

"Sale and Leaseback Transaction" means, with respect to a Person and property, a transaction or series of transactions pursuant to which such Person sells such property with the intent at the time of entering into such transaction or transactions of leasing such property for a term in excess of six months.

"Security" shall have the same meaning as in Section 2(a)(1) of the Securities Act.

"Securities Act" means the Securities Act of 1933, as amended from time to time.

"Senior Financial Officer" means the chief financial officer, principal accounting officer, treasurer or comptroller of the Company.

"Significant Subsidiary" means at any time any Subsidiary that would at such time constitute a "significant subsidiary" (as such term is defined in Regulation S-X of the Securities and Exchange Commission as in effect on the date of the Closing) of the Company.

"Subsidiary" means, as to any Person, any corporation, association or other business entity in which such Person or one or more of its Subsidiaries or such Person and one or more of its Subsidiaries owns sufficient equity or voting interests to enable it or them (as a group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such entity, and any partnership or joint venture if more than a 50% interest in the profits or capital thereof is owned by such Person or one or more of its Subsidiaries or such Person and one or more of its Subsidiaries (unless such partnership can and does ordinarily take major business actions without the prior approval of such Person or one or more of its Subsidiaries). Unless the context otherwise clearly requires, any reference to a "Subsidiary" is a reference to a Subsidiary of the Company.

"Swaps" means, with respect to any Person, payment obligations with respect to interest rate swaps, currency swaps and similar obligations obligating such Person to make payments, whether periodically or upon the happening of a contingency. For the purposes of this

SCHEDULE 4.9  
(to Note Purchase Agreement)

Agreement, the amount of the obligation under any Swap shall be the amount determined in respect thereof as of the end of the then most recently ended fiscal quarter of such Person, based on the assumption that such Swap had terminated at the end of such fiscal quarter, and in making such determination, if any agreement relating to such Swap provides for the netting of amounts payable by and to such Person thereunder or if any such agreement provides for the simultaneous payment of amounts by and to such Person, then in each such case, the amount of such obligation shall be the net amount so determined.

"Unrestricted Subsidiary" shall mean a Subsidiary designated as such by the Company in the most recent notice (or, prior to any such notice, on Schedule 5.4) with respect to such Subsidiary given by the Company pursuant to and in accordance with the provisions of Section 7.4.

"Voting Stock" shall mean Securities of any class or classes, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the corporate directors (or Persons performing similar functions).

"Wholly-Owned Restricted Subsidiary" means, at any time, any Restricted Subsidiary one hundred percent (100%) of all of the equity interests (except directors' qualifying shares) and voting interests of which are owned by any one or more of the Company and the Company's other Wholly-Owned Restricted Subsidiaries at such time.

#### CHANGES IN CORPORATE STRUCTURE

None

#### DISCLOSURE MATERIALS

None

#### SUBSIDIARIES OF THE COMPANY AND OWNERSHIP OF SUBSIDIARY STOCK

##### SECTION 5.4(a)(i) -- SUBSIDIARIES

See attached schedule of the Company's subsidiaries including location and state of incorporation. All subsidiaries are 100% directly or indirectly owned by the Company. All subsidiaries of the Company are designated as Restricted Subsidiaries.

##### SECTION 5.4(a)(ii) -- AFFILIATES

The Company owns an 18% interest in Kamterter II, L.L.C., a Nebraska Limited Liability Company which was formed in January 1998 for the purpose of acquiring, creating, developing, owning and commercializing certain patent rights and technical know-how in the seed priming and enhancement business. The Company's Investment in Kamterter II, L.L.C. is \$182,479.

#### SCHEDULE 4.9 (to Note Purchase Agreement)

## SECTION 5.4(a)(iii) -- DIRECTORS AND SENIOR OFFICERS

The Company's directors and senior officers effective as April 20, 1998 are as follows:

## DIRECTORS

Richard M. Jaffee, Chairman  
Daniel S. Jaffee, President and Chief Executive Officer  
Robert D. Jaffee, Retired Chairman, Amco Corporation  
J. Steven Cole, President, Cole & Associates, Chairman, Sav-A-Life Systems, Inc.  
Arnold W. Donald, Senior Vice President, Monsanto Company  
Ronald B. Gordon, Chief Executive Officer, Beiersdorf North America, Inc.  
Edgar J. Jannotta, Senior Director, William Blair & Company, L.L.C.  
Joseph C. Miller, Vice Chairman  
Haydn H. Murray, Professor Emeritus of Geology, Indiana University  
Allan H. Selig, President, Milwaukee Brewers Baseball Club, Inc.,  
President and Chairman, Selig Executive Leasing, Inc.

## SENIOR OFFICERS

Richard M. Jaffee, Chairman  
Daniel S. Jaffee, President and Chief Executive Officer  
Joseph Miller, Vice Chairman  
Michael L. Goldberg, Executive Vice President and Chief Financial Officer  
Richard V. Hardin, Group Vice President, Technology  
Norman B. Gershon, Vice President, International Operations  
Thomas Cofsky, Vice President, Logistics, Quality & Service  
William O. Thompson, Vice President, Manufacturing  
Steven M. Levy, Vice President and General Manager, Consumer Products Division  
Louis T. Bland, Jr. Vice President, Human Resources and Corporate Secretary  
Brian P. Curtis, General Counsel and Assistant Secretary

(Organization Chart Showing Oil-Dri Corporation's Legal Entity Structure)

## FINANCIAL STATEMENTS

SCHEDULE 5.3  
(to Note Purchase Agreement)

- A. Oil-Dri Corporation of America SEC Form 10-Q for the fiscal quarter ended January 31, 1998.
- B. Oil-Dri Corporation of America Annual Report to Shareholders for the fiscal years ended July 31, 1993 through 1997.
- C. Oil-Dri Corporation of America SEC Form 10-K for the fiscal year ended July 31, 1997.
- D. Oil-Dri Corporation of America proxy statement dated November 3, 1997.

SCHEDULE 5.3  
(to Note Purchase Agreement)



## CERTAIN LITIGATION

None  
PATENTS, ETC.

None  
USE OF PROCEEDS

The Company intends to use the proceeds of the Notes for the following:

\*Acquire the Fuller's Earth business from American Colloid Company, a subsidiary of AMCOL International Corporation on April 20, 1998 (\$15 million),

Repay interim borrowing from Harris Trust and Savings Bank used to complete the Robert D. Jaffee Class B share repurchase on April 1, 1998 (\$3.5 million),

Capital improvements and other general corporate purposes

- - - - -

\* Proceeds will first be applied to this purpose.

## EXISTING INDEBTEDNESS, INVESTMENTS AND LIENS

SCHEDULE 5.14  
(to Note Purchase Agreement)

## NOTES PAYABLE AS OF JANUARY 31, 1998

TOWN OF BLUE MOUNTAIN, MISSISSIPPI		
Industrial Revenue Bonds, Series 1988 Due 10/1/08		\$ 2,500,000
TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA		
\$8,000,000 9.38% Senior Notes Due 11/15/01		\$ 3,300,000
TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA		
\$6,500,000 7.17% Senior Notes Due 8/15/04		\$ 6,500,000
HARRIS TRUST AND SAVINGS BANK		
\$5,000,000 7.78% Term Loan Due 6/20/03		\$ 4,500,000
STARR HILL AND DOROTHY HILL		
\$360,000 Promissory Note Due 4/17/00		\$ 120,000
RICHARD L. AND PATRICIA BAILEY		
\$360,000 Promissory Note Due 4/17/00		\$ 120,000
OTHER		\$ 106,571
		-----
TOTAL		\$17,146,571
		=====

Note: On April 1, 1998, the Company drew \$3,500,000 against its line of credit agreement with Harris Trust and Savings Bank.

## REQUIRED PREPAYMENTS

REQUIRED PREPAYMENT DATE	PRINCIPAL AMOUNT OF NOTES TO BE PREPAID
April 15, 2003	\$1,500,000
April 15, 2004	\$1,500,000
April 15, 2005	\$1,500,000
April 15, 2006	\$3,000,000
April 15, 2007	\$4,000,000
April 15, 2008	\$4,000,000
April 15, 2009	\$1,500,000
April 15, 2010	\$3,000,000
April 15, 2011	\$2,000,000
April 15, 2012	\$1,500,000

## [FORM OF NOTE]

OIL-DRI CORPORATION OF AMERICA

6.55% SENIOR NOTE DUE April 15, 2013

No. [\_\_\_\_\_]
  
\$[\_\_\_\_\_][Date]
  
PPN 677864 A@9

FOR VALUE RECEIVED, the undersigned, OIL-DRI CORPORATION OF AMERICA (herein called the "Company"), a corporation organized and existing under the laws of the State of Delaware, hereby promises to pay to [\_\_\_\_\_] or registered assigns, the principal sum of [\_\_\_\_\_] DOLLARS on April 15, 2013 with interest (computed on the basis of a 360-day year of twelve 30-day months) (a) on the unpaid balance thereof at the rate of 6.55% per annum from the date hereof, payable semiannually, on the 15th day of each April and October in each year, commencing with the April or October next succeeding the date hereof, until the principal hereof shall have become due and payable, and (b) to the extent permitted by law on any overdue payment (including any overdue prepayment) of principal, any overdue payment of interest and any overdue payment of any Make-Whole Amount (as defined in the Note Purchase Agreement referred to below), payable semiannually as aforesaid (or, at the option of the registered holder hereof, on demand), at the rate of 8.55% per annum.

Payments of principal of, interest on and any Make-Whole Amount with respect to this Note are to be made in lawful money of the United States of America at the principal office of the Company in Chicago, Illinois or at such other place as the Company shall have designated by written notice to the holder of this Note as provided in the Note Purchase Agreement referred to below.

This Note is one of a series of Senior Notes (herein called the "Notes") issued pursuant to the Note Purchase Agreement, dated as of April 15, 1998 (as from time to time amended, the "Note Purchase Agreement"), between the Company and the respective Purchasers named therein and is entitled to the benefits thereof. Each holder of this Note will be deemed, by its acceptance hereof, (i) to have agreed to the confidentiality provisions set forth in Section 20 of the Note Purchase Agreement and (ii) to have made the representation set forth in Section 6.2 of the Note Purchase Agreement.

This Note is a registered Note and, as provided in the Note Purchase Agreement, upon surrender of this Note for registration of transfer, duly endorsed, or accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder's attorney duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Company may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Company will not be affected by any notice to the contrary.

EXHIBIT 4.4(b)  
(to Note Purchase Agreement)

The Company will make required prepayments of principal on the dates and in the amounts specified in the Note Purchase Agreement. This Note is also subject to optional prepayment, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement. This Note is not otherwise subject to prepayment.

If an Event of Default, as defined in the Note Purchase Agreement, occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price (including any applicable Make-Whole Amount) and with the effect provided in the Note Purchase Agreement.

This Note shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of Illinois excluding choice-of-law principles of the law of such State that would require the application of the laws of a jurisdiction other than such State.

OIL-DRI CORPORATION OF AMERICA

By  
Its

FORM OF OPINION OF SPECIAL COUNSEL  
TO THE COMPANY

Matters to Be Covered in  
Opinion of Special Counsel to the Company

1. Each of the Company and its Subsidiaries (other than Subsidiaries incorporated outside the United States of America) being duly incorporated, validly existing and in good standing in its respective jurisdiction of incorporation and in the case of the Company having requisite corporate power and authority to issue and sell the Notes and to execute and deliver the documents.

2. Each of the Company and its Significant Subsidiaries being duly qualified and in good standing as a foreign corporation in appropriate jurisdictions except where the failure to so qualify to be in good standing could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

3. Due authorization and execution of the documents and such documents being legal, valid, binding and enforceable.

4. No conflicts with charter documents, laws, orders or other agreements.

5. All consents required to issue and sell the Notes and to execute and deliver the documents having been obtained.

6. No litigation questioning validity of documents.

7. The Notes not requiring registration under the Securities Act of 1933, as amended; no need to qualify an indenture under the Trust Indenture Act of 1939, as amended.

8. No violation of Regulations T, U or X of the Federal Reserve Board.

9. Company not an "investment company", or a company "controlled" by an "investment company", under the Investment Company Act of 1940, as amended.

EXHIBIT 4.4(b)  
(to Note Purchase Agreement)

FORM OF OPINION OF SPECIAL COUNSEL  
TO THE PURCHASERS

Matters to Be Covered in  
Opinion of Special Counsel to the Purchasers

1. The Company being duly incorporated, validly existing and in good standing and having requisite corporate power and authority to issue and sell the Notes and to execute and deliver the documents.
2. Due authorization and execution of the documents and such documents being legal, valid, binding and enforceable.
3. The Notes not requiring registration under the Securities Act of 1933, as amended; no need to qualify an indenture under the Trust Indenture Act of 1939, as amended.

EXHIBIT 4.4(b)  
(to Note Purchase Agreement)

OIL-DRI CORPORATION OF AMERICA AND SUBSIDIARIES  
 Computation of Earnings Per Share  
 (in thousands of dollars except for per share amounts)

	(in thousands, except per share amounts)			
	Three Months Ended April 30		Nine Months Ended April 30	
	1998	1997	1998	1997
Net (loss) income available to Stockholders (numerator)	\$ 1,389 =====	\$ 1,164 =====	\$ 3,165 =====	\$ 5,358 =====
Shares Calculation (denominator):				
Average shares outstanding - basic	6,052,808	6,546,899	6,196,851	6,641,655
Effect of Dilutive Securities:				
Potential Common Stock relating to stock options	17,474 -----	35,475 -----	34,775 -----	2,773 -----
Average shares outstanding- assuming dilution	6,070,282 =====	6,582,374 =====	6,231,626 =====	6,644,428 =====
Earnings per share-basic	\$ 0.23 =====	\$ 0.18 =====	\$ 0.51 =====	\$ 0.81 =====
Earnings per share-assuming dilution	\$ 0.23 =====	\$ 0.18 =====	\$ 0.51 =====	\$ 0.81 =====

9-MOS

JUL-31-1998  
APR-30-1998  
9,962,000  
1,161,000  
22,739,000  
(414,000)  
12,150,000  
52,190,000  
11,736,000  
61,669,000  
130,998,000  
13,461,000  
41,972,000  
0  
0  
724,000  
70,130,000  
130,998,000  
118,995,000  
118,995,000  
81,615,000  
81,615,000  
31,437,000  
264,000  
1,253,000  
4,426,000  
1,261,000  
3,165,000  
0  
0  
0  
3,165,000  
0.51  
0.51