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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**  
**Pursuant to Section 13 or 15(d) of the**  
**Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): December 7, 2006 (November 13, 2006)

**The Scotts Miracle-Gro Company**

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(Exact name of registrant as specified in its charter)

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Ohio  
(State or other jurisdiction  
of incorporation)

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1-13292  
(Commission File Number)

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31-1414921  
(IRS Employer  
Identification No.)

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14111 Scottslawn Road, Marysville, Ohio 43041  
(Address of principal executive offices) (Zip Code)

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(937) 644-0011  
(Registrant's telephone number, including area code)

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Not applicable  
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 5.02 — Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

**Employment Agreement for Christopher Nagel**

On November 13, 2006, The Scotts Miracle-Gro Company (the “Registrant”) entered into an employment agreement with Christopher Nagel, effective as of October 1, 2006 (the “Nagel Agreement”). Mr. Nagel serves as Executive Vice President — North America Consumer Business of the Registrant. The Nagel Agreement has an initial term of three years commencing as of October 1, 2006, which will be extended for one additional year at the end of the initial three-year term and then again after each successive year thereafter unless either party delivers to the other written notice of intent not to renew at least 60 days prior to the end of the initial term or successive term, as appropriate. If, however, at any time during the initial term of the Nagel Agreement or a successive term, a change in control (as defined in the Nagel Agreement) of the Registrant occurs, then the Nagel Agreement will become immediately irrevocable for two years beyond the month in which the effective date of the change in control occurs.

Under the Nagel Agreement, Mr. Nagel will (a) be paid a base annual salary of \$450,000, which will be reviewed at least annually by the Compensation and Organization Committee of the Registrant’s Board of Directors (the “Committee”); (b) participate in The Scotts Company LLC Executive/Management Incentive Plan (the “Incentive Plan”) or any other annual incentive compensation plan in effect for executives, with the amount of the annual incentive compensation award (i.e., bonus) to be based upon performance targets and award levels determined by the Committee; (c) be eligible to receive grants of long-term incentive awards under The Scotts Miracle-Gro Company 2006 Long-Term Incentive Plan (the “2006 Plan”) or any other long-term incentive plan in effect for executives, for services rendered during the applicable performance period based upon performance targets and award levels determined by the Committee; (d) be provided with all retirement benefits and employee benefits which other executives and employees of the Registrant are entitled to receive, subject to applicable eligibility requirements; and (e) receive an annual automobile allowance of \$12,000 and an allowance of \$4,000 for personal financial planning services.

If Mr. Nagel voluntarily terminates his employment other than for “good reason” (as defined in the Nagel Agreement), or is terminated by the Registrant for “cause” (as defined in the Nagel Agreement), he will (a) receive payment of his accrued and unpaid base salary and accrued but unused vacation pay through the date of termination, and (b) be entitled to all benefits as to which he has a vested right at the time of termination.

If Mr. Nagel terminates his employment for good reason, or is discharged by the Registrant for any reason other than death, disability or for cause, in each case unrelated to a change in control of the Registrant, Mr. Nagel will receive (a) a lump sum payment of (i) an amount equal to his accrued and unpaid base salary and accrued but unused vacation pay through the date of termination *plus* (ii) an amount equal to one times his target annual incentive compensation opportunity as in effect on the date of termination; (b) an amount equal to two times his annual base salary at the rate in effect on the date of termination, to be paid in equal monthly installments over a 24-month period; (c) continuation, at the same cost to Mr. Nagel, of health

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insurance coverage for Mr. Nagel and his eligible dependents at the same level as in effect as of the date of termination, for a period of 12 months; and (d) all other benefits as to which he has a vested right under the terms of the governing plans and programs.

Upon termination of Mr. Nagel's employment due to his death or disability, Mr. Nagel, or his estate or designated beneficiary in the event of his death, will be paid in a single lump sum an amount equal to (a) his base salary through the date of termination *plus* (b) the amount of the target annual incentive compensation opportunity he would have earned for the fiscal year in which termination occurs pro-rated to the date of termination *plus* (c) accrued but unused vacation pay through the date of termination. He will also receive all other benefits as to which he has a vested right under the terms of the applicable plans and programs.

If within two years following the change in control of the Registrant, the Registrant terminates Mr. Nagel's employment for any reason other than death, disability, retirement or cause or Mr. Nagel terminates his employment for good reason, Mr. Nagel will be paid or receive (a) a lump sum payment equal to (i) an amount equal to his accrued and unpaid base salary and accrued but unused vacation pay through the date of termination *plus* (ii) an amount equal to two times the sum of his annual base salary and target annual incentive compensation opportunity as in effect on the date of termination *plus* (iii) the amount of the target annual incentive compensation opportunity he would have earned for the fiscal year in which termination occurs pro-rated to the date of termination; (b) continuation, at the same cost to Mr. Nagel, of health insurance coverage for Mr. Nagel and his eligible dependents at the same level as in effect as of the date of termination, for a period of 24 months; and (c) all other benefits as to which he has a vested right under the terms of the governing plans and programs.

The foregoing is a brief description of the terms of the Nagel Agreement and is qualified in its entirety by reference to the Nagel Agreement. A copy of the Nagel Agreement is filed with this Current Report on Form 8-K as Exhibit 10.1 and should be reviewed for further information.

### **Restricted Stock Award to Christopher Nagel**

On October 1, 2006, Mr. Nagel was awarded 38,000 restricted common shares of the Registrant under the 2006 Plan. The terms and conditions of the award agreement evidencing this award (the "Restricted Stock Award Agreement") were finalized in connection with the finalization of the Nagel Agreement and provided that the restricted common shares would be forfeited if a signed copy of the Restricted Stock Award Agreement were not returned to the address specified therein on or before November 30, 2006. The Restricted Stock Award Agreement was signed on behalf of the Registrant on October 30, 2006 and by Mr. Nagel on November 9, 2006 and received at the specified address on behalf of the Registrant on November 13, 2006.

Under the terms of the Restricted Stock Award Agreement, 19,000 of the restricted common shares will vest if Mr. Nagel is actively employed by the Registrant or any of its affiliates or subsidiaries on that date and the remaining 19,000 restricted common shares will vest on October 1, 2009 if he is actively employed by the Registrant or any of its affiliates or subsidiaries on that date. Generally, the unvested portion of the restricted common shares will be forfeited if Mr. Nagel terminates employment prior to

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October 1, 2009. The restricted common shares will be held in escrow until they are settled or forfeited; however, Mr. Nagel may exercise any voting rights associated with the restricted common shares while they are held in escrow. Mr. Nagel will also be entitled to receive any dividends paid on the restricted common shares, although these dividends will be held in escrow until the associated restricted common shares are settled or forfeited, and distributed or forfeited as appropriate.

If Mr. Nagel voluntarily terminates his employment, other than for good reason as described in the Nagel Agreement, or is terminated by the Registrant for cause as described in the Nagel Agreement: (a) the unvested portion of his restricted common shares will be forfeited; (b) Mr. Nagel must pay to the Registrant cash equal to the product of the fair market value of a common share of the Registrant on October 1, 2007 multiplied by 19,000; and (c) Mr. Nagel must pay to the Registrant an amount of cash equal to the value of all dividends paid on the restricted common shares from October 1, 2006 to the date of termination.

If the Registrant terminates Mr. Nagel's employment without cause, other than for death or disability: (a) the unvested portion of his restricted common shares will be forfeited; and (b) subject to the vote and approval of the full Board of Directors of the Registrant, Mr. Nagel must pay to the Registrant cash equal to the product of the fair market value of a common share of the Registrant on October 1, 2007 multiplied by 19,000, as well as an amount of cash equal to the value of all dividends paid on the restricted common shares from October 1, 2006 to the date of termination.

Mr. Nagel will also forfeit any outstanding restricted common shares and must return all common shares and dividends received in respect of the restricted common shares awarded if he engages in specified prohibited conduct within 180 days before and 730 days after terminating employment.

The foregoing is a brief description of the Restricted Stock Award Agreement and is qualified in its entirety by reference to the Restricted Stock Award Agreement. A copy of the Restricted Stock Award Agreement is filed with this Current Report on Form 8-K as Exhibit 10.2 and should be reviewed for further information.

### **Separation Agreement with Robert F. Bernstock**

On December 1, 2006, The Scotts Company LLC, a subsidiary of the Registrant ("Scotts LLC"), entered into a Separation Agreement and Release of All Claims (the "Separation Agreement") with Robert F. Bernstock ("Mr. Bernstock"), formerly President of the Registrant and President and Chief Operating Officer of Scotts LLC. Mr. Bernstock left the organization effective September 12, 2006.

Under the Separation Agreement, Scotts LLC will pay or make the following amounts and benefits available to Mr. Bernstock on or after December 11, 2006 (except as noted below): (a) a lump sum cash payment of \$2,178,000, representing two times the sum of Mr. Bernstock's annual base salary and the target cash incentive opportunity (i.e., bonus) under the Incentive Plan for the fiscal year ended September 30, 2006 (the "2006 fiscal year"); (b) a lump sum cash payment equal to the amount Mr. Bernstock would have received under the Incentive Plan for the 2006 fiscal year had his employment not terminated; (c) all of Mr. Bernstock's unvested equity grants, including

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nonqualified stock options covering 99,800 of the Registrant's common shares, stock appreciation rights covering 150,000 of the Registrant's common shares and 56,400 restricted common shares of the Registrant together with approximately \$35,250 representing dividends associated with those restricted common shares, will be fully vested and Mr. Bernstock may exercise any options or stock appreciation rights covering the Registrant's common shares that he holds until the earlier of December 11, 2006 or the normal expiration date associated with the equity grant; (d) all amounts Mr. Bernstock is entitled to receive under any tax-qualified or nonqualified deferred compensation plan in which he participated (these amounts will be paid no earlier than March 12, 2007); (e) for 24 months after his termination, Mr. Bernstock may participate in the Scotts LLC medical programs if he pays the associated premium cost equal to, for the first 18 months of coverage, the rate prescribed under the benefit continuation provisions of the Consolidated Omnibus Reconciliation Act ("COBRA") and, for the last six months of coverage, 150% of the regular COBRA rate; (f) a lump sum cash payment of \$19,312.13, to partially reimburse Mr. Bernstock for the cost of the continued medical coverage just described; (g) until September 12, 2011, Scotts LLC will include Mr. Bernstock under its Directors and Officers Liability Insurance at a level at least as favorable as the level in effect when he terminated; and (h) Mr. Bernstock may continue to use Scotts LLC's membership at Tartan Fields (a country club located in Dublin, Ohio) through December 31, 2006 on the condition that he has paid (or pays) all dues and fees associated with that usage (and Scotts LLC will reimburse Mr. Bernstock for any dues he has paid for any period after December 31, 2006). Also, on November 7, 2006, Scotts LLC released restrictions on (and Mr. Bernstock accepted) 5,000 shares of the Registrant's common shares in full satisfaction of the performance share award agreement between Scotts LLC and Mr. Bernstock dated December 9, 2005. In addition, Scotts LLC has released (on its own behalf and on behalf of its affiliated entities) all claims they may have against Mr. Bernstock. To the extent required, all amounts paid to Mr. Bernstock will be net of all applicable withholdings and deductions required by federal, state and local taxing authorities.

In exchange for the payments and benefits just described, (a) Mr. Bernstock (on his own behalf and on behalf of his spouse, personal representatives, administrators, minor children, heirs, assigns, wards, agents and any others claiming by or through him) has agreed to release all claims against Scotts LLC (and all related entities), including any related to his employment with Scotts LLC and the termination thereof (b) Mr. Bernstock has agreed to cooperate with Scotts LLC in its defense of any lawsuit relating to matters that occurred during Mr. Bernstock's tenure (subject to payment by Scotts LLC of \$300 for each hour devoted to these matters but no more than \$1,500 per day plus his associated expenses) and (c) Mr. Bernstock has agreed to hold Scotts LLC harmless from any liability it might incur under Section 409A of the Internal Revenue Code of 1986, as amended, in connection with any payments made under the Separation Agreement.

Scotts LLC and Mr. Bernstock have agreed not to make any statement to a third party that the statement maker could reasonably foresee would cause harm to

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the other. In addition, Mr. Bernstock has agreed to return all Scotts LLC's property and acknowledged that he remains subject to the confidentiality, nondisclosure, noncompetition and nonsolicitation obligations specified under prior agreements between him and Scotts LLC.

The foregoing is a brief description of the terms of the Separation Agreement and is qualified in its entirety by reference to the Separation Agreement. The Separation Agreement is filed with this Current Report on Form 8-K as Exhibit 10.3 and should be reviewed for additional information.

**Item 9.01. Financial Statements and Exhibits.**

(a) Financial statements of businesses acquired:

Not applicable.

(b) Pro forma financial information:

Not applicable.

(c) Shell company transactions:

Not applicable.

(d) Exhibits:

<u>Exhibit No.</u>	<u>Description</u>
10.1	Employment Agreement for Christopher Nagel, entered into effective as of October 1, 2006, by and between Christopher Nagel and The Scotts Miracle-Gro Company
10.2	The Scotts Miracle-Gro Company 2006 Long-Term Incentive Plan Award Agreement for Employees, evidencing Restricted Stock Award of 38,000 Restricted Common Shares Awarded to Christopher Nagel on October 1, 2006 by The Scotts Miracle-Gro Company
10.3	Separation Agreement and Release of All Claims, dated December 1, 2006, between The Scotts Company LLC and Robert F. Bernstock

SIGNATURE

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 hereunto duly authorized.

THE SCOTTS MIRACLE-GRO COMPANY

Dated: December 7, 2006

By: /s/ David M. Aronowitz

Printed Name: David M. Aronowitz  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

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Current Report on Form 8-K  
Dated December 7, 2006

The Scotts Miracle-Gro Company

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**Employment Agreement for  
Christopher Nagel**

The Scotts Miracle-Gro Company

October 1, 2006

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**The Scotts Miracle-Gro Company  
Employment Agreement for Christopher Nagel**

This EMPLOYMENT AGREEMENT is made, entered into, and is effective as of this first day of October 2006 (herein referred to as the "Effective Date"), by and between The Scotts Miracle-Gro Company ("Company"), an Ohio corporation and Christopher Nagel ("Executive").

WHEREAS, the Company and the Executive intend that the Executive shall serve the Company as Executive Vice President—North America Consumer Business.

WHEREAS, the Executive possesses considerable experience and an intimate knowledge of the business, and, as such, the Executive has demonstrated unique qualifications to act in an executive capacity for the Company.

WHEREAS, the Company is desirous of assuring the employment of the Executive in the above stated capacity, and the Executive is desirous of such assurance.

WHEREAS, the Company and Executive desire to enter into an agreement embodying the terms of such employment.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements of the parties set forth in this Agreement, and of other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

**Article 1. Term of Employment**

The Company hereby agrees to employ the Executive and the Executive agrees to serve the Company, in accordance with the terms and conditions set forth herein, for an initial period of three (3) years commencing as of the Effective Date; subject, however, to earlier termination as expressly provided herein.

The initial three (3) year period of employment shall be extended for one (1) additional year at the end of the initial three (3) year term and then again after each successive year thereafter. However, either party may terminate this Agreement at the end of the initial three (3) year period, or at the end of any successive one (1) year term thereafter, by giving the other party written notice of intent not to renew delivered at least sixty (60) days prior to the end of such initial period or successive term.

In the event such notice of intent not to renew is properly delivered, this Agreement automatically shall expire at the end of the initial period or successive term then in progress.

Notwithstanding the foregoing, if at any time during the initial term of the Agreement, or successive term, a Change in Control of the Company occurs, then this Agreement shall become immediately irrevocable for two (2) years beyond the month in which the effective date of such Change in Control occurs.

## Article 2. Definitions

- 2.1 **“Agreement”** means this Employment Agreement for Christopher Nagel.
- 2.2 **“Annual Bonus Award”** means the annual bonus to be paid to the Executive in accordance with the Company’s annual bonus program as described in Section 5.2 herein.
- 2.3 **“Award Period”** means the performance period applicable to Long-Term Incentive Awards granted under the Company’s long-term incentive plan.
- 2.4 **“Base Salary”** means the salary of record paid to the Executive as annual salary, pursuant to Section 5.1, excluding amounts received under incentive or other bonus plans, whether or not deferred.
- 2.5 **“Beneficiary”** means the individuals or entities designated or deemed designated by the Executive pursuant to Section 11.6 herein.
- 2.6 **“Board”** or **“Board of Directors”** means the Board of Directors of the Company.
- 2.7 **“Cause”** means the Executive’s:
- (a) Continued failure to substantially perform his duties with the Company, after a written demand for substantial performance is delivered to the Executive that specifically identifies the manner in which the Company believes that the Executive has failed to substantially perform his duties, and after the Executive has failed to resume substantial performance of his duties on a continuous basis within thirty (30) calendar days of receiving such demand; or
  - (b) Conviction of a felony; or
  - (c) Engagement in illegal conduct, an act of dishonesty, or other similar conduct, that in the Committee’s sole discretion, which shall be exercised in good faith, is injurious to the Company; or
  - (d) Material breach of any provision of this Agreement; provided, however, that the Executive’s willful and material breach of Article 4 shall not constitute “Cause” unless the Executive has first been provided with written notice detailing such breach and a thirty (30) day period to cure such breach; or
  - (e) Breach of the Company’s code of business conduct or ethics as determined in good faith by the Committee; or
  - (f) A violation of the Company’s insider-trading policies; or
  - (g) Material breach of his fiduciary duties to the Company.

For purposes of determining Cause, no act or omission by the Executive shall be considered “willful” unless it is done or omitted in bad faith or without reasonable belief that the Executive’s action or omission was in the best interests of the Company. Any act or failure to act based upon: (a) authority given pursuant to a resolution duly adopted by the Board; or (b) advice of counsel for the Company, shall be conclusively presumed to be done or omitted to be done by the Executive in good faith and in the best interests of the Company.

**2.8 “Change in Control”** means the occurrence of any of the following events after the Effective Date of this Agreement:

- (a) Any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) other than the Company, subsidiaries of the Company, an employee benefit plan sponsored by the Company, or Hagedorn Partnership, L.P. or its successor or any party related to Hagedorn Partnership, L.P. (as determined by the Board of Directors) is or becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of more than thirty percent (30%) of the combined voting stock of the Company;
- (b) The shareholders of the Company adopt or approve a definitive agreement or series of related agreements for the merger or other business consolidation with another person and, immediately after giving effect to the merger or consolidation, (i) less than fifty percent (50%) of the total voting power of the outstanding voting stock of the surviving or resulting person is then “beneficially owned” (within the meaning of Rule 13d-3 under the Exchange Act) in the aggregate by (x) the stockholders of the Company immediately prior to such merger or consolidation, or (y) if a record date has been set to determine the stockholders of the Company entitled to vote with respect to such merger or consolidation, the stockholders of the Company as of such record date and (ii) any “person” or “group” (as defined in Section 13(d)(3) or 14(d)(2) of the Exchange Act) has become the direct or indirect “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act) of more than fifty percent (50%) of the voting power of the voting stock of the surviving or resulting person;
- (c) The Company, either individually or in conjunction with one or more of its subsidiaries, sells, assigns, conveys, transfers, leases or otherwise disposes of, or the subsidiaries sell, assign, convey, transfer, lease or otherwise dispose of, all or substantially all of the properties and assets of the Company and the subsidiaries, taken as a whole (either in one transaction or a series of related transactions), to any person (other than the Company or a wholly owned subsidiary);

- (d) For any reason, Hagedorn Partnership, L.P. or its successor or any party related to Hagedorn Partnership, L.P. (as determined by the Board of Directors) becomes the beneficial owner, as defined above, directly or indirectly, of securities of the Company representing more than forty-nine percent of the combined voting power of the Company's then-outstanding voting securities; or
  - (e) The adoption or authorization by the shareholders of the Company of a plan providing for the liquidation or dissolution of the Company.
- 2.9 **"Code"** means the U.S. Internal Revenue Code of 1986, as amended from time to time. For purposes of this Agreement, references to sections of the Code shall be deemed to include references to any applicable regulations thereunder and any successor or similar provision.
- 2.10 **"Committee"** means the Compensation and Organization Committee of the Board or a subcommittee thereof, or any other committee designated by the Board to administer this Agreement. The members of the Committee shall be appointed from time to time by and shall serve at the discretion of the Board. If the Committee does not exist or cannot function for any reason, the Board may take any action under the Plan that would otherwise be the responsibility of the Committee.
- 2.11 **"Company"** means The Scotts Miracle-Gro Company, an Ohio corporation, or any successor company thereto as provided in Section 8.1 herein.
- 2.12 **"Director"** means any individual who is a member of the Board of Directors of the Company.
- 2.13 **"Disability"** or **"Disabled"** means for all purposes of this Agreement, a consecutive period of ninety (90) days during which the Executive is unable to perform his duties.
- 2.14 **"Effective Date"** means October 1, 2006.
- 2.15 **"Effective Date of Termination"** means the date on which a termination of the Executive's employment occurs.
- 2.16 **"Executive"** means Christopher Nagel.
- 2.17 **"Good Reason"** means:
- (a) A material reduction in the Executive's duties or responsibilities as compared to other comparable senior executives of the Company is effected by the Committee and/or the Chairman & Chief Executive Officer of the Company and such material reduction is made without the Executive's written consent (without regard to whether or not any change is made to the Executive's title); and
  - (b) A material reduction in the Executive's pay or benefits as compared to other comparable senior executives of the Company.

**2.18 “Long-Term Incentive Award”** means the Long-Term Incentive Award to be paid to the Executive in accordance with the Company’s long-term incentive plan as described in Section 5.3 herein.

**2.19 “Notice of Termination”** means a written notice which shall indicate the specific termination provision in this Agreement relied upon, and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive’s employment under the provisions so indicated.

### **Article 3. Position and Responsibilities**

During the term of this Agreement, the Executive agrees to serve as Executive Vice President—North America Consumer Business. In his capacity as Executive Vice President, the Executive shall report directly to the Chairman & Chief Executive Officer of the Company, and shall perform duties and responsibilities of an Executive Vice President and other duties and responsibilities as the Chairman & Chief Executive Officer may assign him during the term of this Agreement.

### **Article 4. Standard of Care**

During the term of this Agreement, the Executive agrees to devote his full time, attention, and energies to the Company’s business and shall not be engaged in any other business activity, whether or not such business activity is pursued for gain, profit, or other pecuniary advantage unless such business activity is approved in writing by the Board or Committee, provided, however, that board positions with nonprofit or philanthropic organizations which do not interfere with the Executive’s performance of his duties and responsibilities shall not require Board or Committee Board approval. The Executive covenants, warrants, and represents that he shall:

- (a) Devote his full and best efforts to the fulfillment of his employment obligations; and
- (b) Adhere to the Company’s code of business conduct or ethics as determined by the Board or Committee and exercise the highest standards of conduct in the performance of his duties.

### **Article 5. Compensation**

As remuneration for all services to be rendered by the Executive during the term of this Agreement, and as consideration for complying with the covenants herein, the Company shall pay and provide to the Executive the following.

**5.1 Base Salary.** The Company shall pay the Executive a Base Salary in the amount of four hundred and fifty thousand dollars (\$450,000.00) per year. This Base Salary shall be paid to the Executive in equal installments throughout the year, consistent with the normal payroll practices of the Company. The Base Salary shall be reviewed at least annually following the Effective Date of this Agreement, while this Agreement is in force, to ascertain whether, in the judgment of the Committee, such Base Salary should be modified. If modified, the Base Salary as stated above shall, likewise, be modified for all purposes of this Agreement.

**5.2 Annual Bonus.** Executive shall be eligible to receive in addition to his Base Salary an annual incentive compensation award (“Annual Bonus Award”) for services rendered during such fiscal year. The amount of the Annual Bonus Award, if any, with respect to any fiscal year shall be based upon performance targets and award levels determined by the Committee in its sole discretion, in accordance with the Company’s annual incentive compensation plan as in effect for executives from time to time.

**5.3 Long-Term Incentives.** Executive shall be eligible to receive, in addition to his Base Salary and Annual Bonus Award, a Long-Term Incentive Award for services rendered during an Award Period established by the Committee. The amount of the Long-Term Incentive Award, if any, with respect to any Award Period shall be based upon performance targets and award levels determined by the Committee in its sole discretion, in accordance with the Company’s long-term incentive compensation plan as in effect for executives from time to time.

**5.4 Retirement Benefits.** During the term of this Agreement, and as otherwise provided within the provisions of each of the respective plans, the Company shall provide to the Executive all retirements benefits to which other executives and employees of the Company are entitled to receive, subject to the eligibility requirements and other provisions of such arrangements as applicable to executives of the Company generally.

**5.5 Employee Benefits.** During the term of this Agreement, and as otherwise provided within the provisions of each of the respective plans, the Company shall provide to the Executive all benefits to which other executives and employees of the Company are entitled to receive, subject to the eligibility requirements and other provisions of such arrangements as applicable to executives of the Company generally. Such benefits shall include, but shall not be limited to, life insurance, comprehensive health and major medical insurance, dental insurance, prescription drug insurance, vision insurance, and short-term and long-term disability. The Executive shall likewise participate in any additional benefit as may be established during the term of this Agreement, by standard written policy of the Company.

**5.6 Perquisites.** The Company shall provide to the Executive on an annual basis an automobile allowance of twelve thousand (\$12,000.00) dollars. This allowance shall be paid to the Executive in equal installments throughout the year, consistent with the normal payroll practices of the Company. Additionally, the Company shall provide on an annual basis to the Executive with either a four thousand dollar (\$4,000) amount to be used in lieu of the provision of personal financial planning, or will provide personal financial planning up to a cost or value of such amount. The value of such services or such amount will be added to the Executive’s taxable income. Some or all of such value or amount may be tax deductible by the Executive, but the Company makes no tax representation relating thereto.

#### **Article 6. Expenses**

Upon presentation of appropriate documentation, the Company shall pay, or reimburse the Executive for all ordinary and necessary expenses, in a reasonable amount, which the Executive incurs in performing his duties under this Agreement including, but not limited to, travel, entertainment, professional dues and subscriptions, and all dues, fees, and expenses associated with membership in various professional, business, and civic associations and societies in which the Executive’s participation is in the best interest of the Company, as determined by the Committee in its sole discretion.

## Article 7. Employment Terminations

**7.1 Termination Due to Death.** In the event the Executive's employment is terminated while this Agreement is in force by reason of death, the Company's obligations under this Agreement shall immediately expire.

Notwithstanding the foregoing, the Company shall be obligated to pay to the Executive the following:

- (a) Base Salary through the Effective Date of Termination;
- (b) A prorated Annual Bonus Award based on the Executive's target bonus opportunity established for the year in which termination of employment occurs. The prorated amount shall be determined as a function of time within the year that has elapsed prior to the Executive's Effective Date of Termination;
- (c) Accrued but unused vacation pay through the Effective Date of Termination; and
- (d) All other rights and benefits the Executive is vested in, pursuant to other plans and programs of the Company.

The benefits described in Sections 7.1(a), (b), and (c) shall be paid in cash to the Executive's Beneficiary in a single lump sum as soon as practicable following the Effective Date of Termination in order to avoid penalties and excise taxes under the requirements Section Code 409A. All other payments due to the Executive upon termination of employment shall be paid in accordance with the terms of such applicable plans or programs. The Company and the Executive thereafter shall have no further obligations under this Agreement.

**7.2 Termination Due to Disability.** In the event that the Executive becomes Disabled during the term of this Agreement and is, therefore, unable to perform his duties herein for more than ninety (90) consecutive calendar days during any period of twelve (12) consecutive months, the Company shall have the right to terminate the Executive's active employment as provided in this Agreement. However, the Committee shall deliver written notice to the Executive of the Company's intent to terminate for Disability at least thirty (30) calendar days prior to the Effective Date of Termination.

Disability shall be determined by the Committee upon receipt of and in reliance on competent medical advice from one (1) or more individuals, selected by the Committee, who are qualified to give such professional medical advice.

A termination for Disability shall become effective upon the end of the thirty (30) day notice period. Upon the Effective Date of Termination, the Company's obligations under this Agreement shall immediately expire.

Notwithstanding the foregoing, the Company shall be obligated to pay to the Executive the following:

- (a) Base Salary through the Effective Date of Termination (subject to an offset for any disability payments that the Executive receives during this period);
- (b) A prorated Annual Bonus Award based on the Executive's target bonus opportunity established for the year in which termination of employment occurs. The prorated amount shall be determined as a function of time within the year that has elapsed prior to the Executive's Effective Date of Termination;
- (c) Accrued but unused vacation pay through the Effective Date of Termination; and
- (d) All other rights and benefits the Executive is vested in, pursuant to other plans and programs of the Company.

The benefits described in Sections 7.2(a), (b), and (c) shall be paid in cash to the Executive in a single lump sum as soon as practicable following the Effective Date of Termination in order to avoid penalties and excise taxes under the requirements of Section Code 409A. All other payments due to the Executive upon termination of employment shall be paid in accordance with the terms of such applicable plans or programs. The Company and the Executive thereafter shall have no further obligations under this Agreement.

**7.3 Voluntary Termination by the Executive.** The Executive may terminate this Agreement at any time by giving the Committee written notice of his intent to terminate, delivered at least sixty (60) calendar days prior to the Effective Date of Termination. The termination automatically shall become effective upon the expiration of the sixty (60) day notice period. Notwithstanding the foregoing, the Company may waive the sixty (60) day notice period; however, the Executive shall be entitled to receive all elements of compensation described in Sections 5.1 through 5.6 for the sixty (60) day notice period, subject to the eligibility and participation requirements of any employee benefit plan.

Upon the Effective Date of Termination, following the expiration of the sixty (60) day notice period, the Company shall pay the Executive his accrued and unpaid Base Salary and accrued but unused vacation pay, at the rate then in effect, through the Effective Date of Termination, plus all other benefits to which the Executive has a vested right at that time (for this purpose, the Executive shall not be entitled to any Annual Bonus Award with respect to the fiscal year in which voluntary termination under this Section 7.3 occurs or any Long-Term Incentive Award for the Award Period then in progress). With the exception of the covenants referenced in Article 10, herein (which shall survive such termination), the Company and the Executive thereafter shall have no further obligations under this Agreement.

**7.4 Termination by the Company without Cause or by the Executive with Good Reason unrelated to a Change in Control of the Company.** At all times during the term of this Agreement, the Committee may terminate the Executive's employment for reasons other than death, Disability, or for Cause, by providing to the Executive a Notice of Termination, at least sixty (60) calendar days prior to the Effective Date of Termination. Such Notice of Termination shall be irrevocable absent express, mutual consent of the parties. Additionally, the Executive may terminate employment with the Company for Good Reason by providing the Company with a Notice of Termination at least sixty (60) calendar days prior to the Effective Date of Termination. The Notice of Termination must set forth in reasonable detail the facts and circumstances claimed to provide a basis for such Good Reason termination. The Company shall have thirty (30) days to cure such Company action following receipt of the Notice of Termination. The Company shall have one (1) cure period for each reason that allows an Executive to terminate his employment for Good Reason.

Subject to the Executive signing a waiver of all claims, upon the Effective Date of Termination, following the expiration of the sixty (60) day notice period, the Company shall pay and provide to the Executive:

- (a) An amount equal to the Executive's accrued and unpaid Base Salary and accrued but unused vacation pay through the Effective Date of Termination;
- (b) An amount equal to two (2) times the Executive's annual Base Salary, at the Base Salary rate in effect on the Effective Date of Termination;
- (c) An amount equal to one (1) times the Executive's targeted Annual Bonus Award, at the targeted Annual Bonus Award in effect on the Effective Date of Termination;
- (d) At the exact same cost to the Executive, and at the same coverage level as in effect as of the Executive's Effective Date of Termination (subject to changes in coverage levels applicable to all employees generally), a continuation of the Executive's (and the Executive's eligible dependents') health insurance coverage for twelve (12) months from the Effective Date of Termination. The applicable COBRA health insurance benefit continuation period shall begin coincident with the beginning of this benefit continuation period;

The providing of these health insurance benefits by the Company shall be discontinued prior to the end of the twelve (12) month continuation period to the extent that the Executive becomes covered under the health insurance coverage of a subsequent employer which does not contain any exclusion or limitation with respect to any preexisting condition of the Executive or the Executive's eligible dependents. For purposes of enforcing this offset provision, the Executive shall have a duty to inform the Company as to the terms and conditions of any subsequent employment and the corresponding benefits earned from such employment. The Executive shall provide, or cause to provide, to the Company in writing correct, complete, and timely information concerning the same; and

- (e) All other benefits to which the Executive has a vested right at the time, according to the provisions of the governing plan or program.

Payment of the benefits described in Sections 7.4(a) and (c) shall be paid to the Executive in a single lump sum as soon as practicable following the Effective Date of Termination in order to avoid penalties and excise taxes under the requirements of Code Section 409A. The benefits described in Section 7.4(b) shall be paid in cash to the Executive in equal monthly installments over a twenty-four (24) month period. All other payments due to the Executive upon termination of employment shall be paid in accordance with the terms of such applicable plans or program. With the exception of the covenants referenced in Article 10 (which shall survive such termination), the Company and the Executive thereafter shall have no further obligations under this Agreement.

**7.5 Termination for Cause.** Nothing in this Agreement shall be construed to prevent the Committee from terminating the Executive's employment under this Agreement for Cause.

In the event this Agreement is terminated by the Committee for Cause, the Company shall pay the Executive his Base Salary and accrued vacation pay through the Effective Date of Termination, and the Executive shall immediately thereafter forfeit all rights and benefits (other than vested benefits) he would otherwise have been entitled to receive under this Agreement. The Company and the Executive thereafter shall have no further obligations under this Agreement with the exception of the covenants referenced in Article 10 herein (which shall survive such termination).

**7.6 Termination by the Company without Cause or by the Executive with Good Reason subsequent to a Change in Control of the Company.** If within two (2) years following the Change in Control of the Company, the Company terminates the Executive's employment for any reason other than death, Disability, Retirement, or Cause or the Executive terminates employment for Good Reason, subject to the Executive signing a waiver of all claims, the Company shall pay and provide to the Executive:

- (a) An amount equal to the Executive's accrued and unpaid Base Salary and accrued but unused vacation pay through the Effective Date of Termination;
- (b) An amount equal to two (2) times the Executive's annual Base Salary, at the Base Salary amount in effect on the Effective Date of Termination;
- (c) An amount equal to two (2) times the Executive's targeted Annual Bonus Award, at the targeted Annual Bonus Award in effect on the Effective Date of Termination;
- (d) An amount that is equal to a prorated Annual Bonus Award based on the Executive's target bonus opportunity established for the fiscal year in which termination of employment occurs. The prorated amount shall be determined as a function of time within the fiscal year that has elapsed prior to the Executive's Effective Date of Termination;

- (e) At the exact same cost to the Executive, and at the same coverage level as in effect as of the Executive's Effective Date of Termination (subject to changes in coverage levels applicable to all employees generally), a continuation of the Executive's (and the Executive's eligible dependents') health insurance coverage for twenty four (24) months from the Effective Date of Termination. The applicable COBRA health insurance benefit continuation period shall begin coincident with the beginning of this benefit continuation period;

The providing of these health insurance benefits by the Company shall be discontinued prior to the end of the twenty four (24) month continuation period to the extent that the Executive becomes covered under the health insurance coverage of a subsequent employer which does not contain any exclusion or limitation with respect to any preexisting condition of the Executive or the Executive's eligible dependents. For purposes of enforcing this offset provision, the Executive shall have a duty to inform the Company as to the terms and conditions of any subsequent employment and the corresponding benefits earned from such employment. The Executive shall provide, or cause to provide, to the Company in writing correct, complete, and timely information concerning the same; and

- (f) All other benefits to which the Executive has a vested right at the time, according to the provisions of the governing plan or program.

Payment of the benefits described in Sections 7.6(a), (b), (c), and (d) shall be paid to the Executive in a single lump sum as soon as practicable following the Effective Date of Termination in order to avoid penalties and excise taxes under the requirements of Code Section 409A. All other payments due to the Executive upon termination of employment shall be paid in accordance with the terms of such applicable plans or program. With the exception of the covenants referenced in Article 10 (which shall survive such termination), the Company and the Executive thereafter shall have no further obligations under this Agreement.

## **Article 8. Assignment**

**8.1 Assignment by Company.** This Agreement may and shall be assigned or transferred to, and shall be binding upon and shall inure to the benefit of any successor company. Any such successor company shall be deemed substituted for all purposes of the "Company" under the terms of this Agreement. Notwithstanding such assignment, the Company shall remain, with such successor company, jointly and severally liable for all its obligations hereunder.

Failure of the Company to obtain the agreement of any successor company to be bound by the terms of this Agreement prior to the effectiveness of any such succession shall be a breach of this Agreement, and shall immediately entitle the Executive to benefits from the Company in the same amount and on the same terms as the Executive would be entitled to receive in the event of a termination of employment without Cause as provided in Section 7.4. Except as herein provided, this Agreement may not otherwise be assigned by the Company.

**8.2 Assignment by Executive.** This Agreement shall inure to the benefit of and be enforceable by the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, and legatees. If the Executive dies while any amount would still be payable to him hereunder had he continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement, to the Executive's Beneficiary. If the Executive has not named a Beneficiary, then such amounts shall be paid to the Executive's estate.

#### **Article 9. Notice and Dispute Resolution**

**9.1 Notice.** Any notices, requests, demands, or other communications provided by this Agreement shall be sufficient if in writing and if sent by registered or certified mail to the Executive at the last address he has filed in writing with the Company or, in the case of the Company, at its principal offices.

**9.2 Dispute Resolution.** With the exception of a dispute relating to any violation of a restrictive covenant as referenced in Article 10 of this Agreement, any dispute or controversy arising under or in connection with this Agreement shall be settled by arbitration. The arbitration shall be conducted before a panel of three (3) arbitrators sitting in a location selected by the Executive within fifty (50) miles from the location of his job with the Company and in accordance with the rules of the American Arbitration Association then in effect. The decision of the arbitrators shall be binding on both the Company and Executive. Judgment may be entered on the award of the arbitrators in any court having jurisdiction. Payment of any expenses for such arbitration, including the legal fees and expenses incurred by Executive, shall be determined by the arbitrator in their decision.

#### **Article 10. Confidentiality, Noncompetition, and Nonsolicitation**

This Agreement shall not supersede or nullify in any way the Employee Confidentiality, Noncompetition, Nonsolicitation Agreement executed by the Executive on April 14, 2005 and again on subsequent dates. The Employee Confidentiality, Noncompetition, Nonsolicitation Agreement shall remain in full force and effect and any requirements of such agreement shall be incorporated by reference into this Agreement.

#### **Article 11. Miscellaneous**

**11.1 Entire Agreement.** This Agreement supersedes any prior agreements or understandings, oral or written, between the parties hereto or between the Executive and the Company, with respect to the subject matter hereof, and constitutes the entire agreement of the parties with respect thereto.

**11.2 Amendment or Modification.** This Agreement shall not be varied, altered, modified, canceled, changed, or in any way amended except by mutual agreement of the parties in a written instrument executed by the parties hereto or their legal representatives. Notwithstanding the foregoing, the Committee may amend the Agreement, to take effect retroactively or otherwise, as deemed necessary or advisable for the purpose of conforming the Agreement to any present or future law relating to Agreements of this or similar nature (including, but not limited to, Code Section 409A), and to the administrative regulations and rulings promulgated thereunder.

**11.3 Severability.** In the event that any provision or portion of this Agreement shall be determined to be invalid or unenforceable for any reason, the remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect.

**11.4 Counterparts.** This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same Agreement.

**11.5 Tax Withholding.** The Company may withhold from any benefits payable under this Agreement all federal, state, city, or other taxes as may be required pursuant to any law or governmental regulation or ruling.

**11.6 Beneficiaries.** Any payments or benefits hereunder due to the Executive at the time of his death shall nonetheless be paid or provided and the Executive may designate one or more individuals or entities as the primary and/or contingent Beneficiaries of any amounts to be received under this Agreement. Such designation must be in the form of a signed writing acceptable to the Committee. The Executive may make or change such designation at any time.

**11.7 Payment Obligation Absolute.** All amounts payable by the Company hereunder shall be paid without notice or demand. Subject to the covenants set forth in Article 10 and Section 7.4(e), each and every payment made hereunder by the Company shall be final, and the Company shall not seek to recover all or any part of such payment from the Executive or from whomsoever may be entitled thereto, for any reasons whatsoever.

The restrictive covenants referenced in Article 10 are independent of any other contractual obligations in this Agreement or otherwise owed by the Company to the Executive. Except as provided in this paragraph, the existence of any claim or cause of action by Executive against the Company, whether based on this Agreement or otherwise, shall not create a defense to the enforcement by the Company of any restrictive covenant contained herein.

Except as provided in Section 7.4(e), the Executive shall not be obligated to seek other employment in mitigation of the amounts payable or arrangements made under any provision of this Agreement, and the obtaining of any such other employment shall in no event effect any reduction of the Company's obligations to make the payments and arrangements required to be made under this Agreement.

**11.8 Contractual Rights to Benefits.** Subject to approval by the Committee, this Agreement establishes and vests in the Executive a contractual right to the benefits to which he is entitled hereunder. However, nothing herein contained shall require or be deemed to require, or prohibit or be deemed to prohibit, the Company to segregate, earmark, or otherwise set aside any funds or other assets, in trust or otherwise, to provide for any payments to be made or required hereunder.

**11.9 Specific Performance.** The Executive acknowledges that the obligations undertaken by him pursuant to this Agreement are unique and that the Company will likely have no adequate remedy at law if the Executive shall fail to perform any of his obligations hereunder. The Executive therefore confirms that the Company's right to specific performance of the terms of this Agreement is essential to protect the rights and interests of the Company. Accordingly, in addition to any other remedies that the Company may have at law or in equity, the Company shall have the right to have all obligations, covenants, agreements, and other provisions of this Agreement specifically performed by the Executive and the Company shall have the right to obtain preliminary injunctive relief to secure specific performance and to prevent a breach or contemplated breach of this Agreement by the Executive.

**11.10 Voiding of Agreement Provision.** If any provision under this Agreement causes an amount to be considered deferred under Code Section 409A and as such become subject to income tax, excise tax, or penalties under the Code prior to the time such amount is paid to the Executive, such amount shall be deemed null and void with respect to such amount deferred and the Committee may amend or modify this Agreement in order to accomplish the objectives of the Agreement without causing early taxation of such amounts and without the Company incurring additional cost or liability.

**Article 12. Governing Law**

To the extent not preempted by federal law, the provisions of this Agreement shall be construed and enforced in accordance with the laws of the state of Ohio, excluding any conflicts or choice of law rule or principle that might otherwise refer construction or interpretation of the Agreement to the substantive law of another jurisdiction.

**Article 13. Indemnification**

The Company hereby covenants and agrees to indemnify and hold harmless the Executive against and in respect to any and all actions, suits, proceedings, claims, demands, judgments, costs, expenses, losses, and damages resulting from the Executive's performance of his duties and obligations under the terms of this Agreement; provided however, the Executive acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company or its shareholders, and with respect to a criminal action or proceeding, the Executive had no reasonable cause to believe his conduct was unlawful.

Executive:

\_\_\_\_\_  
Christopher Nagel

Date: \_\_\_\_\_

The Scotts Miracle-Gro Company

\_\_\_\_\_  
Representative of the Board of Directors

Date: \_\_\_\_\_

**THIS DOCUMENT CONSTITUTES PART OF A PROSPECTUS COVERING  
SECURITIES THAT HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF  
1933.**

**THE SCOTTS MIRACLE-GRO COMPANY  
2006 LONG-TERM INCENTIVE PLAN**

**AWARD AGREEMENT FOR EMPLOYEES**

**RESTRICTED STOCK AWARD AWARDED TO CHRISTOPHER NAGEL ON  
OCTOBER 1, 2006 (“Grant Date”)**

The Scotts Miracle-Gro Company (“Company”) and its shareholders believe that their business interests are best served by ensuring that you have an opportunity to share in the Company’s business success. To this end, the Company adopted and its shareholders approved The Scotts Miracle-Gro Company 2006 Long-Term Incentive Plan (“Plan”) through which key employees, like you, may acquire (or share in the appreciation of) common shares of the Company.

We cannot guarantee that the value of your Award (or the value of the common shares you acquire through an Award) will increase. This is because the value of the Company’s common shares is affected by many factors. However, the Company believes that your efforts contribute to the value of the Company’s common shares and that the Plan (and the Awards made through the Plan) is an appropriate means of sharing with you the value of your contribution to the Company’s business success.

This Award Agreement describes the type of Award that you have been granted and the conditions that must be met before you may receive the value associated with your Award. To ensure you fully understand these terms and conditions, you should:

- Read the Plan and the Plan’s Prospectus carefully to ensure you understand how the Plan works;
- Read this Award Agreement carefully to ensure you understand the nature of your Award and what you must do to earn it;
- Consult your tax advisor regarding the federal income tax effect of receiving and earning this Award, as well as the consequences if you are required to repay the value of the Award to the Company; and
- Contact Robert J. Hanley, Vice President, Total Global Rewards at (937) 578-5630 if you have any questions about your Award. Or, you may send a written inquiry to the address shown below:

The Scotts Miracle-Gro Company  
Attention: Robert J. Hanley  
Vice President, Total Global Rewards  
14111 Scottslawn Road  
Marysville, Ohio 43041

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Also, no later than November 30, 2006 you must return a signed copy of the Award Agreement to:

Edward J. Yen & Associates c/o Marc Chapman  
Merrill Lynch  
8425 Pulsar Pl., Ste. 200  
Columbus, OH 43240  
(800) 285-0648

If you do not do this, your Award will be forfeited and you will not be entitled to receive anything on account of this Award.

Section 409A of the Internal Revenue Code ("Section 409A") imposes substantial penalties on persons who receive some forms of deferred compensation (see the Plan's Prospectus for more information about these penalties). Your Award has been designed to avoid these penalties. However, because the Internal Revenue Service ("IRS") has not yet issued final rules fully defining the effect of Section 409A, it is possible that your Award Agreement must be revised after the IRS issues these rules if you are to avoid these penalties. As a condition of accepting this Award, you must agree to accept those revisions, without any further consideration, even if those revisions change the terms of your Award and reduce its value or potential value.

### **Description of Your Restricted Stock**

**You have been awarded 38,000 shares of Restricted Stock.** If you satisfy the conditions described in this Award Agreement, the Plan and the Prospectus, the restrictions imposed on your Restricted Stock will be removed and you will own the underlying common shares. You also must arrange to pay any taxes due on settlement.

### **When Your Restricted Stock Will Be Settled**

Normally, on October 1, 2007, 19,000 shares of your Restricted Stock Award will vest if you are actively employed by the Company or any Affiliate or Subsidiary at that time. If you are not, your Restricted Stock will be forfeited. If you are, as soon as administratively practicable after October 1, 2007, these common shares will be distributed to you, free of any restrictions.

Then, on October 1, 2009, the remaining 19,000 shares of your Restricted Stock Award will vest if you are actively employed by the Company or any Affiliate or Subsidiary at that time. If you are not, your Restricted Stock will be forfeited. If you are, as soon as administratively practicable after October 1, 2009, these common shares will be distributed to you, free of any restrictions.

Your Restricted Stock will be held in escrow until it is settled or forfeited.

The restrictions imposed on your Restricted Stock normally will be met if you are actively employed by the Company or any Affiliate or Subsidiary (as defined in the Plan) on the pertinent vesting dates of October 1, 2007 and October 1, 2009 and all other conditions described in this Award Agreement, the Plan and the Prospectus are met.

### **Tax Treatment of Your Restricted Stock**

The federal income tax treatment of your Restricted Stock is discussed in the Plan's Prospectus. However, you may not make an election under Section 83(b) of the Internal Revenue Code with respect to this award.

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### **General Terms and Conditions**

#### **You Will Forfeit Your Restricted Stock or Be Required to Repay the Value to the Company if Your Employment Terminates**

Normally, your Restricted Stock will be completely vested on October 1, 2009. However, the unvested portion of your Restricted Stock will be forfeited if you terminate employment before October 1, 2009. And, except as provided in the section titled "You May Forfeit Your Restricted Stock if You Engage in Conduct That is Harmful to the Company (or any Affiliate or Subsidiary)," if you terminate employment after October 1, 2007 but before October 1, 2009:

**[a]** If you terminate employment through a Voluntary Termination (as described in your Employment Agreement, effective October 1, 2006, with The Scotts Miracle-Gro

Company (“Employment Agreement”) or are Terminated for Cause (also as described in the Employment Agreement):

**[i]** The unvested portion of your Restricted Stock will be forfeited;

**[ii]** You must pay to the Company cash equal to the product of the fair market value of a common share of the Company on October 1, 2007 multiplied by 19,000; and

**[iii]** You must pay to the Company the amount of cash equal to the value of all dividends (including any reinvested dividends) paid on your Restricted Stock from October 1, 2006 until your Effective Date of Termination (as defined in the Employment Agreement).

**[b]** If your employment is terminated due to Termination by the Company without Cause (as defined in the Employment Agreement) other than for death or Disability (as defined in the Employment Agreement):

**[i]** The unvested portion of your Restricted Stock will be forfeited; and

**[ii]** Subject to the vote and approval of the full Board of Directors (as defined in the Plan), you must pay to the Company cash equal to the product of the fair market value of a common share of the Company on October 1, 2007 multiplied by 19,000, as well as the amount of cash equal to the value of all dividends (including any reinvested dividends) paid on your Restricted Stock from October 1, 2006 until your Effective Date of Termination (as defined in the Employment Agreement).

**You May Forfeit Your Restricted Stock if You Engage in Conduct That is Harmful to the Company (or any Affiliate or Subsidiary)**

Regardless of parts **[a]** and **[b]** in the section titled “You Will Forfeit Your Restricted Stock or Be Required to Repay the Value to the Company if Your Employment Terminates,” you also will forfeit any outstanding Restricted Stock and must return to the Company all common shares and other amounts you have received through the Plan if, without the Company’s consent, you do any of the following within 180 days before and 730 days after terminating employment:

**[a]** You serve (or agree to serve) as an officer, director, consultant or employee of any proprietorship, partnership, corporation or other entity or become the owner of a business or a member of a partnership that competes with any portion of the Company’s (or any Affiliate’s or Subsidiary’s) business with which you have been involved any time within five years before termination of employment or render any service (including, without limitation, advertising or business consulting) to entities that compete with any portion of the Company’s (or any Affiliate’s or Subsidiary’s) business with which you have been involved any time within five years before termination of employment;

**[b]** You refuse or fail to consult with, supply information to or otherwise cooperate with the Company or any Affiliate or Subsidiary after having been requested to do so;

**[c]** You deliberately engage in any action that the Company concludes has caused substantial harm to the interests of the Company or any Affiliate or Subsidiary;

**[d]** On your own behalf or on behalf of any other person, partnership, association, corporation or other entity, you solicit or in any manner attempt to influence or induce any employee of the Company or any Affiliate or Subsidiary to leave the Company's or any Affiliate's or Subsidiary's employment or use or disclose to any person, partnership, association, corporation or other entity any information obtained while an employee of the Company or any Affiliate or Subsidiary concerning the names and addresses of the Company's or any Affiliate's or Subsidiary's employees;

**[e]** You disclose confidential and proprietary information relating to the Company's or any Affiliate's or Subsidiary's business affairs ("Trade Secrets"), including technical information, product information and formulae, processes, business and marketing plans, strategies, customer information and other information concerning the Company's or any Affiliate's or Subsidiary's products, promotions, development, financing, expansion plans, business policies and practices, salaries and benefits and other forms of information considered by the Company or any Affiliate or Subsidiary to be proprietary and confidential and in the nature of Trade Secrets;

**[f]** You fail to return all property (other than personal property), including keys, notes, memoranda, writings, lists, files, reports, customer lists, correspondence, tapes, disks, cards, surveys, maps, logs, machines, technical data, formulae or any other tangible property or document and any and all copies, duplicates or reproductions that you have produced or received or have otherwise been submitted to you in the course of your employment with the Company or any Affiliate or Subsidiary; or

**[g]** You engaged in conduct that the Committee (as defined in the Plan) reasonably concludes would have given rise to a termination for "cause" (as defined in the Employment Agreement) had it been discovered before you terminated employment.

**Your Restricted Stock May Vest Earlier Than Described Above:** Normally, your Restricted Stock will vest only in the circumstances described above. However, and regardless of parts **[a]** and **[b]** in the section titled "You Will Forfeit Your Restricted Stock or Be Required to Repay the Value to the Company if Your Employment Terminates," if there is a "Change in Control" (as defined in the Plan), your Restricted Stock may vest earlier. You should read the Plan and the Prospectus carefully to ensure that you understand how this may happen.

**Rights Before Your Restricted Stock Vests:** Even though your Restricted Stock is held in escrow until it is settled or forfeited, you may exercise any voting rights associated with the common shares underlying your Restricted Stock while it is held in escrow. You also will be entitled to receive any dividends paid on these common shares during this period, although these dividends will be held in escrow until the Restricted Stock is settled, reinvested in common shares of the Company (also held in escrow), and distributed to you (or forfeited) depending on whether or not you have met the conditions described in this Award Agreement and in the Plan and the Prospectus.

**Beneficiary Designation:** You may name a beneficiary or beneficiaries to receive any Restricted Stock that is settled after you die. This may be done only on the attached Beneficiary Designation Form and by following the rules described in that Form. The Beneficiary Designation Form need not be completed now and is not required as a condition of receiving your Award. If you die without completing a Beneficiary Designation Form or if you do not complete that Form correctly, your beneficiary will be your surviving spouse or, if you do not have a surviving spouse, your estate.

**Transferring Your Restricted Stock:** Normally your Restricted Stock may not be transferred to another person. However, you may complete a Beneficiary Designation Form to name the person to receive any Restricted Stock that is settled after you die. Also, the Committee may allow you to place your Restricted Stock into a trust established for your benefit or the benefit of your family. Contact Merrill Lynch/Edward J. Yen & Associates at (800) 285-0648 or the address given below if you are interested in doing this.

**Governing Law:** This Award Agreement will be construed in accordance with and governed by the laws of the United States and of the State of Ohio (other than laws governing conflicts of laws).

**Other Agreements:** Also, your Restricted Stock will be subject to the terms of any other written agreements between you and the Company or any Affiliate or Subsidiary to the extent that those other agreements do not directly conflict with the terms of the Plan or this Award Agreement.

**Adjustments to Your Restricted Stock:** Your Restricted Stock will be adjusted, if appropriate, to reflect any change to the Company's capital structure (e.g., the number of common shares underlying your Restricted Stock will be adjusted to reflect a stock split).

**Other Rules:** Your Restricted Stock also is subject to more rules described in the Plan and in the Plan's Prospectus. You should read both of these documents carefully to ensure you fully understand all the terms and conditions of the grant of Restricted Stock under this Award Agreement.

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You may contact Merrill Lynch/Edward J. Yen & Associates at (800) 285-0648 or at the address given below if you have any questions about your Award or this Award Agreement.

#### **Your Acknowledgment of Award Conditions**

*Note: You must sign and return a copy of this Award Agreement to Merrill Lynch/Edward J. Yen & Associates at the address given below no later than November 30, 2006.*

By signing below, I acknowledge and agree that:

- A copy of the Plan has been made available to me;
- I have received a copy of the Plan's Prospectus;

- I understand and accept the conditions placed on my Award and understand what I must do to earn my Award;
- I understand that if after October 1, 2007 but before October 1, 2009 my employment is terminated by a Voluntary Termination, a Termination for Cause, or (subject to the vote and approval of the full Board of Directors) a Termination by the Company without Cause other than for death or Disability (all as described or defined in the Employment Agreement), I must pay to the Company cash equal to the product of the fair market value of a common share of the Company on October 1, 2007 multiplied by 19,000, as well as the amount of cash equal to the value of all dividends (including any reinvested dividends) paid on my Restricted Stock from October 1, 2006 until my Effective Date of Termination (as defined in the Employment Agreement).
- I understand that I should consult with my tax advisor to discuss the federal income tax effect of earning my Restricted Stock, as well as the consequences if I am required to repay the value of the Award to the Company.
- I will consent (on my own behalf and on behalf of my beneficiaries and without any further consideration) to any necessary change to my Award or this Award Agreement to comply with any law and to avoid paying penalties under Section 409A of the Internal Revenue Code, even if those changes affect the terms of my Award and reduce their value or potential value; and
- If I do not return a signed copy of this Award Agreement to the address shown below on or before November 30, 2006 my Award will be forfeited and I will not be entitled to receive anything on account of this Award.

Christopher Nagel

THE SCOTTS MIRACLE-GRO COMPANY

By: /s/ Christopher Nagel  
(Signature)

By: /s/ David M. Aronowitz  
David M. Aronowitz  
Executive Vice President, General Counsel

Date signed: 11/9/06

Date signed: 10/30/06

A signed copy of this Award Agreement must be sent to the following address no later than November 30, 2006:

Edward J. Yen & Associates c/o Marc Chapman  
Merrill Lynch  
8425 Pulsar Pl., Ste. 200  
Columbus, OH 43240  
(800) 285-0648

After it is received, The Scotts Miracle-Gro Company 2006 Long-Term Incentive Plan Committee will acknowledge receipt of your signed Award Agreement.

\*\*\*\*\*

**Committee's Acknowledgment of Receipt**

A signed copy of this Award Agreement was received on November 13, 2006.

By: /s/ Marc Chapman

Christopher Nagel

Has complied with the conditions imposed on the grant and the Award Agreement remains in effect; or

Has not complied with the conditions imposed on the grant and the Restricted Stock Award awarded to Christopher Nagel on October 1, 2006 is forfeited because \_\_\_\_\_.  
*describe deficiency*

The Scotts Miracle-Gro Company 2006 Long-Term Incentive Plan Committee

By: /s/ ML

Date: 11/13/06

**Note:** Send a copy of this completed Award Agreement to Christopher Nagel and keep a copy as part of the Plan's permanent records.

**THE SCOTTS MIRACLE-GRO COMPANY  
2006 LONG-TERM INCENTIVE PLAN  
BENEFICIARY DESIGNATION FORM  
RELATING TO RESTRICTED STOCK AWARD GRANTED TO  
CHRISTOPHER NAGEL ON OCTOBER 1, 2006**

**1.00 Instructions for Completing This Beneficiary Designation Form**

You may use this Beneficiary Designation Form to [1] name the person you want to receive any amount due under The Scotts Miracle-Gro Company 2006 Long-Term Incentive Plan after your death or [2] change the person who will receive these benefits.

There are several things you should know before you complete this Beneficiary Designation Form:

**First**, if you do not elect another beneficiary, any amount due to you under the Plan when you die will be paid to your surviving spouse or, if you have no surviving spouse, to your estate.

**Second**, your election will not be effective (and will not be implemented) unless you complete all applicable portions of this Beneficiary Designation Form and return it to Merrill Lynch/Edward J. Yen & Associates at the address given below.

**Third**, all elections will remain in effect until they are changed (or until all death benefits are paid).

**Fourth**, if you designate your spouse as your beneficiary but are subsequently divorced from that person (or your marriage is annulled), your beneficiary designation will be revoked automatically.

**Fifth**, if you have any questions about this Beneficiary Designation Form or if you need additional copies of this form, please contact Merrill Lynch/Edward J. Yen & Associates at (800) 285-0648 or at the address or number given below.

**1.00 Designation of Beneficiary**

**1.01 Primary Beneficiary:**

I designate the following person(s) as my Primary Beneficiary or Beneficiaries to receive any amount due after my death under the terms of the Award Agreement described at the top of this Beneficiary Designation Form. This benefit will be paid, in the proportion specified, to:

100 % to [spouse]  
(Name) (Relationship)

Address: \_\_\_\_\_

\_\_\_\_\_ % to \_\_\_\_\_  
(Name) (Relationship)

Address: \_\_\_\_\_

\_\_\_\_\_ % to \_\_\_\_\_  
(Name) (Relationship)

Address: \_\_\_\_\_

\_\_\_\_\_ % to \_\_\_\_\_  
(Name) (Relationship)

Address: \_\_\_\_\_

**1.02 Contingent Beneficiary**

***If one or more of my Primary Beneficiaries die before I die, I direct that*** any amount due after my death under the terms of the Award described at the top of this Beneficiary Designation Form:

\_\_\_\_\_ Be paid to my other named Primary Beneficiaries in proportion to the allocation given above (ignoring the interest allocated to the deceased Primary Beneficiary); or

\_\_\_\_\_ Be distributed among the following Contingent Beneficiaries:

\_\_\_\_\_ % to \_\_\_\_\_  
(Name) (Relationship)

Address: \_\_\_\_\_

***Elections made on this Beneficiary Designation Form will be effective only after this Form is received by Merrill Lynch/Edward J. Yen & Associates and only if it is fully and properly completed and signed.***

Chrisopher Nagel

Date of Birth: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
*Sign and return this Beneficiary Designation Form to Merrill Lynch/Edward J. Yen & Associates at the address given below.*

Date 11/9/06

/s/ Christopher Nagel

Signature

*Return this signed Beneficiary Designation Form to Merrill Lynch/Edward J. Yen & Associates at the following address:*

Edward J. Yen & Associates c/o Marc Chapman  
Merrill Lynch  
8425 Pulsar Pl., Ste. 200  
Columbus, OH 43240  
(800) 285-0648

Received on: 11/13/06

By: /s/ MS



**SEPARATION AGREEMENT  
AND RELEASE OF ALL CLAIMS**

*NOTICE: READ BEFORE YOU SIGN!  
This agreement contains a RELEASE. We advise that you consult an ATTORNEY.*

THIS SEPARATION AGREEMENT AND RELEASE OF ALL CLAIMS ("Agreement") is made and entered into by and between Robert F. Bernstock ("Employee") and The Scotts Company LLC ("Company"), in its own behalf and as successor to The Scotts Company;

WHEREAS, Employee's last day of employment with Company was September 12, 2006 (the "Termination Date");

WHEREAS, Employee and Company wish to enter into an agreement providing for an orderly separation of Employee's employment with Company and providing for severance pay and additional consideration for Employee to which Employee is not otherwise entitled;

WHEREAS, Employee and Company are parties to an Employment Agreement and Covenant Not to Compete, effective October 1, 2004, as subsequently amended (the "Employment Agreement"), which sets forth various forms of compensation payable by Company to Employee in the event Employee's employment with Company is terminated (the "Severance Compensation");

WHEREAS, this Agreement incorporates and enhances the Severance Compensation payable to Employee, in addition to providing additional consideration to both Employee and Company;

WHEREAS, Employee and Company have agreed, in the February 9, 2006 Third Amendment to the Employment Agreement, to administer the Employment Agreement in a manner reasonably expected to avoid any penalties under Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A"); and

WHEREAS, Employee and Company agree that the terms of this Agreement are reasonably expected to avoid any penalties under Section 409A and further agree that the timing of payments made pursuant to this Agreement is the timing requested by Employee upon advice of his counsel, with full recognition of the provisions of Section 409A;

NOW THEREFORE, in exchange for and in consideration of the promises and covenants contained herein, along with other good and valuable consideration, the receipt of which is expressly acknowledged hereby, the parties agree as follows:

\_\_\_\_\_  
Initials

1. Severance Benefits. Company agrees to provide Employee with the following (collectively, the "Severance Benefits"):

(A) A payment in the gross amount of TWO MILLION ONE HUNDRED SEVENTY-EIGHT THOUSAND and 00/100 Dollars ( \$2,178,000.00 ), representing two times the sum of Employee's annual base salary and the Incentive Target Bonus under the Scotts Executive/Management Incentive Plan (the "Incentive Plan") for 2006 (the "Lump Sum Payment"). This Lump Sum Payment shall be made on the first business day following the Effective Date, as defined below, less applicable withholding and deductions required by federal, state, and local taxing authorities.

(B) A payment of the amount of the Incentive Target Bonus which Employee would have earned for 2006, under the terms of the Incentive Plan, pro-rated to the Termination Date (the "2006 Incentive Payment"). The amount of the 2006 Incentive Payment will be calculated consistent with the incentive metrics established at the beginning of 2006 for the Employee. The payment shall be sent in a lump sum on the first business day following the Effective Date, as defined below, less applicable withholding and deductions required by federal, state, and local taxing authorities.

(C) Upon the Termination Date, all of Employee's unvested equity grants (including Nonqualified Stock Options, restricted stock and stock appreciation rights) vested immediately. Employee will have the shorter of December 11, 2006, or the expiration of a specific grant, to exercise Employee's options and stock appreciation rights. Notwithstanding the foregoing, in the event of a major corporate event, Employee's options shall be treated in the same manner as all other Scotts associates. Also, all shares of restricted stock and any undistributed dividends (currently estimated to be \$35,300) associated with those shares will be distributed to Employee on the first business day following the Effective Date, as defined below.

(D) A payment representing the balance of Employee's Executive Retirement Plan account (the "Executive Retirement Plan Payment"). The Executive Retirement Plan Payment shall be made on or within three days after March 12, 2007, less applicable withholding and deductions required by federal, state, and local taxing authorities.

(E) Payment of any benefit to which Employee is entitled under any other non-qualified Scotts plan shall be paid out in accordance with Employee's previous elections. Any such payments shall be made on or within three days after March 12, 2007, less applicable withholding and deductions required by federal, state, and local taxing authorities, or in accordance with the terms of any such plans, whichever is later.

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Initials

(F) For so long as Employee is eligible, but for no longer than 24 months after the Termination Date, Employee shall be entitled to elect and receive COBRA coverage at his own expense. For the first 18 months of said COBRA coverage, Employee's cost shall be at regular COBRA rates. For the final six months of said COBRA coverage, Employee's cost shall be 150% of the regular COBRA rates. On the first business day following the Effective Date, as defined below, Company will pay to the Employee a gross amount equal to \$19,312.13, net of applicable withholding and deductions required by federal, state and local taxing authorities, in mitigation of these costs; Employee will be solely responsible for paying the balance of the COBRA costs.

(G) Company shall maintain, through September 12, 2011, Directors and Officers Liability Insurance covering the Employee (or the Employee's estate, if the Employee is deceased or incompetent), which provides coverage at least as favorable to the Employee (or the Employee's estate, if the Employee is deceased or incompetent), as coverage under Company's policy in effect on the Termination Date, and which coverage shall be increased from time to time in such amounts as Company may determine to be appropriate in light of Company's operations.

(H) On or about November 7, 2006, Company issued and Employee accepted 5,000 shares of Company's common stock in full satisfaction of the Performance Shares award granted pursuant to (and subject to the terms of) an award agreement between Company and Employee dated December 9, 2005 and as consideration for this Agreement. If Employee signs this Agreement (and does not exercise his right of revocation under section 5), Company will not seek the return of those shares

(I) The Severance Benefits described herein shall be the only amounts paid to Employee by or on behalf of Company, and no interest on any amount shall be paid. Employee otherwise acknowledges hereby the receipt of all wages and other compensation or benefits to which Employee is entitled as a result of Employee's employment with Company through the Termination Date.

(M) Employee will be allowed to continue to use Company's membership at Tartan Fields through December 31, 2006 (after which period he will relinquish usage of that membership) on the condition that he has paid all dues and fees associated with that usage through December 31, 2006. Company will reimburse Employee for any dues that he has paid for any usage of that facility for any period after December 31, 2006.

\_\_\_\_\_  
Initials

2. Release of Claims by Employee. Employee, on behalf of Employee and Employee's spouse, personal representatives, administrators, minor children, heirs, assigns, wards, agents, and all other persons claiming by or through Employee, does hereby forever release and discharge Company and its respective officers, directors, shareholders, agents, employees, affiliates, subsidiaries, divisions, predecessors, successors, and assigns (the "Released Parties") from any and all charges, claims, demands, judgments, causes of action, damages, expenses, costs, and liabilities of any kind whatsoever. Employee expressly acknowledges that the claims released by this paragraph include all rights and claims relating to Employee's employment with Company and the termination thereof, including without limitation any claims Employee may have under the Age Discrimination in Employment Act, as amended by the Older Worker Benefit Protection Act, Title VII of the Civil Rights Act of 1964, as amended, the Equal Pay Act, the Americans with Disabilities Act, the Employee Retirement Income Security Act, the Worker Adjustment Retraining and Notification (WARN) Act, Ohio Revised Code Chapter 4112, and any other federal, state, or local laws or regulations governing employment relationships. This release specifically and without limitation includes a release and waiver of any claims for employment discrimination, wrongful discharge, breach of contract, or promissory estoppel, and extends to all claims of every nature and kind, whether known or unknown, suspected or unsuspected, presently existing or resulting from or attributable to any act or omission of the Released Parties occurring prior to the execution of this Agreement. The release contained herein does not apply to any claim or right to benefits Employee is entitled to receive as of the Termination Date under the terms of any Company sponsored tax-qualified deferred compensation program, to Employee's right to indemnification as described in section 5 of the Employment Agreement or to any claim or to rights or claims first arising after the Effective Date of this Agreement, nor does it apply to any claims for unemployment compensation or workers compensation benefits and does not apply to any right or claim to enforce this Agreement.

In addition to the general nature of the release set forth in the preceding paragraph, Employee specifically acknowledges that he is releasing and waiving any claims which might arise as a result of the application of Section 409A of the Internal Revenue Code of 1986, as amended, to the payments made pursuant to this Agreement, and expressly acknowledges herein that the payments and timing of payments made to him hereunder have been administered in a manner compliant with any previous agreement he has with Company and in a good faith, mutually agreed manner reasonably expected to avoid any penalties under Section 409A of the Internal Revenue Code of 1986, as amended. Employee agrees to indemnify Company for any penalties associated with any reporting obligation under Section 409A with regard to any payments made pursuant to this Agreement and with regard to any interest and penalties associated with a withholding obligation under Section 409A and for any costs and fees incurred by Company in respect of any claim made or government proceeding initiated relative to the foregoing.

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Employee agrees not to file any claim or initiate any proceeding, in law or in equity, released by this Agreement. In the event that Employee files any legal action asserting any claim released by this Agreement other than a claim under the Age Discrimination in Employment Act, as amended by the Older Worker Benefit Protection Act, Employee must immediately repay to Company the Separation Pay set forth herein as a condition precedent to the maintenance of such a lawsuit, and Employee shall reimburse Company for all costs, including attorney fees, incurred in defense of any such claim or proceeding; provided, however, that the terms of this paragraph shall not permit the setting aside of this Agreement by payment of such amounts without adjudication by a court that this Agreement is otherwise invalid.

3. **Release of Claims by Scotts.** Company, on behalf of itself and its affiliated entities, does hereby forever release and discharge Employee from any and all charges, claims, demands, judgments, causes of action, damages, expenses, costs, and liabilities of any kind whatsoever. Company expressly acknowledges and agrees that the claims released by this paragraph include all rights and claims relating to Employee's employment with Company and the termination thereof. The release contained herein does not apply to any claim or rights first arising after the Effective Date of this Agreement.

4. **Knowing and Voluntary Act.** Employee acknowledges and agrees that the release set forth above is a general release. Employee, having been encouraged to and having had the opportunity to be advised by counsel, expressly waives all claims for damages which exist as of this date, but of which Employee does not now know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known would materially affect Employee's decision to enter into this Agreement. Employee further agrees that Employee accepts the Severance Benefits as a complete compromise of matters involving disputed issues of law and fact and assumes the risk that the facts and law may be other than Employee believes. Employee further acknowledges and agrees that all the terms of this Agreement shall be in all respects effective and not subject to termination or rescission by reason of any such differences in the facts or law, and that Employee provides this release voluntarily and with full knowledge and understanding of the terms hereof.

5. **Revocation Period.** **Employee specifically acknowledges and understands that this Agreement is intended to release and discharge any claims of Employee under the Age Discrimination in Employment Act, as amended by the Older Worker Benefit Protection Act. Employee has 21 calendar days in which to consider this Agreement and will have 7 calendar days in which to revoke Employee's acceptance after signing this Agreement.** To revoke, Employee must deliver written notice of revocation to Company's Human Resources Department at 14111 Scottslawn Rd; Marysville, Ohio 43041. This Agreement will be effective on the eighth day after it is signed by Employee, assuming that Employee does not exercise the right of revocation described in this section (the "Effective Date").

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Initials

6. Non-disparagement. Company and the Employee agree not to make any statement to any third party that the statement maker could reasonably foresee would cause harm to the personal or professional reputation of the Employee or Released Parties and Company will instruct its officers and directors to adhere to the provisions of this Section.

7. No Admission of Liability. Neither this Agreement, nor any term contained herein, may be construed as, or may be used as, an admission on the part of either party of any fault, wrongdoing, or liability whatsoever.

8. Survivorship. Should Employee die or become totally disabled following the Termination Date but before the payments due Employee under paragraph 1 above have been made, any remaining payments shall be made to Employee (or Employee's designated beneficiary, as applicable).

9. Return of Property. Employee agrees to return all Company property remaining in Employee's possession or control, including without limitation any and all equipment, documents, credit cards, hardware, software, source code, data, keys or access cards, files, or records on or before the Termination Date.

10. Confidentiality. Employee further acknowledges and agrees that any confidentiality, nondisclosure, noncompetition, and nonsolicitation obligations to Company under any prior agreement, are not being released hereby and will specifically survive the termination of Employee's employment and this Agreement. Employee expressly agrees to keep and maintain Company confidential information confidential, and not to use or disclose such information, directly or indirectly, without the prior written consent of Company or unless required by law or legal process. Employee agrees that the provisions of this paragraph are material terms of this Agreement.

11. Cooperation with Litigation. Employee will cooperate fully with Company in its defense of any lawsuit filed over matters that occurred during the tenure of Employee's employment with Company, and Employee agrees to provide full and accurate information with respect to same; Company will compensate Employee for any such service at the rate of \$300.00 per hour (but no more than \$1,500 per day plus reasonable costs and expenses. Employee further agrees not to assist any party in maintaining any lawsuit against any of the Released Parties, and will not provide any information to anyone concerning any of the Released Parties, unless compelled to do so by valid subpoena or other court order, and in such case only after first notifying Company sufficiently in advance of such subpoena or court order to reasonably allow Company an opportunity to object to same. Nothing in this paragraph shall be construed to mean that Employee may not file a charge with, or from participating in any investigation of a charge conducted by, any governmental agency. Employee nevertheless understands and agrees that because of the waiver and release, he/she freely provides by signing this Agreement, he/she cannot obtain any monetary relief or recovery from Company or any Releasee in any proceeding.

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Initials

12. Choice of Law. The validity, construction and interpretation of this Agreement shall be governed by the laws of the State of Ohio.

13. Execution in Parts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which shall constitute a single Agreement.

14. No Waiver of Terms. Failure to insist upon strict compliance with any of the terms, covenants, or conditions of this Agreement shall not be deemed a waiver of any such term, covenant, or condition, nor shall any failure at any one time or more times be deemed a waiver or relinquishment at any other time or times of any right under this Agreement.

15. Modifications. No modification or amendment of this Agreement shall be effective unless the same is in a writing duly executed by all the parties hereto.

16. Assignment. Company may assign, in whole or in part, its rights under this Agreement, and the rights of Company hereunder shall inure to the benefit of, and the obligations of Company hereunder shall be binding upon, its successors and assigns. Employee's rights and obligations hereunder may not be assigned.

17. Entire Agreement. Except as otherwise set forth herein, this Agreement sets forth the entire Agreement between Company and Employee and supersedes and replaces any and all prior or contemporaneous representations or agreements, whether oral or written, relating to the subject matter hereof, including but not limited to the Employment Agreement, except that Paragraphs 4, 5 and 6, 7(i) and 7(j) of said Employment Agreement shall survive and remain in full force and effect.

18. Method of Acceptance. To accept, Employee must deliver a signed and dated copy hereof to Tasha Potts in Company's Human Resources Department, 14111 Scottslawn Road, Marysville, Ohio 43041. This Agreement will not be effective or enforceable until such signed copy is received by Company as set forth herein.

19. Method of Distribution. The amounts described in Paragraph 1(A) will be sent by wire transfer pursuant to instructions provided by Employee. The other cash payments due under this Agreement will be distributed through the U.S. Postal service and sent by first class mail, postage paid, to Employee's residence. Any shares of stock due to Employee under this Agreement will be transferred through Merrill Lynch in the

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Initials

manner similar transfers are effected under the terms of the Company's equity plans through which those shares are being distributed.

**IN WITNESS WHEREOF, EACH OF THE UNDERSIGNED, HAVING RECEIVED ALL THE ADVICE DEEMED NECESSARY, AND HAVING CAREFULLY READ AND UNDERSTOOD THIS AGREEMENT, DOES HEREBY SIGN AND ACCEPT THIS AGREEMENT AS OF THE DATE SET FORTH BELOW.**

12/01/06  
Date

/s/ Robert F. Bernstock  
Robert F. Bernstock

December 1, 2006  
Date

THE SCOTTS COMPANY LLC

By: Denise Stump

Its: Executive Vice President, Global HR

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Initials