

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the  
Securities Exchange Act of 1934  
(Amendment No. )

Filed by the Registrant    
Filed by a Party other than the Registrant    
Check the appropriate box:   
 Preliminary Proxy Statement   
 Definitive Proxy Statement   
 Definitive Additional Materials   
 Soliciting Material Pursuant to Section 240.14a-11(c) or Section 240.14a-12

The Scotts Company  
(Name of Registrant as Specified In Its Charter)

The Scotts Company  
(Name of Person(s) Filing Proxy Statement)

Payment of Filing Fee (Check the appropriate box):   
 \$125 per Exchange Act Rules 0-11(c)(1)(ii), 14a-6(i)(1), or 14a-6(j)(2).   
 \$500 per each party to the controversy pursuant to Exchange Act Rule 14a-6(i)(3).   
 Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.

1) Title of each class of securities to which transaction applies:

2) Aggregate number of securities to which transaction applies:

3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11:

4) Proposed maximum aggregate value of transaction:

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

1) Amount Previously Paid:

2) Form, Schedule or Registration Statement No.:

3) Filing Party:

4) Date Filed:

THE SCOTTS COMPANY  
14111 Scottslawn Road  
Marysville, Ohio 43041

August 16, 1994

Dear Fellow Stockholders:

A Special Meeting of the Stockholders (the "Special Meeting") of The Scotts Company, a Delaware corporation (the "Company"), will be held at 9:00 a.m., local time, on Tuesday, September 20, 1994, at the Dwight G. Scott Research Center, R&D Auditorium, 14310 Scottslawn Road, Marysville, Ohio 43041. The enclosed Notice of Special Meeting and Proxy Statement contain detailed information about the business to be transacted at the Special Meeting.

You are being asked to consider and approve a proposal (the "Reincorporation Proposal") which provides, among other things, for the change of the Company's state of incorporation from Delaware to Ohio through a merger of the Company into The Scotts Company, an Ohio corporation ("Scotts Ohio"), in a transaction in which the surviving corporation will be Scotts Ohio and the stockholders of the Company will become owners of all of the outstanding shares of Scotts Ohio, and related changes in the Company's organizational documents.

Your Board of Directors believes that the Reincorporation Proposal is in the best interest of The Scotts Company and all of its stockholders and unanimously recommends that you vote "FOR" this Proposal. The Reincorporation Proposal and the reasons for our recommendations are set forth in the accompanying Proxy Statement which you are asked to read at your earliest convenience.

On behalf of the Board of Directors and management, I cordially invite you to attend the Special Meeting.

The prompt return of your proxy in the enclosed business return envelope will save the Company additional expenses of solicitation and will help ensure that as many shares as possible are represented.

Sincerely,

Tadd C. Seitz  
Chairman and Chief Executive

Officer

THE SCOTTS COMPANY

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS  
To Be Held September 20, 1994

NOTICE IS HEREBY GIVEN that a Special Meeting of Stockholders (the "Special Meeting") of The Scotts Company, a Delaware corporation (the "Company"), will be held at the Dwight G. Scott Research Center, R&D Auditorium, 14310 Scottslawn Road, Marysville, Ohio 43041, on Tuesday, September 20, 1994, at 9:00 a.m., local time, for the following purposes:

1. To consider and vote upon a proposal (the "Reincorporation Proposal") which provides, among other things, for the change of the Company's state of incorporation from Delaware to Ohio through a merger of the Company into The Scotts Company, an Ohio corporation and a wholly-owned subsidiary of the Company ("Scotts Ohio"), in a transaction in which the surviving corporation will be Scotts Ohio and the stockholders of the Company will become owners of all of the outstanding shares of Scotts Ohio and related changes in the Company's organizational documents; and
2. To transact such other business as may properly come before the Special Meeting or any adjournment or adjournments thereof.

The close of business on August 1, 1994, has been fixed by the Board of Directors of the Company as the record date for determining the stockholders entitled to notice of, and to vote at, the Special Meeting. A list of stockholders eligible to vote at the Special Meeting will be available for inspection at the Special Meeting and during business hours from September 9, 1994

to the date of the Special Meeting at the Company's headquarters at the address set forth below and at the law offices of Vorys, Sater, Seymour and Pease, 52 East Gay Street, Columbus, Ohio 43215.

You are cordially invited to attend the Special Meeting. Whether or not you plan to attend the Special Meeting, you may insure your representation by completing, signing, dating and promptly returning the enclosed proxy card. A return envelope, which requires no postage if mailed in the United States, has been provided for your use. If you attend the Special Meeting and inform the Secretary of the Company in writing that you wish to vote your shares in person, your proxy will not be used.

By Order of the Board of Directors,

Craig D. Walley,  
Vice President and Secretary

The Scotts Company  
14111 Scottslawn Road  
Marysville, Ohio 43041

August 16, 1994

THE SCOTTS COMPANY

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS  
To Be Held September 8, 1994

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THE SCOTTS COMPANY  
14111 Scottslawn Road  
Marysville, Ohio 43041

PROXY STATEMENT  
for  
Special Meeting of Stockholders  
Tuesday, September 20, 1994

This Proxy Statement is furnished in connection with the solicitation on behalf of the Board of Directors of The Scotts Company, a Delaware corporation (the "Company"), of proxies for use at the Special Meeting of Stockholders (the "Special Meeting") to be held at the Dwight G. Scott Research Center, R&D Auditorium, 14310 Scottslawn Road, Marysville, Ohio 43041, on Tuesday, September 20, 1994, at 9:00 a.m., local time, and at any adjournment or adjournments thereof, for the purposes set forth in the accompanying Notice of Special Meeting of Stockholders. This Proxy Statement and the accompanying proxy card are first being mailed on or about August 16, 1994, to all stockholders of the Company. Only holders of record of the Company's Class A Common Stock, \$.01 par value (the "Scotts Delaware Shares"), at the close of business on August 1, 1994 (the "Record Date"), will be entitled to vote at the Special Meeting. As of the Record Date, there were 18,667,064 Scotts Delaware Shares outstanding. Each Scotts Delaware Share entitles the holder thereof to one vote. A quorum for the Special Meeting is a majority of the Scotts Delaware Shares outstanding. There is no cumulative voting. There are no other voting securities of the Company outstanding.

If the accompanying proxy card is properly signed and returned to the Company prior to the Special Meeting and not revoked, it will be voted in accordance with the instructions contained therein. If no instructions are given, the persons designated as proxies in the accompanying proxy card will vote

the Scotts Delaware Shares represented thereby FOR the Reincorporation Proposal described in this Proxy Statement.

The Board of Directors of the Company is not currently aware of any matters other than those referred to herein which will come before the Special Meeting. If any other matter should be presented for action at the Special Meeting, the persons named in the accompanying proxy card will vote the Scotts Delaware Shares represented by the proxy in their discretion, in accordance with their best judgment in light of the conditions then prevailing.

Without affecting any vote previously taken, any stockholder executing a proxy may revoke it at any time before it is actually voted at the Special Meeting by delivering written notice of revocation to the Secretary of the Company, by submitting a subsequently dated proxy, or by attending the Special Meeting and requesting in writing that the proxy be withdrawn. Attendance at the Special Meeting will not, in and of itself, constitute revocation of a proxy.

The expense of preparing, printing and mailing proxy materials to the Company's stockholders will be borne by the Company. The Company has engaged Corporate Investor Communications, Inc. to assist in the solicitation of proxies from stockholders at a fee of \$5,500 plus reimbursement of reasonable out-of-pocket expenses. In addition, proxies may be solicited personally or by telephone by officers or employees of the Company, none of whom will receive additional compensation therefor. The Company will also reimburse brokerage houses and other nominees who are record holders of Scotts Delaware Shares not beneficially owned by them for their reasonable expenses in forwarding proxy materials to, and obtaining proxies from, the beneficial owners of such Scotts Delaware Shares.

If a stockholder is a participant in The O. M. Scott & Sons Company Profit Sharing and Savings Plan (the "O. M. Scott Profit Sharing Plan") and Scotts Delaware Shares have been allocated to such person's account in the O. M. Scott Profit Sharing Plan, the trust will vote the allocated Scotts Delaware Shares.

#### BENEFICIAL OWNERSHIP OF SCOTTS DELAWARE SHARES

The following table furnishes certain information as of the Record Date (except as otherwise noted), as to the Scotts Delaware Shares beneficially owned by each of the directors of the Company, by each of the five most highly-paid executive officers of the Company and by all directors and executive officers of the Company as a group, and, to the Company's knowledge, by the only persons beneficially owning more than 5% of the outstanding Scotts Delaware Shares.

##### Amount and Nature of Beneficial Ownership(1)

Name of Beneficial Owner or Number of Persons in Group	Scotts Delaware Shares Presently Held	Scotts Delaware Shares Which Can Be Acquired Upon Exercise of Options Exercisable Within 60 Days	Total	Percent of Class(2)
Government of Singapore Investment Corporation Pte Ltd 250 North Bridge Road #33-00 Raffles City Tower Singapore 0617	1,060,600(3)	0	1,060,600(3)	5.7%(3)
Thorsell, Parker Partners Incorporated 215 Main Street Westport, CT 06880	997,100(4)	0	997,100(4)	5.3%(4)
James B Beard	16,727	8,000	24,727	(5)
John S. Chamberlin	22,727	8,000	30,727	(5)
Alberto Cribiore	0	0	0	(5)

Joseph P. Flannery	25,454	8,000	33,454	(5)
Theodore J. Host (6)	45,454 (7)	172,139	217,593	1.2%
Tadd C. Seitz (6)	462,454	57,266	519,720	2.8%
Donald A. Sherman	22,727	8,000	30,727	(5)
John M. Sullivan	1,000	4,000	5,000	(5)
L. Jack Van Fossen	1,200	4,000	5,200	(5)
J. Blaine McKinney (6)	1,100	18,472	19,572	(5)
Richard B. Stahl (6)	77,545 (8)	9,799	87,344	(5)
Paul D. Yeager (6)	140,885 (9)	12,622	153,507	(5)
All directors and executive officers as a group (18 persons)	1,244,123 (10)	340,489	1,584,612	8.3%

(1) Unless otherwise indicated, the beneficial owner has sole voting and investment power as to all of the Scotts Delaware Shares reflected in the table.

(2) The percent of class is based upon the sum of 18,667,064 Scotts Delaware Shares outstanding on the Record Date, and the number of Scotts Delaware Shares as to which the named person has the right to acquire beneficial ownership upon the exercise of options exercisable within 60 days of the Record Date.

(3) Based on information contained in a Schedule 13D, dated October 18, 1993, filed with the Securities and Exchange Commission, Government of Singapore Investment Corporation Pte Ltd, an agency of the Singapore government and an investment manager, shares voting and investment power with respect to 749,400 Scotts Delaware Shares with the Government of Singapore and shares voting and investment power with respect to 311,200 Scotts Delaware Shares with the Monetary Authority of Singapore.

(4) Based on information provided to the Company by Thorsell, Parker Partners Incorporated ("Thorsell, Parker"), Thorsell, Parker, a registered investment adviser, is deemed to have beneficial ownership of 997,100 Scotts Delaware Shares as of December 31, 1993, all of which Scotts Delaware Shares are held in portfolios of clients for which Thorsell, Parker serves as investment manager with investment discretion. Thorsell, Parker also exercises sole voting power with respect to 747,825 of such Scotts Delaware Shares.

(5) Represents ownership of less than 1% of the outstanding Scotts Delaware Shares.

(6) Executive officer of the Company.

(7) Includes 45,454 Scotts Delaware Shares which were issued to Mr. Host at the time of his employment by the Company and which are pledged to Bank One, N.A.

(8) Includes 1,000 Scotts Delaware Shares held by the son of Mr. Stahl who shares his home.

(9) Includes 100 Scotts Delaware Shares held by each of Mr. Yeager's wife and his two daughters who share his home.

(10) See Notes (7), (8) and (9) above. Also includes Scotts Delaware Shares held by the respective spouses of executive officers of the Company and by their children who reside with them.

Each member of the Company's Board of Directors, for the reasons set forth below, has approved and recommends that the Company's stockholders approve a proposal (the "Reincorporation Proposal") which provides, among other things, for the change of the Company's state of incorporation from Delaware to Ohio. This change in the state of incorporation (the "Reincorporation") will be accomplished through a merger (the "Merger") of the Company into The Scotts Company ("Scotts Ohio"), a wholly-owned subsidiary of the Company which was recently formed as an Ohio corporation as a vehicle to effect the Reincorporation. (The name of the surviving corporation following the Merger will be The Scotts Company and reference hereafter to Scotts Ohio shall, where appropriate, mean the surviving corporation.)

Upon consummation of the Merger, Scotts Ohio will succeed to all the business, properties, assets and liabilities of the Company and to the Company's name; and the directors, officers and employees of the Company will become directors, officers and employees of Scotts Ohio. Outstanding Scotts Delaware Shares will be converted into an equal number of common shares, without par value, of Scotts Ohio (the "Scotts Ohio Common Shares"). Approval of the Reincorporation Proposal will not result in any change in the name, business, management, location of the principal executive offices or other facilities, capitalization, assets or liabilities of the Company. The Company's employee benefit plans and arrangements will also be continued by Scotts Ohio upon the same terms and subject to the same conditions. See "Manner of Effecting the Reincorporation" at page 12.

Since the Scotts Delaware Shares were designated as a NASDAQ National Market System security on the Record Date, under Section 262 of the Delaware General Corporation Law (the "DGCL"), stockholders of the Company who do not vote in favor of the Reincorporation Proposal will not be entitled to appraisal rights in connection with the Reincorporation Proposal. See "Manner of Effecting the Reincorporation" at page 12.

Immediately following the consummation of the Merger, The O.M. Scott & Sons Company, a wholly-owned subsidiary of the Company which would become a wholly-owned subsidiary of Scotts Ohio as a result of the Merger ("OMS"), will be merged into Scotts Ohio (the "OMS Merger"). Upon consummation of the OMS Merger, Scotts Ohio will succeed to all the business, properties, assets and liabilities of OMS and will become an operating company and the outstanding shares of OMS will be extinguished. Since OMS would be a wholly-owned subsidiary of Scotts Ohio immediately prior to the OMS Merger and no Scotts Ohio Common Shares would be issued in connection therewith, the shareholders of Scotts Ohio would not be required to approve the OMS Merger. The vote by the Company's stockholders upon the Reincorporation Proposal will not constitute a vote upon the OMS Merger. If the Reincorporation Proposal is not approved by the Company's stockholders, OMS will be merged into the Company rather than into Scotts Ohio. See "Manner of Effecting the Reincorporation" at page 12.

#### Summary of the Effects of the Reincorporation

The Reincorporation will change the law applicable to the Company's corporate affairs from Delaware to Ohio law and will result in some differences in stockholders' rights. The material differences between the Ohio General Corporation Law (the "OGCL") and the Delaware General Corporation Law ("DGCL") are more fully discussed below.

Because the Company incorporated in Delaware, it is exposed to taxation not only in Ohio, but also in Delaware, where it conducts no business. Following payment of an one-time Ohio fee of \$90,100, levied at the time of the Reincorporation, Scotts Ohio's overall state tax liability, based on present rates, will be approximately \$134,000 per year less than that currently paid by the Company. In addition, as a result of the OMS Merger, Scotts Ohio would become an operating company. Since OMS and Scotts Ohio would no longer be separately taxed entities, the overall state tax liability of Scotts Ohio and its subsidiaries, based on present rates, should decrease by approximately \$184,000 per year, in addition to the previously mentioned \$134,000. If the Company's stockholders would not approve the Reincorporation Proposal and OMS would merge into the Company rather than into

Scotts Ohio, the overall state tax liability of the Company and its subsidiaries, based on present rates, should decrease by approximately \$184,000 per year. See "Reasons for the Proposed Reincorporation" at page 14.

The Reincorporation will also mean that the Company's corporate affairs will be governed by the Articles of Incorporation and Regulations of Scotts Ohio which are attached to this Proxy Statement as Annex A and Annex B, respectively, and are herein referred to as the "New Articles" and "New Regulations," respectively. The New Articles and New Regulations will carry over many of the provisions of the Company's Restated Certificate of Incorporation (the "Present Charter") and By-Laws, as amended (the "Present By-Laws"), and will also add certain additional provisions more fully discussed below. Copies of the Present Charter and the Present By-Laws are available for inspection at the office of the Secretary of the Company at the address set forth on the cover page of this Proxy Statement and copies will be sent to stockholders upon written request.

The following table briefly describes significant provisions of the DGCL and the Present Charter and Present By-Laws applicable to the Company before the Reincorporation and significant provisions of the OGCL and the New Articles and New Regulations applicable to Scotts Ohio after the Reincorporation which are more fully described below and in "Certain Significant Differences Between the Organizational Documents of Scotts Ohio and the Company" beginning at page 15 and "Comparison of Shareholders' Rights Under Ohio and Delaware Law" beginning at page 16.

Provisions Applicable to the Company Before the Reincorporation Under the DGCL and the Present Charter and Present By-Laws	Provisions Applicable to Scotts Ohio After the Reincorporation Under the OGCL and the New Articles and New Regulations
1. Directors serve one-year terms	1. Directors serve one-year terms
2. Affirmative vote of not less than a majority of voting power required to adopt amendments to Present Charter and Present By-Laws, approve mergers and consolidations, approve the dissolution of the Company, or approve the sale, lease or exchange of all or substantially all of the assets of the Company	2. Affirmative vote of not less than 2/3 of voting power required to adopt amendments to New Articles, approve mergers and consolidations, approve the dissolution of Scotts Ohio, or approve the sale, lease, exchange, transfer or other disposition of all or substantially all of the assets of Scotts Ohio; affirmative vote of not less than a majority of voting power required to adopt amendments to New Regulations
3. Special meetings of stockholders may be called by persons holding at least a majority of voting shares	3. Special meetings of shareholders may be called by persons holding at least a majority of voting shares
4. Section 203 of DGCL prohibits business combinations between the Company and a 15% stockholder for a period of three years after the stockholder becomes such, unless certain conditions are satisfied	4. Chapter 1704 of OGCL prohibits business combinations and certain other transactions between Scotts Ohio and a 10% shareholder for a period of three years after the shareholder becomes such, unless certain conditions are satisfied
5. Present By-Laws may be amended by Board of Directors without stockholder action	5. Under Section 1701.831 of OGCL, person undertaking to purchase 20% or more of the voting power of Scotts Ohio must obtain the

approval of a majority of the voting power of Scotts Ohio and a majority of the portion of such voting power excluding "interested shares"

6. Action may be taken by stockholders without a meeting with written consent of holders of shares having number of votes necessary to authorize action at a meeting

6. New Regulations may be amended only by shareholders

7. Stockholders have no right of cumulative voting in the election of directors

7. Action may be taken by shareholders without a meeting only by unanimous written consent

8. Directors may be removed prior to expiration of term, with or without cause, by holders of a majority of voting power of the Company

8. Shareholders have no right of cumulative voting in the election of directors

9. Vacancies in the Board of Directors may be filled by vote of a majority of directors then in office

9. Directors may be removed prior to expiration of term, with or without cause, by holders of a majority of voting power of Scotts Ohio

10. Personal liability of directors for monetary damages for breach of fiduciary duty eliminated except in the instance of (a) breach of duty of loyalty to the Company or its stockholders, (b) acts or omissions not in good faith or involving intentional misconduct or a knowing violation of law, (c) the paying of a dividend or the approval of a stock repurchase illegal under the DGCL or (d) any transaction from which director derived improper personal benefit

10. Vacancies in the Board of Directors may be filled by vote of a majority of directors then in office

11. Broad mandatory indemnification of directors and officers consistent with DGCL

11. Director not liable for monetary damages unless proved by clear and convincing evidence that his action or failure to act was undertaken with deliberate intent to cause injury to, or with reckless disregard for the best interest of, Scotts Ohio

12. Present Charter authorizes 35,000,000 Scotts Delaware Shares, 35,000,000 shares of Class B Common Stock, \$.01 par value, and 10,000,000 shares of Preferred Stock, \$.01 par value

12. Broad mandatory indemnification of directors and officers consistent with OGCL

13. New Articles authorize 35,000,000 Scotts Ohio Common Shares

#### Significant Carryover Provisions

Special Meetings. Under the Present By-Laws, a special meeting of stockholders may be called by the Board of Directors or by persons holding at least a majority of the voting shares of the Company. The Present By-Laws also authorize the Chairman of

the Board or the President (or, in the event of their absence or disability, any Vice President) to call special meetings of the Company's stockholders. Under the New Regulations and consistent with the OGCL, a special meeting of shareholders may be called by the Board of Directors or by persons holding at least a majority of the voting shares of Scotts Ohio. In addition, consistent with the OGCL, the New Regulations authorize the Chairman of the Board, the President (or the Vice President authorized to act in his absence, death or disability) and the Secretary to call special meetings of Scotts Ohio's shareholders. See "Special Meetings" at page 20.

Cumulative Voting. The stockholders of the Company do not have, and the shareholders of Scotts Ohio will not have, the right of cumulative voting in the election of directors. See "Cumulative Voting" at page 20.

Removal of Directors and Filling of Vacancies. Under the Present By-Laws and the New Regulations, a director of the Company or of Scotts Ohio, as appropriate, may be removed from office prior to the expiration of his term, with or without cause, by the holders of a majority of the Scotts Delaware Shares or Scotts Ohio Common Shares, as appropriate. Both the Present By-Laws and the New Regulations provide that vacancies in the Board of Directors may be filled by a majority of the directors then in office. See "Removal of Directors and Filling of Vacancies" at page 21.

Preemptive Rights. Neither the stockholders of the Company nor the shareholders of Scotts Ohio have preemptive rights. See "Preemptive Rights" at page 23.

Terms of Directors. The directors of the Company currently serve, and the directors of Scotts Ohio will serve, one-year terms.

#### Significant Changes Resulting from the Reincorporation

The significant changes which would result from the Reincorporation of the Company as an Ohio corporation are discussed in the paragraphs which follow.

THE CHANGES DESCRIBED IN PARAGRAPHS 1 THROUGH 4 BELOW, MAY HAVE AN ANTI-TAKEOVER IMPACT AND MAY MAKE TENDER OFFERS, PROXY CONTESTS AND CERTAIN MERGERS MORE DIFFICULT. HOWEVER, THE INTENT OF THESE CHANGES IS NOT TO PREVENT OFFERS TO ACQUIRE SCOTTS OHIO FROM BEING MADE. RATHER, THESE CHANGES ARE DESIGNED TO ENCOURAGE POTENTIAL ACQUIRERS TO MAKE FINANCIALLY ATTRACTIVE NON-COERCIVE OFFERS AND TO NEGOTIATE DIRECTLY WITH THE BOARD OF DIRECTORS.

1. Ohio Control Share Acquisition Statute and Merger Moratorium Statute. Scotts Ohio and its shareholders would be entitled to the protections afforded by Section 1701.831 of the Ohio Revised Code (the "Ohio Control Share Acquisition Statute") and Chapter 1704 of the Ohio Revised Code (the "Merger Moratorium Statute").

The Ohio Control Share Acquisition Statute requires shareholder approval of any proposed "control share acquisition" of an Ohio corporation. A "control share acquisition" is the acquisition, directly or indirectly, by any person (including any individual, partnership, corporation, limited liability company, society, association or two or more persons having a joint or common interest) of shares of a corporation that, when added to all other shares of the corporation that may be voted, directly or indirectly, by the acquiring person, would entitle such person to exercise or direct the exercise of 20% or more (but less than 33 1/3%) of the voting power of the corporation in the election of directors or 33 1/3% or more (but less than a majority) of such voting power or a majority or more of such voting power. The control share acquisition must be approved in advance by the holders of a majority of the outstanding voting shares represented at a meeting at which a quorum is present and by the holders of a majority of the portion of the outstanding voting shares represented at such a meeting excluding the voting shares owned by the acquiring shareholder and certain "interested shares," including shares owned by officers elected or appointed by the directors of Scotts Ohio and by directors of Scotts Ohio who are also employees of Scotts Ohio. See "Anti-takeover Statutes" at page 17.

The purpose of the Ohio Control Share Acquisition Statute is to give shareholders of Ohio corporations a reasonable opportunity to express their views on a proposed shift in control (thereby reducing the coercion inherent in an unfriendly takeover). The provisions of the Ohio Control Share Acquisition Statute would grant to the shareholders of Scotts Ohio the assurance that they will have adequate time to evaluate the proposal of the acquiring person, that they will be permitted to vote on the issue of authorizing the acquiring person's purchase program to go forward in the same manner and with the same proxy information that would be available to them if a proposed merger of Scotts Ohio were before them and, most importantly, that the interests of all shareholders will be taken into account in connection with such vote and the probability will be increased that they will be treated equally regarding the price to be offered for their Scotts Ohio Common Shares if the implementation of the proposal is approved.

The Ohio Control Share Acquisition Statute applies not only to traditional tender offers but also to open market purchases, privately negotiated transactions and original issuances by an Ohio corporation, whether friendly or unfriendly. The procedural requirements of the Ohio Control Share Acquisition Statute could render approval of any control share acquisition difficult in that a majority of the voting power of Scotts Ohio, excluding "interested shares," must be represented at the meeting and must be voted in favor of the acquisition. It is recognized that any corporate defense against persons seeking to acquire control may have the affect of discouraging or preventing offers which some shareholders might find financially attractive. On the other hand, the need on the part of the acquiring person to convince the shareholders of Scotts Ohio of the value and validity of his offer may cause such offer to be more financially attractive in order to gain shareholder approval. The Board of Directors believes that the potential benefit of the procedures contemplated by the Ohio Control Share Acquisition Statute substantially outweighs the disadvantage that shareholders may not have the opportunity to consider or to accept certain offers.

The DGCL does not contain a corresponding provision for restrictions on transfer in connection with control share acquisitions.

The Merger Moratorium Statute generally prohibits a wide range of business combinations and other transactions (including mergers, consolidations, asset sales, loans, disproportionate distributions of property and disproportionate issuances or transfers of shares or rights to acquire shares) between an Ohio corporation and a person that owns, alone or with others, shares representing at least 10% of the voting power of the corporation (an "Interested Shareholder") for a period of three (3) years after such person becomes an Interested Shareholder, unless, prior to the date that the Interested Shareholder became such, the directors approve either the transaction or the acquisition of the corporation's shares that resulted in the person becoming an Interested Shareholder. See "Anti-takeover Statutes" at page 17. The Merger Moratorium Statute is designed to prevent many of the self-dealing activities that often accompany highly-leveraged acquisitions by prohibiting an Interested Shareholder from using the corporation or its assets or shares for his special benefit. The Merger Moratorium Statute will encourage potential tender offerors to negotiate with the Board of Directors of Scotts Ohio to ensure that the shareholders of Scotts Ohio receive fair and equitable consideration for their shares. However, the Merger Moratorium Statute presents potential pitfalls for unwary shareholders. Close attention to the impact of common corporate actions, such as the grant of employee stock options and loans to Interested Shareholders in the ordinary course of business, is necessary to determine whether such actions are encompassed by the Merger Moratorium Statute.

Delaware also has a business combination law; however, unlike Delaware's business combination law, the Merger Moratorium Statute does not include an exception to the three-year moratorium on transactions with a significant shareholder in circumstances in which the significant shareholder acquires more than 85% of the outstanding shares of a corporation in a transaction that results in the significant shareholder becoming an Interested Shareholder, and the Merger Moratorium Statute does

not permit the directors or shareholders to approve a transaction during the three-year merger moratorium period.

The Board of Directors believes that the limitation on business combinations and other transactions between Scotts Ohio and an Interested Shareholder provided by the Merger Moratorium Statute substantially outweigh the disadvantage that shareholders may not have the opportunity to consider or approve such transactions until a period of three years has elapsed after a person becomes an Interested Shareholder.

2. Director Liability and Indemnification. The Ohio corporation laws would provide the directors of Scotts Ohio with specific statutory direction to guide them in making decisions relating to matters affecting the interests of the corporation, including takeover proposals. These statutes codify the directors' common law duty of care and, in part, their common law duty of loyalty. In addition, a director of Scotts Ohio would be liable in damages for actions taken (or not taken) as a director only if the plaintiff proved by clear and convincing evidence that the director's action or failure to act was done with deliberate intent to cause injury to the corporation or with reckless disregard for the best interests of the corporation. The directors of Scotts Ohio, as an Ohio corporation, would under most circumstances be entitled to advancement of litigation and similar expenses related to lawsuits or claims arising out of such person's service as a director. Each director of Scotts Ohio would also be entitled to a broad right of indemnification against not only expenses but also judgments, fines and amounts paid in settlement if the standards for such indemnification are satisfied. See "Comparison of Director and Officer Liability and Indemnification Under Ohio and Delaware Law" at page 23.

The Board of Directors may be deemed to have a conflict of interest in recommending the adoption of the Reincorporation Proposal by the stockholders because if the members of the Board of Directors of Scotts Ohio are sued in their capacity as Board members, they may be able to take advantage of the broad indemnification provisions of the New Regulations and the provisions of the OGCL limiting their liability for monetary damages. The Company's Board of Directors believes that a broad right of indemnification is necessary to encourage and retain capable persons to serve as corporate directors. The quality of a corporation's board of directors is a major factor in its long-term success and any steps which improve the capacity of the corporation to attract and retain the best possible directors is of considerable value to the shareholders. The Board of Directors also believes that a broad right of indemnification and limitations upon directors' liability for monetary damages are necessary to promote the desirable end that directors will vigorously resist what they consider unjustified suits and claims brought against them in their corporate capacities. At the same time, the Board of Directors believes that directors should not be completely immunized from personal liability resulting from certain breaches of their duties by means of overly broad indemnification and limitation of liability provisions. The indemnification provisions in the New Regulations and the limitation of liability provisions of the OGCL attempt to balance these competing concerns.

The Board of Directors of the Company believes that the indemnification provisions of the New Regulations are largely confirmatory of the existing Ohio law. The Board recognizes that, notwithstanding any provision in the New Regulations to the contrary, Scotts Ohio's ability to indemnify pursuant to the provisions of the New Regulations, or pursuant to any indemnification agreement, at all times would be subject to federal and state public policy limitations which may prevent indemnification. The Board believes that public policy would prevent indemnification for egregious intentional wrongdoing, such as self-dealing or willful fraud. Insofar as indemnification for liabilities under the Securities Act of 1933, as amended, may be permitted under the indemnification provisions of the New Regulations, the Company understands that, in the opinion of the Securities and Exchange Commission, such indemnification is against public policy and is, therefore, unenforceable.

The Company is not aware of any current or past indemnification or liability issues that will or could be presented to Scotts Ohio in the event the Reincorporation

Proposal is consummated.

3. Constituencies Which May Be Considered by the Directors. Ohio law gives directors broad discretion to consider a variety of constituencies in determining what is in the best interests of the corporation, including employees, suppliers, creditors and customers, as well as state and local economic and societal considerations, and to consider the long-term as well as the short-term interests of the corporation and its shareholders. See "Comparison of Director and Officer Liability and Indemnification Under Ohio and Delaware Law" at page 23.

4. Actions Without A Meeting. Consistent with Ohio law, the New Regulations require unanimous consent of shareholders to take action without a meeting. The Present By-Laws, consistent with Delaware law, permit action to be taken by the stockholders of the Company without a meeting with the written consent of the holders of shares of the Company having the number of votes necessary to authorize action at a meeting. The New Regulations limit the ability of a holder of the requisite voting percentage to take actions affecting Scotts Ohio and its shareholders without convening a shareholder meeting. As a result, minority shareholders will be assured of an opportunity to vote on matters coming before them at a duly called meeting preceded by delivery to them of a proxy statement describing the action proposed to be taken. See "Actions Without a Meeting" at page 15.

5. Amendment to Present Charter and New Articles; Amendment to Present By-Laws and New Regulations; Mergers and Consolidations; Other Corporate Transactions. Under the DGCL, the affirmative vote of not less than a majority of the voting power of the Company is required in order to adopt amendments to the Present Charter and the Present By-Laws, to approve mergers and consolidations, to approve the dissolution of the Company or to approve the sale, lease or exchange of all or substantially all of the assets of the Company. The New Regulations will also require the affirmative vote of not less than a majority of the voting power of Scotts Ohio in order to adopt amendments to the New Regulations. Consistent with the OGCL, the affirmative vote of not less than 2/3 of the voting power of Scotts Ohio will be required to adopt amendments to the New Articles, approve mergers and consolidations, approve the dissolution of Scotts Ohio, and approve the sale, lease, exchange, transfer or other disposition of all or substantially all of the assets of Scotts Ohio. See "Amendment to Present By-Laws and New Regulations" at page 15, "Amendment to Present Charter and New Articles" at page 16, "Mergers and Consolidations" at page 16, and "Other Corporate Transactions" at page 17.

6. No Amendment of New Regulations by Directors. The Present By-Laws may be amended by the Board of Directors without stockholder action. Consistent with the OGCL, the New Regulations may be amended only by the shareholders. See "Amendment to Present By-Laws and New Regulations" at page 15.

#### Manner of Effecting the Reincorporation

The following summary does not purport to be a complete description of the Reincorporation Proposal and is qualified in its entirety by reference to the New Articles, the New Regulations and the Agreement of Merger, dated as of August 16, 1994 (the "Merger Agreement"), by and between the Company and Scotts Ohio, a copy of which is attached as Annex C.

The proposed Reincorporation will be effected by merging the Company with and into Scotts Ohio (the "Merger") pursuant to the terms of the Merger Agreement. At the Effective Time (as defined in the Merger Agreement), the separate corporate existence of the Company will cease; Scotts Ohio will succeed to all the business, properties, assets and liabilities of the Company and to the Company's name; and the directors, officers and employees of the Company will become directors, officers and employees of Scotts Ohio. Scotts Delaware Shares issued and outstanding immediately prior to the Effective Time will, by virtue of the Merger, be converted into an equal number of fully paid and nonassessable Scotts Ohio Common Shares. Each of the Scotts Ohio Common Shares will have the same terms as the Scotts Delaware Shares, subject to the differences arising by virtue of the differences between Delaware and Ohio law and between the provisions of the Present Charter and the Present By-Laws and the New Articles and New Regulations.

From and after the Effective Time, each holder of a certificate representing Scotts Delaware Shares (a "Delaware Certificate") will be deemed for all purposes to be the holder of the number of Scotts Ohio Common Shares into which the Scotts Delaware Shares represented by his Delaware Certificate(s) have been converted. Such Delaware Certificates will continue to represent Scotts Ohio Common Shares and need not be surrendered for certificates representing Scotts Ohio Common Shares. It will not be necessary for stockholders of the Company to surrender their Delaware Certificates for certificates representing Scotts Ohio Common Shares, although they may do so if they wish. Each holder of a Delaware Certificate outstanding immediately prior to the Effective Time will receive upon surrender of his Delaware Certificate for cancellation, a new certificate representing the same number of Scotts Ohio Common Shares.

Approval of the Reincorporation Proposal will not result in any change in the name, business, management, location of the principal executive offices or other facilities, capitalization, assets or liabilities of the Company. The Scotts Ohio Common Shares will continue to be traded without interruption in the over-the-counter market and reported on the NASDAQ National Market System. The Company's 1992 Long Term Incentive Plan (the "1992 Plan") will be continued by Scotts Ohio and each outstanding award issued pursuant to the 1992 Plan will be converted into an award for Scotts Ohio Common Shares equal to the number of Scotts Delaware Shares related to the 1992 Plan immediately prior to the Effective Time, at the same prices per share and upon the same terms and subject to the same conditions as were in effect immediately prior to the Effective Time. The Company's other employee benefit plans and arrangements will also be continued by Scotts Ohio upon the same terms and subject to the same conditions.

It is anticipated that the Merger will become effective as soon as practicable following stockholder approval. However, the Merger Agreement provides that the Merger may be abandoned by the Board of Directors of the Company prior to the Effective Time, either before or after stockholder approval, if the Board determines that such abandonment is in the best interests of the Company. The Board of Directors has made no determination as to any circumstances which may prompt a decision to abandon the proposed Reincorporation. In addition, the Merger Agreement may be amended prior to the Effective Time, either before or after stockholder approval, provided that the Merger Agreement may not be amended after stockholder approval if such amendment would (i) alter or change the number or kind of shares to be received by stockholders of the Company in the Merger, (ii) alter or change any term of the New Articles or New Regulations, or (iii) alter or change any of the terms and conditions of the Merger Agreement if such alteration or change would adversely affect the stockholders of the Company.

Since the Scotts Delaware Shares were designated as a NASDAQ National Market System security on the Record Date, stockholders of the Company who do not vote in favor of the Reincorporation Proposal will not be entitled to appraisal rights in connection with the Reincorporation Proposal.

Immediately following the consummation of the Merger, OMS will be merged into Scotts Ohio. Upon consummation of the OMS Merger, Scotts Ohio will succeed to all the business, properties, assets and liabilities of OMS and will become an operating company and the outstanding shares of OMS will be extinguished. Since OMS would be a wholly-owned subsidiary of Scotts Ohio immediately prior to the OMS Merger and no Scotts Ohio Common Shares would be issued in connection therewith, the shareholders of Scotts Ohio would not be required to approve the OMS Merger. The vote by the Company's stockholders upon the Reincorporation Proposal will not constitute a vote upon the OMS Merger. If the Reincorporation Proposal is not approved by the Company's stockholders, OMS will be merged into the Company rather than into Scotts Ohio.

#### Reasons for the Proposed Reincorporation

A major reason for incorporation under Ohio law is that the overall state tax liability should decrease. Because the Company incorporated in Delaware, it is exposed to taxation not only in Ohio, but also in Delaware, where it conducts no

business. Following payment of an one-time Ohio fee of \$90,100, levied at the time of the Reincorporation, Scotts Ohio's overall state tax liability, based on present rates, will be approximately \$134,000 per year less than that currently paid by the Company.

In addition, as a result of the OMS Merger, Scotts Ohio would become an operating company. Since OMS and Scotts Ohio would no longer be separately taxed entities, the overall state tax liability of Scotts Ohio and its subsidiaries, based on present rates, should decrease by approximately \$184,000 per year, in addition to the previously mentioned \$134,000. If the Company's stockholders would not approve the Reincorporation Proposal and OMS would merge into the Company rather than into Scotts Ohio, the overall state tax liability of the Company and its subsidiaries, based on present rates, should decrease by approximately \$184,000 per year.

Another major reason for incorporation under Ohio law is that by expressly broadening the scope of judgment and discretion which may be exercised by them, it affords directors of Ohio corporations a better environment than does Delaware in which to perform their duties. Both Ohio and Delaware law require directors in the performance of their duties to be careful and disinterested and to act in good faith, following appropriate consideration, in the best interests of the corporation and its shareholders. Ohio law, however, addresses the specifics of the obligations of directors more clearly than does Delaware in several very important areas. For example, it provides explicit guidelines regarding the types of considerations which are appropriate in corporate governance generally and, in particular, in the evaluation of efforts to take over control. It also provides that a person challenging the actions of directors, including actions involving a change in control, has the burden of proving by clear and convincing evidence that the directors have not acted in good faith with regard to a matter. The Ohio statutes also provide that in most cases directors may be assured of the advancement of funds to them by their corporation in connection with their defense of litigation in which they are involved by reason of the performance of their duties as directors. These provisions are believed by the Board of Directors of the Company to be of value to the shareholders by providing a greater degree of assurance to a director regarding the range of discretion and judgment which he may exercise. The advantages and disadvantages of the provisions of the OGCL and the New Regulations governing indemnification and limitations upon directors' liability for monetary damages are more fully discussed in "Significant Changes Resulting from the Reincorporation -- Director Liability and Indemnification" at page 10.

The Ohio Control Share Acquisition Statute is intended to give shareholders of Ohio corporations, such as Scotts Ohio, a reasonable opportunity to express their views on a proposed shift in control (thereby reducing the coercion inherent in an unfriendly takeover). The Ohio Control Share Acquisition Statute would grant to the shareholders of Scotts Ohio the assurance that they will have adequate time to evaluate the proposal of the acquiring person and will be permitted to vote on the issue of authorizing the acquiring person's purchase program to go forward in the same manner and with the same proxy information that would be available to them if a proposed merger of Scotts Ohio were before them. The Merger Moratorium Statute is designed to prevent many of the self-dealing activities that often accompany highly-leveraged acquisitions by prohibiting an Interested Shareholder from using Scotts Ohio or its assets or shares for his special benefit. The advantages and disadvantages of the Ohio Control Share Acquisition Statute and the Merger Moratorium Statute are described fully in "Significant Changes Resulting from the Reincorporation -- Ohio Control Share Acquisition Statute and Merger Moratorium Statute" at page 9.

#### Certain Significant Differences Between the Organizational Documents of Scotts Ohio and the Company

The New Articles and New Regulations differ from the Present Charter and the Present By-Laws in several significant respects. The most important of these differences are described below.

The by-laws of a Delaware corporation may be amended by the stockholders and, if the certificate of incorporation so provides, by the board of directors. The Present Charter provides that the Board may adopt, alter, amend or repeal the Present By-Laws without stockholder action.

The regulations of an Ohio corporation may be amended only by the corporation's shareholders. In the case of the New Regulations, an amendment may be adopted by the shareholders by a majority of the voting power entitled to vote in connection with the amendment.

#### Actions Without a Meeting

Under the DGCL, unless the certificate of incorporation provides otherwise, any action which may be authorized or taken at a meeting of stockholders may be authorized or taken without such meeting, and without prior notice and without a vote, by written consent of the holders of shares of outstanding stock having the number of votes necessary to authorize or take such an action at a meeting at which all shares entitled to vote thereon were present and voted. The Present Charter provides no limits on the actions which may be taken by the stockholders of the Company without a meeting.

The New Regulations contain provisions consistent with the OGCL relating to the taking of shareholder action without a meeting. Under the New Regulations and the OGCL, any action which may be authorized or taken at a meeting of shareholders may be authorized or taken without such meeting by the affirmative vote or the written approval of all of the shareholders entitled to notice of such meeting.

#### Comparison of Shareholders' Rights Under Ohio and Delaware Law

The rights of shareholders of Scotts Ohio will be governed by the OGCL rather than the DGCL. The OGCL and the DGCL differ in a number of respects, and it is not practical to summarize all of such differences here. However, the following is a summary of certain significant differences between the provisions of these laws as they might affect the rights and interests of stockholders of the Company, based on the provisions contained in the New Articles and New Regulations.

#### Amendment to Present Charter and New Articles

Under the DGCL, the directors of a corporation must adopt a resolution setting forth a proposed amendment to the corporation's certificate of incorporation, declaring its advisability and either calling a special meeting of the stockholders entitled to vote thereon to consider the proposed amendment or directing that the proposed amendment be considered at the next annual meeting of stockholders. An amendment must be adopted by the affirmative vote of the holders of a majority of the outstanding shares entitled to vote thereon, or by a greater vote as provided in the certificate of incorporation. The Present Charter does not provide for a greater vote.

Under the OGCL, an amendment to the articles must be adopted by the affirmative vote of the holders of shares entitling them to exercise 2/3 of the voting power of the corporation on the proposal, or a different proportion but not less than a majority of the voting power, as provided in the articles. The New Articles do not provide for a different vote.

#### Mergers and Consolidations

Under the DGCL, an agreement of merger or consolidation must be approved by the directors of each constituent corporation and adopted by the affirmative vote of the holders of a majority of the outstanding shares entitled to vote thereon, or by a greater vote as provided in the certificate of incorporation. The Present Charter does not provide for a greater vote. Under the DGCL, the separate vote of any class of shares is not required. Additionally, the DGCL provides that, unless its certificate of incorporation provides otherwise, no vote of the stockholders of the surviving corporation is required to approve a merger if (i) the agreement of merger does not amend in any respect the corporation's certificate of incorporation, (ii) each share outstanding immediately prior to the effective date of the merger is to be an identical outstanding or treasury share of the

surviving corporation after the effective date of the merger, and (iii) the number of shares of the surviving corporation's common stock to be issued in the merger plus the number of shares of common stock into which any other securities to be issued in the merger are initially convertible does not exceed 20% of its common stock outstanding immediately prior to the effective date of the merger.

Under the OGCL, an agreement of merger or consolidation must be approved by the directors of each constituent corporation and adopted by the shareholders of each constituent Ohio corporation (other than the surviving corporation in the case of a merger) holding at least 2/3 of the corporation's voting power, or a different proportion but not less than a majority of the voting power, as provided in the articles. The New Articles do not provide for a different vote. In the case of a merger, the agreement must also be adopted by the shareholders of the surviving corporation by similar vote, if one or more of the following conditions exist: (a) the articles or regulations of the surviving corporation then in effect require that the agreement be adopted by the shareholders or by the holders of a particular class of shares of that corporation; (b) the agreement conflicts with the articles or regulations of the surviving corporation then in effect, or changes the articles or regulations, or authorizes any action that, if it were being made or authorized apart from the merger, would otherwise require adoption by the shareholders or by the holders of a particular class of shares of that corporation; (c) the merger involves the issuance or transfer by the surviving corporation to the shareholders of the other constituent corporation or corporations of such number of shares of the surviving corporation as will entitle the holders of the shares immediately after the consummation of the merger to exercise 1/6 or more of the voting power of that corporation in the election of directors; or (d) the agreement of merger makes such change in the directors of the surviving corporation as would otherwise require action by the shareholders or by the holders of a particular class of shares of that corporation.

#### Other Corporate Transactions

The DGCL does not require stockholder approval in the case of combinations and majority share acquisitions, and provides for a majority vote on the disposition of all or substantially all of a corporation's assets and on dissolutions, unless a greater vote is provided for in the certificate of incorporation. The Present Charter does not provide for a greater vote.

Subject to certain exceptions, under the OGCL, the approval of 2/3 of the voting power of the corporation, or a different proportion (not less than a majority of the corporation's voting power) as provided in the articles, is required for (i) the consummation of combinations and majority share acquisitions involving the transfer or issuance of such number of shares as would entitle the holders thereof to exercise at least 1/6 of the voting power of such corporation in the election of directors immediately after the consummation of such transaction, (ii) the disposition of all or substantially all of the corporation's assets other than in the regular course of business and (iii) voluntary dissolutions. The New Articles do not provide for a different vote.

#### Anti-takeover Statutes

Section 203 of the DGCL, designed primarily to regulate the second step of a two-tiered takeover attempt, applies to a broad range of "business combinations" between a Delaware corporation, such as the Company, and an "interested stockholder". That Section defines a "business combination" as including mergers, consolidations, sales and other dispositions of 10% or more of the assets, issuances of stock and almost any related party transaction. An "interested stockholder" is defined to include any person (other than the corporation or any of its majority-owned subsidiaries) who beneficially owns, directly or indirectly, 15% or more of the outstanding voting stock of a corporation. Delaware law prohibits a corporation from engaging in a business combination with an interested stockholder for a period of three years following the date on which the stockholder became an interested stockholder, unless (a) the board of directors approved either the business

combination or the transaction which resulted in the stockholder's becoming an interested stockholder before the person became an interested stockholder; (b) upon consummation of the transaction which resulted in the stockholder's becoming an interested stockholder, such stockholder owned at least 85% of the voting stock outstanding when the transaction began, excluding for purposes of determining the number of shares outstanding those shares owned by persons who are directors and also officers of the corporation and by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or (c) the board of directors approved the business combination after the stockholder became an interested stockholder and the business combination was approved by at least 66 2/3% of the outstanding voting stock not owned by such stockholder at a meeting of the stockholders. The Company has not taken any action to opt out of the restrictions contained in Delaware's business combination law.

Under the OGCL, unless the corporation's articles or regulations otherwise provide, any "control share acquisition" of an "issuing public corporation" may be made only with the prior authorization of its shareholders in accordance with the Ohio Control Share Acquisition Statute. Scotts Ohio qualifies as an issuing public corporation.

The Ohio Control Share Acquisition Statute requires shareholder approval of any proposed "control share acquisition" of Scotts Ohio. A "control share acquisition" is the acquisition, directly or indirectly, by any person (including any individual, partnership, corporation, limited liability company, society, association or two or more persons having a joint or common interest) of shares of a corporation that, when added to all other shares of the corporation that may be voted, directly or indirectly, by the acquiring person, would entitle such person to exercise or direct the exercise of 20% or more (but less than 33 1/3%) of the voting power of the corporation in the election of directors or 33 1/3% or more (but less than a majority) of such voting power or a majority or more of such voting power. The control share acquisition must be approved in advance by the holders of at least a majority of the outstanding voting shares represented at a meeting at which a quorum is present and by the holders of a majority of the portion of the outstanding voting shares represented at such a meeting excluding the voting shares owned by the acquiring shareholder and certain "interested shares," including shares owned by officers elected or appointed by the directors of Scotts Ohio and by directors of Scotts Ohio who are also employees of Scotts Ohio. "Interested shares" also include those shares acquired by a person or group between the date of the first disclosure of a proposed control share acquisition or change-in-control transaction and the date of the special meeting of shareholders held pursuant to the Ohio Control Share Acquisition Statute. Shares acquired during that period by a person or group will be deemed "interested shares" only if (i) the amount paid for the shares by such person or group exceeds \$250,000 or (ii) the number of shares acquired by such person or group exceeds 1/2 of 1% of the outstanding voting shares.

The New Articles and New Regulations do not contain any provision opting out of the Ohio Control Share Acquisition Statute. Therefore, it applies to control share acquisitions of Scotts Ohio's shares.

Unless the corporation's articles otherwise provide, the Merger Moratorium Statute prohibits an Ohio corporation that is a reporting company under the Securities Exchange Act of 1934 (Scotts Ohio will be such a reporting company) from engaging in a wide range of business combinations and other transactions (including mergers, consolidations, asset sales, loans, disproportionate distributions of property and disproportionate issuances or transfers of shares or rights to acquire shares) with an Interested Shareholder for a period of three years after such person becomes an Interested Shareholder unless, prior to the date that the Interested Shareholder became such, the directors approved either the transaction or the acquisition of the corporation's shares that resulted in the person's becoming an Interested Shareholder. Following the three-year moratorium period, the corporation may engage in covered transactions with an Interested Shareholder only if, among other things, (i) the transaction receives the approval of the holders of 2/3 of all

the voting shares and the approval of the holders of a majority of the voting shares held by persons other than an Interested Shareholder or (ii) the remaining shareholders receive an amount for their shares equal to the higher of the highest amount paid in the past by the Interested Shareholder for the corporation's shares or the amount that would be due the shareholders if the corporation were to dissolve. Among other differences, unlike Delaware, Ohio does not include an exception to the three-year moratorium on transactions with a significant shareholder in circumstances in which the significant shareholder acquires more than 85% of the outstanding shares of a corporation in a transaction that results in the significant shareholder becoming an Interested Shareholder, and Ohio does not permit the directors or shareholders to approve a transaction during the three-year merger moratorium period.

The New Articles do not contain any provision to opt out of the Merger Moratorium Statute. Therefore, it applies to Scotts Ohio.

Section 1707.041 of the Ohio Revised Code provides in part that no offeror may make a control bid pursuant to a tender offer or a request or invitation for tenders unless, on the day the offeror commences a control bid, it files with the Ohio Division of Securities (the "Securities Division") and the target company certain information in respect of the offeror, his ownership of the company's shares and his plans for the company (including, among other things, plans to terminate employee benefit plans, close any plant or facility, or reduce the work force). If the Securities Division determines that the offeror's disclosures are inadequate, it must act within three calendar days from the date of the offeror's filing to issue a suspension order. If a bid is suspended, a hearing must be held within ten calendar days from the date of the Securities Division's suspension order. The hearing procedure must be completed no later than sixteen calendar days after the date on which the suspension was imposed. A control bid is the purchase of or offer to purchase any equity security of an issuer with certain connections to Ohio from a resident of Ohio if (i) after the purchase of such security, the offeror would directly or indirectly be the beneficial owner of more than 10% of any class of the issued and outstanding equity securities of the issuer or (ii) the offeror is the issuer, there is a pending control bid by a person other than the issuer, and the number of the issued and outstanding shares of the company would be reduced by more than 10%. Section 1707.041 does not apply when the offeror or the target company is a bank, a bank holding company or a savings and loan holding company and the control bid is subject to approval by the appropriate federal regulatory agency.

Unless the corporation's articles or regulations otherwise provide, Section 1707.043 of the Ohio Revised Code (the "Profit Recovery Statute") permits an Ohio corporation to recover any profit realized from the disposition of equity securities of the corporation by a person or group who made a proposal to acquire control of the corporation within eighteen months before the disposition of the equity securities. Certain profits are not recoverable pursuant to the Profit Recovery Statute, including profits that do not exceed \$250,000 in the aggregate, profits with respect to securities that were acquired prior to April 11, 1990 or more than eighteen months prior to the date on which the acquisition proposal was made, and profits realized by a person or group that establishes in court that its motives were not manipulative. Neither the New Articles nor the New Regulations provide that the Profit Recovery Statute will not apply to Scotts Ohio and its equity securities.

#### Special Meetings

Under the DGCL, a special meeting of stockholders may be called by the board of directors or by such person or persons as may be authorized by the certificate of incorporation or by-laws. Under the Present By-Laws, a special meeting of stockholders of the Company may be called by the Board of Directors, the Chairman of the Board or the President (or, in the event of their absence or disability, any Vice President) or by any stockholders owning, in the aggregate, not less than a majority of the Scotts Delaware Shares. Under the OGCL, persons who may call a special meeting of shareholders include the chairman of the board, the president, or, in case of the president's absence, death, or disability, the vice-president

authorized to exercise the authority of the president; the directors by action at a meeting or a majority of the directors acting without a meeting; persons holding 25% or more of the voting power of all shares entitled to vote, unless the articles or regulations specify a smaller or larger portion, but not more than 50%; or such other officers or persons as the articles or regulations may authorize. The New Regulations, in addition to authorizing the Chairman of the Board, the President (or, in the event of his absence, death or disability, the Vice President authorized to exercise the authority of the President), the Secretary or the Board of Directors to call a special meeting of shareholders, authorize a special meeting of shareholders to be called by persons holding at least a majority of all shares outstanding and entitled to vote thereat.

#### Cumulative Voting

Where cumulative voting is permitted, each share of stock is entitled to as many votes as there are directors to be elected and each shareholder may cast all his votes for a single candidate or distribute such votes among two or more candidates. Under the DGCL, cumulative voting is permitted only if it is provided for in the certificate of incorporation. The Present Charter does not provide for cumulative voting.

Under the OGCL, unless specifically eliminated by an amendment to the corporation's articles, or in the case of a merger, in the constituent corporations' merger agreement, cumulative voting in the election of directors is mandatory if written notice is given by any shareholder to the president, a vice president or the secretary of the corporation, not less than 48 hours before a meeting held for the purpose of electing directors (if the meeting notice has been given at least 10 days prior thereto, and otherwise not less than 24 hours before the meeting), that the shareholder desires that the vote for the election of directors be cumulative, and if an announcement of the giving of such notice is made upon the convening of the meeting by the chairman or secretary or by or on behalf of the shareholder giving such notice. The Merger Agreement provides that at and after the Effective Time, no shareholders of Scotts Ohio will be entitled to vote cumulatively in the election of directors of Scotts Ohio and Article SEVENTH of the New Articles pursuant to the Merger Agreement also expressly eliminates cumulative voting. AN EFFECT OF THE ELIMINATION OF CUMULATIVE VOTING WOULD BE BOTH TO (A) PERMIT A MAJORITY OF A QUORUM OF THE VOTING POWER IN THE ELECTION OR REMOVAL OF DIRECTORS TO ELECT OR REMOVE EVERY DIRECTOR; AND (B) PRECLUDE A MINORITY OF A QUORUM OF THE VOTING POWER IN THE ELECTION OR REMOVAL OF DIRECTORS FROM ELECTING OR PREVENTING THE REMOVAL OF ANY DIRECTOR. However, the elimination of cumulative voting for the shareholders of Scotts Ohio as an Ohio corporation does not represent any substantive change in the voting rights of the stockholders of the Company as a Delaware corporation.

#### Class Voting

The DGCL requires voting by separate classes only with respect to amendments to the certificate of incorporation which adversely affect the holders of such classes or which increase or decrease the aggregate number of authorized shares or the par value of the shares of any such classes. Under the OGCL, holders of a particular class of shares are entitled to vote as a separate class if the rights of such class are affected by mergers, consolidations or amendments to the articles.

#### Removal of Directors and Filling of Vacancies

Under the Present By-Laws, a director of the Company may be removed from office prior to the expiration of his term, with or without cause, by the holders of a majority of the Scotts Delaware Shares. Under the Present By-Laws and the DGCL, vacancies in the Board of Directors of the Company and any newly-created directorships resulting from any increase in the number of the Company's directors may be filled by the Company's Board of Directors, acting by the vote of a majority of the directors then in office, even if less than a quorum, and any director so chosen shall serve until the next annual election of directors and until his successor is elected and qualified.

Under the New Regulations, a director or directors may be removed from office, with or without cause, by the affirmative

vote of the holders of at least a majority of the voting power of Scotts Ohio entitling them to elect directors in place of those to be removed. Vacancies in the Board of Directors of Scotts Ohio and any newly-created directorships resulting from any increase in the number of Scotts Ohio's directors may be filled by Scotts Ohio's Board of Directors, acting by the vote of a majority of the directors then in office, even if less than a quorum. A director elected to the Board to fill a vacancy would hold office for the unexpired portion of the term of the director whose place has been filled. A director elected by the Board to fill a newly created directorship resulting from an increase in the number of directors would hold office until the next election of the class for which the director was elected.

#### Appraisal Rights

Under the DGCL, appraisal rights are available only in connection with statutory mergers or consolidations. Even in such cases, unless the certificate of incorporation otherwise provides (and the Present Charter does not so provide), the DGCL does not recognize dissenters' rights for any class or series of stock which is either listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc. or held of record by more than 2,000 stockholders except that appraisal rights are available for holders of stock who, by the terms of the merger or consolidation, are required to accept anything except (i) stock of the corporation surviving or resulting from the merger or consolidation, (ii) shares of any other corporation which at the effective time of the merger or consolidation are either listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc. or held of record by more than 2,000 shareholders, (iii) cash in lieu of fractional shares of stock described in the foregoing clauses (i) and (ii), or (iv) any combination of stock and cash in lieu of fractional shares described in the foregoing clauses (i), (ii) or (iii).

Under the OGCL, dissenting shareholders are entitled to appraisal rights in connection with the lease, sale, exchange, transfer or other disposition of all or substantially all of the assets of a corporation and in connection with amendments to its articles which change the rights of shareholders in a substantially prejudicial manner. In addition, shareholders of an Ohio corporation being merged into a new corporation are also entitled to appraisal rights. Shareholders of an acquiring corporation are entitled to appraisal rights in a merger, combination or majority share acquisition in which such shareholders are entitled to voting rights.

#### Dividends

A Delaware corporation may pay dividends out of any surplus and, if it has no surplus, out of any net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year provided that such payment will not reduce capital below the amount of capital represented by all classes of shares having a preference upon the distribution of assets. An Ohio corporation may pay dividends in an amount which does not exceed the combination of the surplus of the corporation and the difference between (a) the reduction in surplus that results from the immediate recognition of the transition obligation under Statement of Financial Accounting Standards No. 106 ("SFAS No. 106") issued by the Financial Accounting Standards Board and (b) the aggregate amount of the transition obligation that would have been recognized as of the date of the declaration of a dividend or distribution if the corporation had elected to amortize its recognition of the transition obligation under SFAS No. 106. An Ohio corporation must notify its shareholders if a dividend is paid out of capital surplus.

#### Repurchases

Under the DGCL, a corporation may repurchase its shares only out of surplus and only if such purchase does not impair capital. Under the OGCL, a corporation may repurchase its own shares if authorized to do so by its articles or under certain other circumstances but may not do so if immediately thereafter its assets would be less than its liabilities plus its stated capital, if any, or if the corporation is insolvent or would be

rendered insolvent by such a purchase or redemption. Article FIFTH of the New Articles permits Scotts Ohio to repurchase shares to the extent permitted by law.

#### Preemptive Rights

Under the DGCL, stockholders have no preemptive rights unless such rights are expressly granted to them by the certificate of incorporation. The Present Charter does not grant preemptive rights to the Company's stockholders.

With few exceptions, the OGCL grants preemptive rights to shareholders of an Ohio corporation, unless specifically denied in the articles. The New Articles specifically deny preemptive rights to shareholders of Scotts Ohio.

#### Revocability of Proxies

Under the DGCL, a duly executed proxy is irrevocable if it states that it is irrevocable and if, and only so long as, it is coupled with an interest. Under the OGCL, a duly executed proxy is revocable unless such appointment is coupled with an interest, except that proxies given in connection with the shareholder authorization of a control share acquisition are revocable at all times prior to the obtaining of such shareholder authorization, whether or not coupled with an interest.

#### Comparison of Director and Officer Liability and Indemnification Under Ohio and Delaware Law

##### Delaware

Section 102(b)(7) of the DGCL permits a Delaware corporation to limit or eliminate a director's personal liability to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director except in the instance of (i) a breach of the director's duty of loyalty to the Company or its stockholders, (ii) acts or omissions not in good faith or which involved intentional misconduct or a knowing violation of law, (iii) the paying of a dividend or the approving of a stock repurchase or redemption which is illegal under the DGCL, or (iv) any transaction from which the director derived an improper personal benefit. Article FIFTH of the Present Charter eliminates the personal liability of the directors of the Company to the fullest extent permitted by Section 102(b)(7) of the DGCL.

Under Section 145 of the DGCL, directors, officers and other employees and individuals may be indemnified against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement in connection with specified actions, suits or proceedings, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation--a "derivative action") if they acted in good faith and in a manner they reasonably believed to be in, or not opposed to, the best interests of the corporation, and, regarding any criminal action or proceeding, had no reasonable cause to believe their conduct was unlawful. A similar standard is applicable in the case of derivative actions, except that indemnification only extends to expenses (including attorneys' fees) incurred in connection with defense or settlement of such actions. The DGCL requires court approval before there can be any indemnification where the person seeking indemnification has been found liable to the corporation. To the extent that a person otherwise eligible to be indemnified is successful on the merits of any claim or defense described above, indemnification for expenses (including attorneys' fees) is mandated by the DGCL. Advancement of such expenses (i.e., payment prior to a determination on the merits) is permissive only and such person must repay such expenses if it is ultimately determined that he is not entitled to indemnification.

Consistent with Section 145 of the DGCL, the Present By-Laws provide that any person made a party to any action, suit or proceeding (other than an action threatened or instituted directly by the Company) by reason of the fact that he is or was a director or officer of the Company or of any corporation which he served as such at the request of the Company, shall be indemnified by the Company against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, if such person acted in good faith and in a

manner which such person reasonably believed to be in the best interests of the Company, and, with respect to any criminal action or proceeding, had no reason to believe the conduct was unlawful. Similar indemnification of employees and agents of the Company is permissive only. A similar standard is applicable in the case of derivative actions, except, consistent with Section 145 of the DGCL, indemnification only extends to expenses (including attorneys' fees) incurred in connection with defense or settlement of such actions. Consistent with Section 145 of the DGCL, court approval is required before there can be any indemnification where the person seeking indemnification has been found liable to the Company.

Consistent with Section 145 of the DGCL, to the extent that a person otherwise eligible to be indemnified is successful on the merits of any claim or defense described above, indemnification for expenses (including attorneys' fees) is mandated by the Present By-Laws. In addition, advancement of such expenses incurred by officers and directors is required by the Present By-Laws (permitted in the case of employees and agents) as long as such person agrees to repay such expenses if it is ultimately determined that he is not entitled to indemnification. Section 145 of the DGCL also grants express power to a Delaware corporation to purchase liability insurance for its directors, officers, employees and agents, regardless of whether any such individual is otherwise eligible for indemnification by the corporation. Similarly, the Present By-Laws requires the Company to purchase such insurance for directors and officers.

Ohio

Under Section 1701.13(E) of the Ohio Revised Code, directors, officers, employees and agents of Ohio corporations have an absolute right to indemnification for expenses (including attorneys' fees) actually and reasonably incurred by them to the extent they are successful in defense of any action, suit or proceeding, including derivative actions, brought against them, or in defense of any claim, issue or matter asserted in any such proceeding. A director or officer is entitled to such indemnification if his success is "on the merits or otherwise", thus mandating indemnification if the indemnitee is successful on the merits or if he is successful, for example, in asserting a procedural defense, such as a claim that the action is barred by the applicable statute of limitations or if he is released pursuant to a negotiated settlement without making payment or providing other consideration. Directors (but not officers, employees or agents) are entitled to mandatory payment of expenses by the corporation as they are incurred, in advance of the final disposition of the action, suit or proceeding, provided the director agrees to cooperate with the corporation concerning the matter and to repay the amount advanced if it is proved by clear and convincing evidence that his act or failure to act was done with deliberate intent to cause injury to the corporation or with reckless disregard for the corporation's best interests.

The OGCL, like the DGCL, permits a corporation to indemnify directors, officers, employees or agents of the corporation in circumstances where indemnification is not mandated by the statute if certain statutory standards are satisfied. A corporation may grant indemnification in actions other than actions brought by, or derivatively in the right of, the corporation if the indemnitee has acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Such indemnification is permitted against expenses (including attorneys' fees) as well as judgments, fines and amounts paid in settlement actually and reasonably incurred by the indemnitee.

An Ohio corporation may also provide indemnification in actions brought by, or derivatively in the right of, the corporation for attorneys' fees and expenses actually and reasonably incurred in connection with the defense or settlement of an action if the officer, director, employee or agent acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation. Ohio law does not expressly authorize indemnification against judgments, fines and amounts paid in settlement in such actions. The corporation may not indemnify a director, officer, employee or

agent in such actions for attorneys' fees and expenses if the director, officer, employee or agent is adjudged to be liable to the corporation for negligence or misconduct in the performance of his duties to the corporation, unless and only to the extent that a court determines that, despite the adjudication of liability, such person is fairly and reasonably entitled to indemnity.

The OGCL grants express power to an Ohio corporation to purchase and maintain insurance or furnish similar protection, including but not limited to trust funds, letters of credit and self-insurance, for director, officer, employee or agent liability. Such insurance may be purchased for, or other protection provided to, any director, officer, employee or agent, regardless of whether that individual is otherwise eligible for indemnification by the corporation.

The New Regulations provide for indemnification consistent with Section 1701.13(E) of the Ohio Revised Code. The New Regulations provide that Scotts Ohio must indemnify officers and directors against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement incurred in connection with any pending, threatened or completed action (whether criminal, civil, administrative or investigative) by reason of the fact that such individual is or was a director, officer, employee or agent of Scotts Ohio or is or was serving at the request of Scotts Ohio as a director, trustee, officer, employee, member, manager or agent of another corporation or other entity so long as such individual acted in good faith and in a manner he reasonably believed was in, or not opposed to, the best interests of Scotts Ohio and, with respect to any criminal matter, he had no reasonable cause to believe his conduct was unlawful. The New Regulations forbid Scotts Ohio from indemnifying an officer or director if such person is adjudged to be liable for acting with reckless disregard for the best interests of Scotts Ohio or misconduct (other than negligence) in the performance of his duty to Scotts Ohio unless and only to the extent a court, in view of all the circumstances, concludes that such person is fairly and reasonably entitled to such indemnity as the court deems proper. The New Regulations recite a presumption that a director or officer acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of Scotts Ohio, and with respect to any criminal matter to have had no reasonable cause to believe his conduct was unlawful. Because of this presumption, Scotts Ohio believes that a director or officer will not have the initial burden of showing that he acted in good faith or in a manner he reasonably believed to be in, or not opposed to, the best interests of Scotts Ohio. In addition, the New Regulations require Scotts Ohio to advance expenses on behalf of officers and directors if they agree in writing to repay such amounts if they are not successful in litigation.

The New Regulations state that the indemnification provided thereby is not exclusive of any other rights to which any person seeking indemnification may be entitled. Additionally, the New Regulations provide that Scotts Ohio may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of Scotts Ohio, or who is or was serving another entity at the request of Scotts Ohio, against any liability asserted against him and incurred by him in such capacity, or arising out of his status as such, whether or not Scotts Ohio would have the obligation or power to indemnify him under the New Regulations. The New Regulations also authorize Scotts Ohio to purchase and maintain trust funds, letters of credit or self-insurance on behalf of any person who is or was a director, officer, employee or agent of Scotts Ohio or who is or has served another entity at the request of Scotts Ohio.

Ohio has codified the directors' common law duty of care and, in part, their common law duty of loyalty. Section 1701.59(B) of the Ohio Revised Code provides in pertinent part:

A director shall perform his duties as a director, including his duties as a member of any committee of the directors upon which he may serve, in good faith, in a manner he reasonably believes to be in or not opposed to the best interests of the corporation, and with the care that an ordinarily prudent

person in a like position would use under similar circumstances.

Under Ohio law, a director is not liable for monetary damages unless it is proved by clear and convincing evidence that his action or failure to act was undertaken with deliberate intent to cause injury to the corporation or with reckless disregard for the best interests of the corporation. This higher standard of proof must be met in any action brought against a director for breach of his duties, including any action involving or affecting (i) a change or potential change in control of the corporation, (ii) a termination or potential termination of a director's service to the corporation as a director or (iii) his service in any other position or relationship with the corporation. The higher standard of proof, however, does not affect the liability of directors for unlawful loans, dividends or distributions under Section 1701.95 of the Ohio Revised Code. There is no comparable provision limiting the liability of officers, employees or agents of Ohio corporations.

The Company is not aware of any current or past indemnification or liability issues that will or could be presented to Scotts Ohio in the event the Reincorporation Proposal is consummated.

Ohio law provides specific statutory authority for directors, in determining what they reasonably believe to be in the best interests of the corporation, to consider, in addition to the interests of the corporation's shareholders, other factors such as the interests of the corporation's employees, suppliers, creditors and customers; the economy of the state and nation; community and societal considerations; the long-term and the short-term interests of the corporation and its shareholders; and the possibility that these interests may be best served by the continued independence of the corporation.

#### Federal Income Tax Consequences of the Reincorporation

The Company has been advised by Coopers & Lybrand, the Company's independent public accountants, that for Federal income tax purposes, the Reincorporation will constitute a reorganization under Section 368 of the Code and that, consequently, the holders of Scotts Delaware Shares will not recognize any gain or loss as a result of the Merger. For Federal income tax purposes, each stockholder of the Company will retain the same tax basis in his Scotts Ohio Common Shares as he had in the corresponding Scotts Delaware Shares held by him immediately prior to the Effective Time, and his holding period for his Scotts Ohio Common Shares will include the period during which he held the corresponding Scotts Delaware Shares.

Although it is not anticipated that state or local income tax consequences will vary from the Federal income tax consequences described above, stockholders should consult their own tax advisors as to the effect of the reorganization under state, local or foreign income tax laws.

The Company further has been advised by Coopers & Lybrand that Scotts Ohio will not recognize any gain, loss or income for Federal income tax purposes as a result of the Reincorporation and Merger and that it will succeed, without adjustment, to the tax attributes of the Company.

#### Vote Required; Board Recommendation

Pursuant to the DGCL and the Present Charter, the affirmative vote of the holders of a majority of the outstanding Scotts Delaware Shares entitled to vote thereon is required for approval of the Reincorporation Proposal. Under Delaware law, abstentions are counted as present for quorum purposes; however, the effect of an abstention on the Reincorporation Proposal is the same as a "no" vote. The Reincorporation Proposal is considered "non-discretionary" and brokers who have received no instructions from their clients by the tenth day before the Special Meeting, do not have discretion to vote on the Reincorporation Proposal. Such "broker non-votes" will not be considered as votes entitled to be cast in determining the outcome of the proposal to approve the Reincorporation Proposal. As of the Record Date, the current executive officers and direc-

tors of the Company and their respective associates held approximately 6.7% of the outstanding Scotts Delaware Shares and corresponding voting power. See "BENEFICIAL OWNERSHIP OF SCOTTS DELAWARE SHARES."

THE BOARD OF DIRECTORS HAS UNANIMOUSLY APPROVED THE REINCORPORATION PROPOSAL AND UNANIMOUSLY RECOMMENDS THAT THE STOCKHOLDERS OF THE COMPANY VOTE FOR THE REINCORPORATION PROPOSAL. A vote FOR the Reincorporation Proposal will constitute approval of the Merger Agreement and the transactions contemplated thereby.

Unless otherwise directed, the persons named in the enclosed proxy will vote the Scotts Delaware Shares represented by all proxies received prior to the Special Meeting, and not properly revoked, in favor of the Reincorporation Proposal.

#### PROPOSALS BY STOCKHOLDERS

Proposals by stockholders intended to be presented at the 1995 Annual Meeting of Stockholders must be received by the Secretary of the Company no later than September 27, 1994, to be included in the Company's proxy, notice of meeting and proxy statement relating to such meeting and should be mailed to The Scotts Company, 14111 Scottslawn Road, Marysville, Ohio 43041, Attention: Secretary.

#### OTHER BUSINESS

The Board of Directors is aware of no other matter that will be presented for action at the Special Meeting. If any other matter requiring a vote of the stockholders properly comes before the Special Meeting, the persons authorized under management proxies will vote and act according to their best judgment in light of the conditions then prevailing.

The form of proxy and the Proxy Statement have been approved by the Board of Directors of the Company and are being mailed and delivered to stockholders by its authority.

Craig D. Walley  
Vice President and Secretary

Annex A

#### AMENDED

#### ARTICLES OF INCORPORATION OF THE SCOTTS COMPANY

The undersigned, desiring to form a corporation for profit under Chapter 1701 of the Ohio Revised Code, does hereby certify:

FIRST: The name of the corporation shall be The Scotts Company.

SECOND: The place in Ohio where the principal office of the corporation is to be located is in the City of Marysville, County of Union.

THIRD: The purpose for which the corporation is formed is to engage in any lawful act or activity for which corporations may be formed under Sections 1701.01 to 1701.98 of the Ohio Revised Code.

FOURTH: The authorized number of shares of the corporation shall be Thirty-Five Million (35,000,000), all of which shall be common shares, each without par value.

FIFTH: The directors of the corporation shall have the power to cause the corporation from time to time and at any time to purchase, hold, sell, transfer or otherwise deal with (A) shares of any class or series issued by it, (B) any security or other obligation of the corporation which may confer upon the holder thereof the right to convert the same into shares of

any class or series authorized by the articles of the corporation, and (C) any security or other obligation which may confer upon the holder thereof the right to purchase shares of any class or series authorized by the articles of the corporation. The corporation shall have the right to repurchase, if and when any shareholder desires to sell, or on the happening of any event is required to sell, shares of any class or series issued by the corporation. The authority granted in this Article FIFTH of these Articles shall not limit the plenary authority of the directors to purchase, hold, sell, transfer or otherwise deal with shares of any class or series, securities or other obligations issued by the corporation or authorized by its articles.

SIXTH: No shareholder of the corporation shall have, as a matter of right, the pre-emptive right to purchase or subscribe for shares of any class, now or hereafter authorized, or to purchase or subscribe for securities or other obligations convertible into or exchangeable for such shares or which by warrants or otherwise entitle the holders thereof to subscribe for or purchase any such share.

SEVENTH: Shareholders of the corporation shall not have the right to vote cumulatively in the election of directors.

EIGHTH: These Amended Articles of Incorporation take the place of and supersede the existing Articles of Incorporation of The Scotts Company.

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CODE OF REGULATIONS

OF

THE SCOTTS COMPANY

ARTICLE ONE

MEETINGS OF SHAREHOLDERS

Section 1.01. Annual Meetings. The annual meeting of the shareholders for the election of directors, for the consideration of reports to be laid before such meeting and for the transaction of such other business as may properly come before such meeting, shall be held on the second Tuesday of March in each year or on such other date as may be fixed from time to time by the directors.

Section 1.02. Calling of Meetings. Meetings of the shareholders may be called only by the chairman of the board, the president, or, in case of the president's absence, death, or disability, the vice president authorized to exercise the authority of the president; the secretary; the directors by action at a meeting, or a majority of the directors acting without a meeting; or the holders of at least a majority of all shares outstanding and entitled to vote thereat.

Section 1.03. Place of Meetings. All meetings of shareholders shall be held at the principal office of the corporation, unless otherwise provided by action of the directors. Meetings of shareholders may be held at any place within or without the State of Ohio.

Section 1.04. Notice of Meetings. (A) Written notice stating the time, place and purposes of a meeting of the shareholders shall be given either by personal delivery or by mail not less than seven nor more than sixty days before the date of the meeting, (1) to each shareholder of record entitled to notice of the meeting, (2) by or at the direction of the chairman of the board, the president or the secretary. If mailed, such notice shall be addressed to the shareholder at his address as it appears on the records of the corporation. Notice of adjournment of a meeting need not be given if the time and place to which it is adjourned are fixed and announced at such meeting. In the event of a transfer of shares after the record date for determining the shareholders who are entitled to receive notice of a meeting of shareholders, it shall not be necessary to give notice to the transferee. Nothing herein contained shall prevent the setting of a record date in the manner provided by law, the Articles or the Regulations for the determination of shareholders who are entitled to receive notice of or to vote at any meeting of shareholders or for any purpose required or permitted by law.

(B) Following receipt by the president or the secretary of a request in writing, specifying the purpose or purposes for which the persons properly making such request have called a meeting of the shareholders, delivered either in person or by registered mail to such officer by any persons entitled to call a meeting of shareholders, such officer shall cause to be given to the shareholders entitled thereto notice of a meeting to be held on a date not less than seven nor more than sixty days after the receipt of such request, as such officer may fix. If such notice is not given within fifteen days after the receipt of such request

by the president or the secretary, then, and only then, the persons properly calling the meeting may fix the time of meeting and give notice thereof in accordance with the provisions of the Regulations.

Section 1.05. Waiver of Notice. Notice of the time, place and purpose or purposes of any meeting of shareholders may be waived in writing, either before or after the holding of such meeting, by any shareholder, which writing shall be filed with or entered upon the records of such meeting. The attendance of any shareholder, in person or by proxy, at any such meeting without protesting the lack of proper notice, prior to or at the commencement of the meeting, shall be deemed to be a waiver by such shareholder of notice of such meeting.

Section 1.06. Quorum. At any meeting of shareholders, the holders of a majority of the voting shares of the corporation then outstanding and entitled to vote thereat, present in person or by proxy, shall constitute a quorum for such meeting. The holders of a majority of the voting shares represented at a meeting, whether or not a quorum is present, or the chairman of the board, the president, or the officer of the corporation acting as chairman of the meeting, may adjourn such meeting from time to time, and if a quorum is present at such adjourned meeting any business may be transacted as if the meeting had been held as originally called.

Section 1.07. Votes Required. At all elections of directors, the candidates receiving the greatest number of votes shall be elected. Any other matter submitted to the shareholders for their vote shall be decided by the vote of such proportion of the shares, or of any class of shares, or of each class, as is required by law, the Articles or the Regulations.

Section 1.08. Order of Business. The order of business at any meeting of shareholders shall be determined by the officer of the corporation acting as chairman of such meeting unless otherwise determined by a vote of the holders of a majority of the voting shares of the corporation then outstanding, present in person or by proxy, and entitled to vote at such meeting.

Section 1.09. Shareholders Entitled to Vote. Each shareholder of record on the books of the corporation on the record date for determining the shareholders who are entitled to vote at a meeting of shareholders shall be entitled at such meeting to one vote for each share of the corporation standing in his name on the books of the corporation on such record date. The directors may fix a record date for the determination of the shareholders who are entitled to receive notice of and to vote at a meeting of shareholders, which record date shall not be a date earlier than the date on which the record date is fixed and which record date may be a maximum of sixty days preceding the date of the meeting of shareholders.

Section 1.10. Proxies. At meetings of the shareholders, any shareholder of record entitled to vote thereat may be represented and may vote by a proxy or proxies appointed by an instrument in writing signed by such shareholder, but such instrument shall be filed with the secretary of the meeting before the person holding such proxy shall be allowed to vote thereunder. No proxy shall be valid after the expiration of eleven months after the date of its execution, unless the shareholder executing it shall have specified therein the length of time it is to continue in force.

Section 1.11. Inspectors of Election. In advance of any meeting of shareholders, the directors may appoint inspectors of election to act at such meeting or any adjournment thereof; if inspectors are not so appointed, the officer of the corporation acting as chairman of any such meeting may make such appointment. In case any person appointed as inspector fails to appear or act, the vacancy may be filled only by appointment made by the directors in advance of such meeting or, if not so filled, at the meeting by the officer of the corporation acting as chairman of such meeting. No other person or persons may appoint or require the appointment of inspectors of election.

Section 2.01. Authority and Qualifications. Except where the law, the Articles or the Regulations otherwise provide, all authority of the corporation shall be vested in and exercised by its directors. Directors need not be shareholders of the corporation.

Section 2.02. Number of Directors and Term of Office.

(A) Until changed in accordance with the provisions of the Regulations, the number of directors of the corporation shall be nine. Each director shall be elected to serve until the next annual meeting of shareholders and until his successor is duly elected and qualified or until his earlier resignation, removal from office or death.

(B) The number of directors may be fixed or changed at a meeting of the shareholders called for the purpose of electing directors at which a quorum is present, only by the affirmative vote of the holders of not less than a majority of the voting shares which are represented at the meeting, in person or by proxy, and entitled to vote on such proposal.

(C) The directors may fix or change the number of directors and may fill any director's office that is created by an increase in the number of directors; provided, however, that the directors may not reduce the number of directors to less than three.

(D) No reduction in the number of directors shall of itself have the effect of shortening the term of any incumbent director.

Section 2.03. Election. At each annual meeting of shareholders for the election of directors, the successors to the directors whose term shall expire in that year shall be elected, but if the annual meeting is not held or if one or more of such directors are not elected thereat, they may be elected at a special meeting called for that purpose. The election of directors shall be by ballot whenever requested by the presiding officer of the meeting or by the holders of a majority of the voting shares outstanding, entitled to vote at such meeting and present in person or by proxy, but unless such request is made, the election shall be viva voce.

Section 2.04. Removal. A director or directors may be removed from office, with or without assigning any cause, only by the vote of the holders of shares entitling them to exercise not less than a majority of the voting power of the corporation to elect directors in place of those to be removed. In case of any such removal, a new director may be elected at the same meeting for the unexpired term of each director removed. Failure to elect a director to fill the unexpired term of any director removed shall be deemed to create a vacancy in the board.

Section 2.05. Vacancies. The remaining directors, though less than a majority of the whole authorized number of directors, may, by the vote of a majority of their number, fill any vacancy in the board for the unexpired term. A vacancy in the board exists within the meaning of this Section 2.05 in case the shareholders increase the authorized number of directors but fail at the meeting at which such increase is authorized, or an adjournment thereof, to elect the additional directors provided for, or in case the shareholders fail at any time to elect the whole authorized number of directors.

Section 2.06. Meetings. A meeting of the directors shall be held immediately following the adjournment of each annual meeting of shareholders at which directors are elected, and notice of such meeting need not be given. The directors shall hold such other meetings as may from time to time be called, and such other meetings of directors may be called only by the chairman of the board, the president, or any two directors. All meetings of directors shall be held at the principal office of the corporation in Marysville or at such other place within or without the State of Ohio, as the directors may from time to time determine by a resolution. Meetings of the directors may be held through any communications equipment if all persons participating can hear each other and participation in a meeting pursuant to this provision shall constitute presence at such meeting.

Section 2.07. Notice of Meetings. Notice of the time and place of each meeting of directors for which such notice is required by law, the Articles, the Regulations or the By-Laws shall be given to each of the directors by at least one of the following methods:

(A) In a writing mailed not less than three days before such meeting and addressed to the residence or usual place of business of a director, as such address appears on the records of the corporation; or

(B) By telegraph, cable, radio, wireless, facsimile or a similar writing sent or delivered to the residence or usual place of business of a director as the same appears on the records of the corporation, not later than the day before the date on which such meeting is to be held; or

(C) Personally or by telephone not later than the day before the date on which such meeting is to be held.

Notice given to a director by any one of the methods specified in the Regulations shall be sufficient, and the method of giving notice to all directors need not be uniform. Notice of any meeting of directors may be given only by the chairman of the board, the president or the secretary of the corporation. Any such notice need not specify the purpose or purposes of the meeting. Notice of adjournment of a meeting of directors need not be given if the time and place to which it is adjourned are fixed and announced at such meeting.

Section 2.08. Waiver of Notice. Notice of any meeting of directors may be waived in writing, either before or after the holding of such meeting, by any director, which writing shall be filed with or entered upon the records of the meeting. The attendance of any director at any meeting of directors without protesting, prior to or at the commencement of the meeting, the lack of proper notice, shall be deemed to be a waiver by him of notice of such meeting.

Section 2.09. Quorum. A majority of the whole authorized number of directors shall be necessary to constitute a quorum for a meeting of directors, except that a majority of the directors in office shall constitute a quorum for filling a vacancy in the board. The act of a majority of the directors present at a meeting at which a quorum is present is the act of the board, except as otherwise provided by law, the Articles or the Regulations.

Section 2.10. Executive and Other Committees. The directors may create an executive committee or any other committee of directors, to consist of not less than three directors, and may authorize the delegation to such executive committee or other committees of any of the authority of the directors, however conferred, other than that of filling vacancies among the directors or in the executive committee or in any other committee of the directors.

Such executive committee or any other committee of directors shall serve at the pleasure of the directors, shall act only in the intervals between meetings of the directors, and shall be subject to the control and direction of the directors. Such executive committee or other committee of directors may act by a majority of its members at a meeting or by a writing or writings signed by all of its members.

Any act or authorization of any act by the executive committee or any other committee within the authority delegated to it shall be as effective for all purposes as the act or authorization of the directors. No notice of a meeting of the executive committee or of any other committee of directors shall be required. A meeting of the executive committee or of any other committee of directors may be called only by the president or by a member of such executive or other committee of directors. Meetings of the executive committee or of any other committee of directors may be held through any communications equipment if all persons participating can hear each other and participation in such a meeting shall constitute presence thereat.

Section 2.11. Compensation. Directors shall be entitled to receive as compensation for services rendered and expenses

incurred as directors, such amounts as the directors may determine.

Section 2.12. By-Laws. The directors may adopt, and amend from time to time, By-Laws for their own government, which By-Laws shall not be inconsistent with the law, the Articles or the Regulations.

### ARTICLE THREE

#### OFFICERS

Section 3.01. Officers. The officers of the corporation to be elected by the directors shall be a chairman of the board, a president, a secretary, a treasurer, and, if desired, one or more vice presidents and such other officers and assistant officers as the directors may from time to time elect. The chairman of the board must be a director. Officers need not be shareholders of the corporation, and may be paid such compensation as the board of directors may determine. Any two or more offices may be held by the same person, but no officer shall execute, acknowledge, or verify any instrument in more than one capacity if such instrument is required by law, the Articles, the Regulations or the By-Laws to be executed, acknowledged, or verified by two or more officers.

Section 3.02. Tenure of Office. The officers of the corporation shall hold office at the pleasure of the directors. Any officer of the corporation may be removed, either with or without cause, at any time, by the affirmative vote of a majority of all the directors then in office; such removal, however, shall be without prejudice to the contract rights, if any, of the person so removed.

Section 3.03. Duties of the Chairman of the Board. The chairman of the board shall preside at all meetings of the shareholders and directors at which he is present, shall be the chief executive officer of the corporation, and shall have general control and supervision of the policies and operations of the corporation and shall see that all orders and resolutions of the board of directors are carried into effect. He shall manage and administer the corporation's business and affairs and shall also perform all duties and exercise all powers usually pertaining to the office of a chief executive officer of a corporation. He shall have the authority to sign, in the name and on behalf of the corporation, checks, orders, contracts, leases, notes, drafts and other documents and instruments in connection with the business of the corporation, and together with the secretary or an assistant secretary, conveyances of real estate and other documents and instruments. He shall have the authority to cause the employment or appointment of such employees and agents of the corporation as the conduct of the business of the corporation may require, and to fix their compensation; and to remove or suspend any employee or agent elected or appointed by the chairman of the board.

Section 3.04. Duties of the President. The president shall be chief operating officer of the corporation, and, subject to the control of the chairman of the board, shall have general and active management of the ordinary business of the corporation and shall see that all orders and resolutions of the board of directors are carried into effect. In the absence of the chairman of the board, the president shall exercise all the powers of the chairman, including, without limitation, the authority to: (A) sign, in the name and on behalf of the corporation, checks, orders, contracts, leases, notes, drafts and other documents and instruments in connection with the business of the corporation, and, together with the secretary or an assistant secretary, conveyances of real estate and other documents and instruments; (B) cause the employment or appointment of such employees and agents of the corporation as the conduct of the business of the corporation may require and to fix their compensation; and (C) remove or suspend any employee or agent who shall not have been elected or appointed by the chairman of the board or the board of directors. The president shall perform such other duties and have such other powers as the board of directors or the chairman of the board may from time to time prescribe.

Section 3.05. Duties of the Vice Presidents. Each vice president shall perform such duties and exercise such powers as may be assigned to him from time to time by the chairman of the board

or the president. In the absence of the chairman of the board or the president, the duties of the chairman of the board or the president shall be performed and his powers may be exercised by such vice president as shall be designated by the chairman of the board or the president, or failing such designation, such duties shall be performed and such powers may be exercised by each vice president in the order of their earliest election to that office, subject in any case to review and superseding action by the chairman of the board or the president.

Section 3.06. Duties of the Secretary. The secretary shall have the following powers and duties:

(A) He shall keep or cause to be kept a record of all the proceedings of the meetings of the shareholders and of the board of directors in books provided for that purpose.

(B) He shall cause all notices to be duly given in accordance with the provisions of these Regulations and as required by law.

(C) Whenever any committee shall be appointed pursuant to a resolution of the board of directors, he shall furnish a copy of such resolution to the members of such committee.

(D) He shall be the custodian of the records of the corporation.

(E) He shall properly maintain and file all books, reports, statements, certificates and all other documents and records required by law, the Articles or these Regulations.

(F) He shall have charge of the stock books and ledgers of the corporation and shall cause the stock and transfer books to be kept in such manner as to show at any time the number of shares of the corporation of each class issued and outstanding, the names (alphabetically arranged) and the addresses of the holders of record of such shares, the number of shares held by each holder and the date as of which each became such holder of record.

(G) He shall sign (unless the treasurer, an assistant treasurer or assistant secretary shall have signed) certificates representing shares of the corporation the issuance of which shall have been authorized by the board of directors.

(H) He shall perform, in general, all duties incident to the office of secretary and such other duties as may be specified in these Regulations or as may be assigned to him from time to time by the board of directors, the chairman of the board or the president.

Section 3.07. Duties of the Treasurer. The treasurer shall have the following powers and duties:

(A) He shall have charge and supervision over and be responsible for the moneys, securities, receipts and disbursements of the corporation, and shall keep or cause to be kept full and accurate records of all receipts of the corporation.

(B) He shall cause the moneys and other valuable effects of the corporation to be deposited in the name and to the credit of the corporation in such banks or trust companies or with such bankers or other depositaries as shall be selected by the board of directors, the chairman of the board or the president.

(C) He shall cause the moneys of the corporation to be disbursed by checks or drafts upon the authorized depositaries of the corporation and cause to be taken and preserved proper vouchers for all moneys disbursed.

(D) He shall render to the board of directors, the chairman of the board or the president, whenever requested, a statement of the financial condition of the corporation and of all his transactions as treasurer, and

render a full financial report at the annual meeting of the shareholders, if called upon to do so.

(E) He shall be empowered from time to time to require from all officers or agents of the corporation reports or statements giving such information as he may desire with respect to any and all financial transactions of the corporation.

(F) He may sign (unless an assistant treasurer or the secretary or an assistant secretary shall have signed) certificates representing shares of the corporation the issuance of which shall have been authorized by the board of directors.

(G) He shall perform, in general, all duties incident to the office of treasurer and such other duties as may be specified in these Regulations or as may be assigned to him from time to time by the board of directors, the chairman of the board or the president.

## ARTICLE FOUR

### SHARES

Section 4.01. Certificates. Certificates evidencing ownership of shares of the corporation shall be issued to those entitled to them. Each certificate evidencing shares of the corporation shall bear a distinguishing number; the signatures of the chairman of the board, the president, or a vice president, and of the secretary, an assistant secretary, the treasurer or an assistant treasurer (except that when any such certificate is countersigned by an incorporated transfer agent or registrar, such signatures may be facsimile, engraved, stamped or printed); and such recitals as may be required by law. Certificates evidencing shares of the corporation shall be of such tenor and design as the directors may from time to time adopt and may bear such recitals as are permitted by law.

Section 4.02. Transfers. Where a certificate evidencing a share or shares of the corporation is presented to the corporation or its proper agents with a request to register transfer, the transfer shall be registered as requested if:

(1) An appropriate person signs on each certificate so presented or signs on a separate document an assignment or transfer of shares evidenced by each such certificate, or signs a power to assign or transfer such shares, or when the signature of an appropriate person is written without more on the back of each such certificate; and

(2) Reasonable assurance is given that the indorsement of each appropriate person is genuine and effective; the corporation or its agents may refuse to register a transfer of shares unless the signature of each appropriate person is guaranteed by a commercial bank or trust company having an office or a correspondent in the City of New York or by a firm having membership in the New York Stock Exchange; and

(3) All applicable laws relating to the collection of transfer or other taxes have been complied with; and

(4) The corporation or its agents are not otherwise required or permitted to refuse to register such transfer.

Section 4.03. Transfer Agents and Registrars. The directors may appoint one or more agents to transfer or to register shares of the corporation, or both.

Section 4.04. Lost, Wrongfully Taken or Destroyed Certificates. Except as otherwise provided by law, where the owner of a certificate evidencing shares of the corporation claims that such certificate has been lost, destroyed or wrongfully taken, the directors must cause the corporation to issue a new certificate in place of the original certificate if the owner:

(1) So requests before the corporation has notice that such original certificate has been acquired by a bona fide purchaser; and

(2) Files with the corporation, unless waived by the directors, an indemnity bond, with surety or sureties satisfactory to the corporation, in such sums as the directors may, in their discretion, deem reasonably sufficient as indemnity against any loss or liability that the corporation may incur by reason of the issuance of each such new certificate; and

(3) Satisfies any other reasonable requirements which may be imposed by the directors, in their discretion.

## ARTICLE FIVE

### INDEMNIFICATION AND INSURANCE

Section 5.01. Mandatory Indemnification. The corporation shall indemnify any officer or director of the corporation who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including, without limitation, any action threatened or instituted by or in the right of the corporation), by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, trustee, officer, employee, member, manager or agent of another corporation (domestic or foreign, nonprofit or for profit), limited liability company, partnership, joint venture, trust or other enterprise, against expenses (including, without limitation, attorneys' fees, filing fees, court reporters' fees and transcript costs), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and with respect to any criminal action or proceeding, he had no reasonable cause to believe his conduct was unlawful. A person claiming indemnification under this Section 5.01 shall be presumed, in respect of any act or omission giving rise to such claim for indemnification, to have acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and with respect to any criminal matter, to have had no reasonable cause to believe his conduct was unlawful, and the termination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, rebut such presumption.

Section 5.02. Court-Approved Indemnification. Anything contained in the Regulations or elsewhere to the contrary notwithstanding:

(A) the corporation shall not indemnify any officer or director of the corporation who was a party to any completed action or suit instituted by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, trustee, officer, employee, member, manager or agent of another corporation (domestic or foreign, nonprofit or for profit), limited liability company, partnership, joint venture, trust or other enterprise, in respect of any claim, issue or matter asserted in such action or suit as to which he shall have been adjudged to be liable for acting with reckless disregard for the best interests of the corporation or misconduct (other than negligence) in the performance of his duty to the corporation unless and only to the extent that the Court of Common Pleas of Union County, Ohio or the court in which such action or suit was brought shall determine upon application that, despite such adjudication of liability, and in view of all the circumstances of the case, he is fairly and reasonably entitled to such indemnity as such Court of Common Pleas or such other court shall deem proper; and

(B) the corporation shall promptly make any such unpaid indemnification as is determined by a court to be proper as contemplated by this Section 5.02.

Section 5.03. Indemnification for Expenses. Anything contained in the Regulations or elsewhere to the contrary notwithstanding, to the extent that an officer or director of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 5.01, or in defense of any claim, issue or matter therein,

he shall be promptly indemnified by the corporation against expenses (including, without limitation, attorneys' fees, filing fees, court reporters' fees and transcript costs) actually and reasonably incurred by him in connection therewith.

Section 5.04. Determination Required. Any indemnification required under Section 5.01 and not precluded under Section 5.02 shall be made by the corporation only upon a determination that such indemnification of the officer or director is proper in the circumstances because he has met the applicable standard of conduct set forth in Section 5.01. Such determination may be made only (A) by a majority vote of a quorum consisting of directors of the corporation who were not and are not parties to, or threatened with, any such action, suit or proceeding, or (B) if such a quorum is not obtainable or if a majority of a quorum of disinterested directors so directs, in a written opinion by independent legal counsel other than an attorney, or a firm having associated with it an attorney, who has been retained by or who has performed services for the corporation, or any person to be indemnified, within the past five years, or (C) by the shareholders, or (D) by the Court of Common Pleas of Union County, Ohio or (if the corporation is a party thereto) the court in which such action, suit or proceeding was brought, if any; any such determination may be made by a court under division (D) of this Section 5.04 at any time [including, without limitation, any time before, during or after the time when any such determination may be requested of, be under consideration by or have been denied or disregarded by the disinterested directors under division (A) or by independent legal counsel under division (B) or by the shareholders under division (C) of this Section 5.04]; and no failure for any reason to make any such determination, and no decision for any reason to deny any such determination, by the disinterested directors under division (A) or by independent legal counsel under division (B) or by shareholders under division (C) of this Section 5.04 shall be evidence in rebuttal of the presumption recited in Section 5.01. Any determination made by the disinterested directors under division (A) or by independent legal counsel under division (B) of this Section 5.04 to make indemnification in respect of any claim, issue or matter asserted in an action or suit threatened or brought by or in the right of the corporation shall be promptly communicated to the person who threatened or brought such action or suit, and within ten days after receipt of such notification such person shall have the right to petition the Court of Common Pleas of Union County, Ohio or the court in which such action or suit was brought, if any, to review the reasonableness of such determination.

Section 5.05. Advances for Expenses. Expenses (including, without limitation, attorneys' fees, filing fees, court reporters' fees and transcript costs) incurred in defending any action, suit or proceeding referred to in Section 5.01 shall be paid by the corporation in advance of the final disposition of such action, suit or proceeding to or on behalf of the officer or director promptly as such expenses are incurred by him, but only if such officer or director shall first agree, in writing, to repay all amounts so paid in respect of any claim, issue or other matter asserted in such action, suit or proceeding in defense of which he shall not have been successful on the merits or otherwise:

(A) if it shall ultimately be determined as provided in Section 5.04 that he is not entitled to be indemnified by the corporation as provided under Section 5.01; or

(B) if, in respect of any claim, issue or other matter asserted by or in the right of the corporation in such action or suit, he shall have been adjudged to be liable for acting with reckless disregard for the best interests of the corporation or misconduct (other than negligence) in the performance of his duty to the corporation, unless and only to the extent that the Court of Common Pleas of Union County, Ohio or the court in which such action or suit was brought shall determine upon application that, despite such adjudication of liability, and in view of all the circumstances, he is fairly and reasonably entitled to all or part of such indemnification.

Section 5.06. Article FIVE Not Exclusive. The indemnification provided by this Article FIVE shall not be exclusive of, and shall be in addition to, any other rights to which any person seeking indemnification may be entitled under the Articles or the Regulations or any agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in his

official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be an officer or director of the corporation and shall inure to the benefit of the heirs, executors, and administrators of such a person.

Section 5.07. Insurance. The corporation may purchase and maintain insurance or furnish similar protection, including but not limited to trust funds, letters of credit, or self-insurance, on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, trustee, officer, employee, member, manager or agent of another corporation (domestic or foreign, nonprofit or for profit), limited liability company, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the obligation or the power to indemnify him against such liability under the provisions of this Article FIVE. Insurance may be purchased from or maintained with a person in which the corporation has a financial interest.

Section 5.08. Certain Definitions. For purposes of this Article FIVE, and as examples and not by way of limitation:

(A) A person claiming indemnification under this Article FIVE shall be deemed to have been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 5.01, or in defense of any claim, issue or other matter therein, if such action, suit or proceeding shall be terminated as to such person, with or without prejudice, without the entry of a judgment or order against him, without a conviction of him, without the imposition of a fine upon him and without his payment or agreement to pay any amount in settlement thereof (whether or not any such termination is based upon a judicial or other determination of the lack of merit of the claims made against him or otherwise results in a vindication of him); and

(B) References to an "other enterprise" shall include employee benefit plans; references to a "fine" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" within the meaning of that term as used in this Article FIVE.

Section 5.09. Venue. Any action, suit or proceeding to determine a claim for indemnification under this Article FIVE may be maintained by the person claiming such indemnification, or by the corporation, in the Court of Common Pleas of Union County, Ohio. The corporation and (by claiming such indemnification) each such person consent to the exercise of jurisdiction over its or his person by the Court of Common Pleas of Union County, Ohio in any such action, suit or proceeding.

## ARTICLE SIX

### MISCELLANEOUS

Section 6.01. Amendments. The Regulations may be amended, or new regulations may be adopted, at a meeting of shareholders held for such purpose, only by the affirmative vote of the holders of shares entitling them to exercise not less than a majority of the voting power of the corporation on such proposal, or without a meeting by the written consent of the holders of shares entitling them to exercise not less than all of the voting power of the corporation on such proposal.

Section 6.02. Action by Shareholders or Directors Without a Meeting. Anything contained in the Regulations to the contrary notwithstanding, any action which may be authorized or taken at a meeting of the shareholders or of the directors or of a committee of the directors, as the case may be, may be author-

ized or taken without a meeting with the affirmative vote or approval of, and in a writing or writings signed by, all the shareholders who would be entitled to notice of a meeting of the shareholders held for such purpose, or all the directors, or all the members of such committee of the directors, respectively, which writings shall be filed with or entered upon the records of the corporation.

Annex C

#### AGREEMENT OF MERGER

AGREEMENT OF MERGER ("Merger Agreement"), dated as of August 16, 1994, by and between THE SCOTTS COMPANY, a Delaware corporation ("SCOTTS DELAWARE"), and THE SCOTTS COMPANY, an Ohio corporation ("SCOTTS OHIO"). SCOTTS DELAWARE and SCOTTS OHIO are hereinafter sometimes collectively referred to as the "Constituent Corporations."

The authorized capital stock of SCOTTS OHIO consists of 35,000,000 Common Shares, each without par value, 100 of which are issued and outstanding and owned by SCOTTS DELAWARE.

SCOTTS DELAWARE, as the sole shareholder of SCOTTS OHIO, desires to effect a merger of SCOTTS DELAWARE with and into SCOTTS OHIO pursuant to the provisions of the General Corporation Law of the State of Delaware (the "DGCL") and the General Corporation Law of the State of Ohio (the "OGCL").

The respective Boards of Directors of SCOTTS DELAWARE and SCOTTS OHIO have determined that it is advisable and in the best interest of each of such corporations that SCOTTS DELAWARE merge with and into SCOTTS OHIO upon the terms and subject to the conditions herein provided.

The Board of Directors of SCOTTS OHIO has, by resolution duly adopted, approved this Merger Agreement and directed that it be executed by the undersigned officers.

The Board of Directors of SCOTTS DELAWARE has, by resolution duly adopted, approved this Merger Agreement and directed that it be executed by the undersigned officers and that it be submitted to a vote of the stockholders of SCOTTS DELAWARE.

In consideration of the mutual agreements herein contained, the parties agree that SCOTTS DELAWARE shall be merged with and into SCOTTS OHIO and that the terms and conditions of the merger, the mode of carrying the merger into effect, the manner of converting the shares of the Constituent Corporations and certain other provisions relating thereto shall be as hereinafter set forth.

#### ARTICLE I

##### THE MERGER

Section 1.01. Surviving Corporation. Subject to the terms and provisions of this Merger Agreement, and in accordance with the DGCL and the OGCL, at the Effective Time (as defined in Section 1.07 hereof), SCOTTS DELAWARE shall be merged with and into SCOTTS OHIO (the "Merger"). SCOTTS OHIO shall be the surviving corporation (hereinafter sometimes called the "Surviving Corporation") of the Merger and shall continue its corporate existence under the laws of the State of Ohio. At the Effective Time, the separate corporate existence of SCOTTS DELAWARE shall cease.

Section 1.02. Effect of the Merger. At the Effective Time, the Merger shall have the effects provided for herein and in Section 1701.82 of the OGCL and Section 259 of the DGCL.

Section 1.03. Articles of Incorporation. As of the Effective Time, the Articles of Incorporation of SCOTTS OHIO, as in effect immediately prior to the Effective Time, shall be amended and replaced in their entirety by the Articles of Incorporation attached hereto as Annex I, which Articles of Incorporation shall become, at the Effective Time, the Articles

of Incorporation of the Surviving Corporation until thereafter duly amended in accordance with the provisions thereof and applicable law.

Section 1.04. Regulations. As of the Effective Time, the Regulations of SCOTTS OHIO, as in effect immediately prior to the Effective Time, shall be the Regulations of the Surviving Corporation until thereafter duly amended in accordance with the provisions thereof, the Articles of Incorporation of the Surviving Corporation and applicable law.

Section 1.05. Directors of the Surviving Corporation. At and after the Effective Time and until changed in the manner provided in the Regulations or the Articles of Incorporation of the Surviving Corporation or as otherwise provided by law, the number of directors of the Surviving Corporation shall be the number of directors of SCOTTS OHIO immediately prior to the Effective Time. At the Effective Time, each person who is a director of SCOTTS OHIO immediately prior to the Effective Time shall become a director of the Surviving Corporation and each such person shall serve as a director of the Surviving Corporation for the balance of the term for which such person was elected a director of SCOTTS OHIO and until his successor is duly elected and qualified in the manner provided in the Regulations or the Articles of Incorporation of the Surviving Corporation or as otherwise provided by law or until his earlier death, resignation or removal in the manner provided in the Regulations or the Articles of Incorporation of the Surviving Corporation or as otherwise provided by law.

Section 1.06. Officers of the Surviving Corporation. At the Effective Time, each person who is an officer of SCOTTS OHIO immediately prior to the Effective Time shall become an officer of the Surviving Corporation with each such person to hold the same office in the Surviving Corporation, in accordance with the Regulations thereof, as he or she held in SCOTTS OHIO immediately prior to the Effective Time.

Section 1.07. Effective Time. The Merger shall become effective in accordance with the provisions of Section 1701.81 of the OGCL and Sections 252 and 103 of the DGCL, upon the later to occur of (a) completion of the filing of a certificate of merger with the Secretary of State of the State of Ohio, and (b) completion of the filing of a certificate of merger with the Secretary of State of the State of Delaware. The date and time when the Merger shall become effective is herein referred to as the "Effective Time."

Section 1.08. Cumulative Voting. At and after the Effective Time, no holder of shares of SCOTTS OHIO shall be entitled to vote cumulatively in the election of directors.

Section 1.09. Additional Actions. If, at any time after the Effective Time, the Surviving Corporation shall consider or be advised that any further deeds, assignments or assurances in law or any other acts are necessary or desirable (a) to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation, title to and possession of any property or right of SCOTTS DELAWARE acquired or to be acquired by reason of, or as a result of, the Merger, or (b) otherwise to carry out the purposes of this Merger Agreement, SCOTTS DELAWARE and its proper officers and directors shall be deemed to have granted hereby to the Surviving Corporation an irrevocable power of attorney to execute and deliver all such proper deeds, assignments and assurances in law and to do all acts necessary or proper to vest, perfect or confirm title to and the possession of such property or rights in the Surviving Corporation and otherwise to carry out the purposes of this Merger Agreement; and the proper officers and directors of the Surviving Corporation are hereby fully authorized in the name of SCOTTS DELAWARE or otherwise to take any and all such action.

## ARTICLE II

### MANNER, BASIS AND EFFECT OF CONVERTING SHARES

Section 2.01. Conversion of Shares. At the Effective Time:

- (a) Each share of Class A Common Stock, par value

\$0.01 per share (the "Scotts Delaware Shares"), of SCOTTS DELAWARE issued and outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into one fully paid and nonassessable Common Share, without par value (the "Scotts Ohio Common Shares"), of SCOTTS OHIO.

(b) Each Scotts Delaware Share held in the treasury of SCOTTS DELAWARE immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of SCOTTS DELAWARE, be converted into one fully paid and nonassessable Scotts Ohio Common Share and shall be held in the treasury of the Surviving Corporation; and

(c) Each Scotts Ohio Common Share, issued and outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, be cancelled and retired and shall cease to exist, and shall not be converted into shares of the Surviving Corporation or the right to receive cash.

Section 2.02. Effect of Conversion. At and after the Effective Time, each share certificate which immediately prior to the Effective Time represented outstanding Scotts Delaware Shares (a "Delaware Certificate") shall be deemed for all purposes to evidence ownership of, and to represent, the number of Scotts Ohio Common Shares into which the Scotts Delaware Shares represented by such Delaware Certificate immediately prior to the Effective Time have been converted pursuant to Section 2.01 hereof. The registered owner of any Delaware Certificate outstanding immediately prior to the Effective Time, as such owner appears in the books and records of SCOTTS DELAWARE or its transfer agent immediately prior to the Effective Time, shall, until such Delaware Certificate is surrendered for transfer or exchange, have and be entitled to exercise any voting and other rights with respect to and to receive any dividends or other distributions on the Scotts Ohio Common Shares into which the Scotts Delaware Shares represented by any such Delaware Certificate have been converted pursuant to Section 2.01 hereof.

Section 2.03. Exchange of Certificates. Each holder of a Delaware Certificate shall, upon the surrender of such Delaware Certificate to SCOTTS OHIO or its transfer agent for cancellation after the Effective Time, be entitled to receive from SCOTTS OHIO or its transfer agent a certificate (an "Ohio Certificate") representing the number of Scotts Ohio Common Shares into which the Scotts Delaware Shares represented by such Delaware Certificate have been converted pursuant to Section 2.01 hereof. If any such Ohio Certificate is to be issued in a name other than that in which the Delaware Certificate surrendered for exchange is registered, it shall be a condition of such exchange that the Delaware Certificate so surrendered shall be properly endorsed or otherwise in proper form for transfer and that the person requesting such exchange shall either pay any transfer or other taxes required by reason of the issuance of the Ohio Certificate in a name other than that of the registered holder of the Delaware Certificate surrendered, or establish to the satisfaction of SCOTTS OHIO or its transfer agent that such tax has been paid or is not applicable.

Section 2.04. Long Term Incentive Plan and Profit Sharing Plan.

(a) Each option to purchase Scotts Delaware Shares and each performance share granted under The Scotts Company 1992 Long Term Incentive Plan (the "Long Term Incentive Plan") which is outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder of any such option or performance share, as appropriate, be converted into and become an option to purchase, or a performance share with respect to, the same number of Scotts Ohio Common Shares as the number of Scotts Delaware Shares which were subject to such option or performance share immediately prior to the Effective Time at the same option price per share (in the case of options) and upon the same terms and subject to the same conditions as are in effect at the Effective Time. The Surviving Corporation shall reserve for purposes of the Long Term Incentive Plan a number of Scotts Ohio Common Shares equal to the number of Scotts Delaware Shares reserved by SCOTTS DELAWARE for issuance under the Long Term Incentive Plan as of the Effective Time. As of the Effective Time, SCOTTS OHIO hereby assumes the Long Term

Incentive Plan and all obligations of SCOTTS DELAWARE under the Long Term Incentive Plan including the outstanding options and performance shares or portions thereof granted or awarded pursuant thereto.

(b) The O. M. Scott & Sons Company Profit Sharing and Savings Plan (the "Profit Sharing Plan") shall become an identical plan of the Surviving Corporation at the Effective Time, automatically and without further act of either of the Constituent Corporations or any participant thereunder, and each person who is a participant under the Profit Sharing Plan shall thereafter continue to participate thereunder upon identical terms and conditions; provided, however, that at and after the Effective Time, each right to acquire Scotts Delaware Shares shall thereafter be a right to acquire Scotts Ohio Common Shares.

Section 2.05. Subordinated Indenture. As of the Effective Time, SCOTTS OHIO hereby assumes all of the obligations of SCOTTS DELAWARE under the Subordinated Indenture, dated as of June 1, 1994, as supplemented, of SCOTTS DELAWARE to Chemical Bank and the Senior Subordinated Notes issued thereunder.

### ARTICLE III

#### APPROVAL; AMENDMENT; TERMINATION; MISCELLANEOUS

Section 3.01. Approval. This Merger Agreement shall be submitted for approval by the stockholders of SCOTTS DELAWARE at a special meeting of stockholders.

Section 3.02. Amendment. Subject to applicable law, this Merger Agreement may be amended, modified or supplemented by written agreement of the Constituent Corporations, after authorization of such action by the Boards of Directors of the Constituent Corporations, at any time prior to the filing of certificates of merger, as contemplated by Section 1.07 of this Merger Agreement, with the Secretary of State of the State of Delaware and with the Secretary of State of the State of Ohio, except that after the approval contemplated by Section 3.01 hereof, there shall be no amendments that would (a) alter or change the amount or kind of shares to be received by the holders of any class or series of shares of either of the Constituent Corporations in the Merger, (b) alter or change any term of the Articles of Incorporation or Regulations of SCOTTS OHIO, or (c) alter or change any of the terms and conditions of this Merger Agreement if such alteration or change would adversely affect the holders of any class or series of shares of either of the Constituent Corporations.

Section 3.03. Abandonment. At any time prior to the filing of certificates of merger, as contemplated by Section 1.07 of this Merger Agreement, with the Secretary of State of the State of Delaware and with the Secretary of State of the State of Ohio, this Merger Agreement may be terminated and the Merger may be abandoned by the Board of Directors of either SCOTTS OHIO or SCOTTS DELAWARE, or both, notwithstanding approval of this Merger Agreement by the sole shareholder of SCOTTS OHIO or by the stockholders of SCOTTS DELAWARE, or by both.

Section 3.04. Counterparts. This Merger Agreement may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, taken together, shall be deemed to constitute a single instrument.

Section 3.05. Statutory Agent in Ohio. The name and address of the statutory agent in Ohio upon whom any process, notice or demand against SCOTTS DELAWARE or the Surviving Corporation may be served are:

CT Corporation System  
3810 Carew Tower  
Cincinnati, Ohio 45202

Section 3.06. Designated Agent in Delaware. The Surviving Corporation agrees that it may be served with process in the State of Delaware in any proceeding for enforcement of any obligation of SCOTTS DELAWARE, as well as for enforcement of any obligation of the Surviving Corporation arising from the Merger, and the Surviving Corporation irrevocably appoints the Secretary of State of the State of Delaware as its agent to accept service

of process in any such suit or other proceeding; a copy of such process shall be mailed by the Secretary of State of the State of Delaware to:

Craig D. Walley  
Vice President and Secretary  
The Scotts Company  
14111 Scottslawn Road  
Marysville, Ohio 43041

IN WITNESS WHEREOF, SCOTTS DELAWARE and SCOTTS OHIO have caused this Merger Agreement to be signed by their respective duly authorized officers as of the date first above written.

Attest: THE SCOTTS COMPANY,  
an Ohio corporation

By: /s/Craig D. Walley, Secretary /s/Tadd C. Seitz, Chairman and  
Chief Executive Officer

Attest: THE SCOTTS COMPANY,  
a Delaware corporation

By: /s/Craig D. Walley, Secretary /s/Tadd C. Seitz, Chairman and  
Chief Executive Officer

Annex I

AMENDED

ARTICLES OF INCORPORATION  
OF  
THE SCOTTS COMPANY

The undersigned, desiring to form a corporation for profit under Chapter 1701 of the Ohio Revised Code, does hereby certify:

FIRST: The name of the corporation shall be The Scotts Company.

SECOND: The place in Ohio where the principal office of the corporation is to be located is in the City of Marysville, County of Union.

THIRD: The purpose for which the corporation is formed is to engage in any lawful act or activity for which corporations may be formed under Sections 1701.01 to 1701.98 of the Ohio Revised Code.

FOURTH: The authorized number of shares of the corporation shall be Thirty-Five Million (35,000,000), all of which shall be common shares, each without par value.

FIFTH: The directors of the corporation shall have the power to cause the corporation from time to time and at any time to purchase, hold, sell, transfer or otherwise deal with (A) shares of any class or series issued by it, (B) any security or other obligation of the corporation which may confer upon the holder thereof the right to convert the same into shares of any class or series authorized by the articles of the corporation, and (C) any security or other obligation which may confer upon the holder thereof the right to purchase shares of any class or series authorized by the articles of the corporation. The corporation shall have the right to repurchase, if and when any shareholder desires to sell, or on the happening of any event is required to sell, shares of any class or series issued by the corporation. The authority granted in this Article FIFTH of these Articles shall not limit the plenary authority of the directors to purchase, hold, sell, transfer or otherwise deal with shares of any class or series, securities or other obligations issued by the corporation or authorized by its articles.

SIXTH: No shareholder of the corporation shall have, as a matter of right, the pre-emptive right to purchase or subscribe for shares of any class, now or hereafter authorized, or to purchase or subscribe for

securities or other obligations convertible into or exchangeable for such shares or which by warrants or otherwise entitle the holders thereof to subscribe for or purchase any such share.

SEVENTH: Shareholders of the corporation shall not have the right to vote cumulatively in the election of directors.

EIGHTH: These Amended Articles of Incorporation take the place of and supersede the existing Articles of Incorporation of The Scotts Company.

THE SCOTTS COMPANY  
PROXY FOR SPECIAL MEETING OF STOCKHOLDERS TO BE HELD  
ON SEPTEMBER 20, 1994  
THIS PROXY IS SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS

The undersigned holder(s) of shares of Class A Common Stock of The Scotts Company (the "Company") hereby appoints Craig D. Walley and Paul D. Yeager, and each of them, the Proxies of the undersigned, with full power of substitution, to attend the Special Meeting of Stockholders of the Company to be held at the Dwight G. Scott Research Center, R&D Auditorium, 14310 Scottslawn Road, Marysville, Ohio 43041, on Tuesday, September 20, 1994, at 9:00 a.m., local time, and any adjournment or adjournments thereof, and to vote all of the shares of Class A Common Stock which the undersigned is entitled to vote at such Special Meeting or at any adjournment or adjournments thereof:

1. To approve a Reincorporation Proposal which provides, among other things, for the change of the Company's state of incorporation from Delaware to Ohio through a merger of the Company into The Scotts Company, an Ohio corporation, and related changes in the Company's organizational documents.

\_\_\_ FOR \_\_\_ AGAINST \_\_\_ ABSTAIN

2. In their discretion, the Proxies are authorized to vote upon such other matters (none known at the time of solicitation of this proxy) as may properly come before the Special Meeting or any adjournment or adjournments thereof.

WHERE A CHOICE IS INDICATED, THE SHARES REPRESENTED BY THIS PROXY WHEN PROPERLY EXECUTED WILL BE VOTED OR NOT VOTED AS SPECIFIED. IF NO CHOICE IS INDICATED, THE SHARES REPRESENTED BY THIS PROXY WILL BE VOTED "FOR" PROPOSAL NO. 1. IF ANY OTHER MATTERS ARE PROPERLY BROUGHT BEFORE THE SPECIAL MEETING OR ANY ADJOURNMENT OR ADJOURNMENTS THEREOF, THE SHARES REPRESENTED BY THIS PROXY WILL BE VOTED IN THE DISCRETION OF THE PROXIES ON SUCH MATTERS AS THE DIRECTORS MAY RECOMMEND.

(THIS PROXY CONTINUES AND MUST BE SIGNED AND DATED ON THE REVERSE SIDE)

The undersigned hereby acknowledges receipt of the Notice of the Special Meeting of Stockholders, dated August 16, 1994, and the Proxy Statement furnished therewith. Any proxy heretofore given to vote the shares of Class A Common Stock which the undersigned is entitled to vote at the Special Meeting of Stockholders is hereby revoked.

Date \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Stockholder sign name exactly as it is stenciled hereon.)

NOTE: Please fill in, sign and return this proxy in the enclosed envelope. When

signing as Attorney,  
Executor, Administrator,  
Trustee or Guardian,  
please give full title as  
such. If signer is a  
corporation, please sign  
the full corporate name  
by authorized officer.  
Joint Owners should sign  
individually. (Please  
note any change of  
address on this proxy.)

THIS PROXY IS SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS OF  
THE SCOTTS COMPANY