SECURITIES AND EXCHANGE COMMISSION
Washington, D. C. 20549

(Mark One)

( X ) ANNUAL REPORT PURSUANT TO SECTION 13 or 15 (d) OF THE SECURITIES EXCHANGE ACT OF 1934 (FEE REQUIRED)

For the fiscal year ended September 30, 1994

OR

( ) TRANSITION REPORT PURSUANT TO SECTION 13 or 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 (NO FEE REQUIRED)

For the transition period from _____ to _____

Commission file number 0-19768

The Scotts Company
(Exact name of registrant as specified in its charter)

Ohio
31-1199481
(State or other jurisdiction of incorporation or organization
(I.R.S. Employer
Identification No.)

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

Registrant's telephone number, including area code:
513-644-0011

Securities registered pursuant to Section 12(b) of the Act:

| Title of Each Class | Name of Each Exchange Where Registered |
|---|---|
| 97/8% Senior Subordinated Notes due August 1, 2004 | New York Stock Exchange |

Securities registered pursuant to Section 12(g) of the Act:

Common Shares, Without Par Value
(18,667,064 Common Shares outstanding at November 30, 1994)
Title of class

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes x No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of the Form 10-K or any amendment to this Form 10-K. (X)

The aggregate market value of the voting stock held by non-affiliates of the registrant at November 30, 1994 was $275,339,194.

This report contains 258 pages of which this is Page 1. The Index to Exhibits begins at page 71.

## PART I

### ITEM 1. BUSINESS.

The Scotts Company, through its wholly-owned subsidiaries, Hyponex Corporation ("Hyponex"), Scotts-Sierra Horticultural Products Company ("Sierra"), Republic Tool and Manufacturing Corp. ("Republic") and their subsidiaries (collectively, the "Company") is one of the oldest and most widely recognized manufacturers of products used to grow and maintain landscapes: lawns, gardens and golf courses. In both the consumer and professional market segments, the Company's Scotts and Turf

Builder (for consumer lawn care), ProTurf (for professional turf care) and Osmocote and Peters (for commercial horticulture) brands command market-leading shares more than double those of the next ranked competitors. The Company's long history of technical innovation, its reputation for quality and service and its effective marketing tailored to the needs of do-it-yourselfers and professionals have enabled the Company to maintain leadership in its markets while delivering consistent growth in sales and operating income and stable operating margins. On September 20, 1994, The Scotts Company, a Delaware corporation ("Scotts Delaware") was merged with and into The Scotts Company, an Ohio corporation ("Scotts Ohio") (hereafter, the "Company Merger"). On September 30, 1994, Scotts Ohio's major operating subsidiary, The O. M. Scott & Sons Company, a Delaware Corporation ("O. M. Scott") was merged into Scotts Ohio (the "O. M. Scott Merger"). Management believes these mergers should decrease the Company's overall tax liability.

Do-it-yourselfers and professionals purchase through different distribution channels and have different information and product needs. Accordingly, the Company has two business groups, Consumer and Professional, to serve these domestic markets, as well as an International Group to serve its markets outside of North America.

## Consumer Business Group

### Products

The Company's consumer products include lawn fertilizers, fertilizer/control combination products, potting soils and other organic products, grass seed, lawn spreaders, and indoor and outdoor plant care products.

Lawn Fertilizers and Combination Products. The Company's most important consumer products are lawn fertilizers, such as Turf Builder, and combination fertilizer/control products, such as Turf Builder Plus 2 and Turf Builder Plus Halts. Typically, these are patented, homogeneous, controlled-release products which provide complete controlled feeding for consumers' lawns for up to two months without the risk of damage to the lawn presented by less expensive non-controlled-release products. Many of the Company's products are specially formulated for geographical differences and some, such as Bonus S (to control weeds in Southern grasses) are distributed to limited areas. Most of the Company's fertilizer and combination products are sold in dry, granular form, although the Company also sells a small amount of liquid lawn care products. With the acquisition of Sierra in December, 1993, the Company obtained new products and technologies. Consumer products that utilize Sierra's technology in this category include Once controlled-release lawn fertilizer, which can provide up to three months of feeding from one application.

Management estimates that in fiscal 1994, the Company's share of the U.S. do-it-yourself consumer lawn chemicals products market was approximately 46%, more than double that of the second leading brand.



Organic Products. The Company sells a broad line of organic products under the Scotts, Hyponex, Peters Professional and other labels, including retail potting soils, topsoil, peat, manures and mulches. Management estimates that the Company's fiscal 1994 U.S. market share was approximately 50% in potting soils, and approximately 39% in other consumer organic products.

Grass Seed. High quality grass seed was the Company's first lawn product. Today, the Company sells numerous varieties and blends of grass seed, many of them proprietary, designed for different uses and geographies. Management estimates that the Company's share of the U.S. consumer grass seed market was approximately 28% in fiscal 1994.

Lawn Spreaders. Because the Company's granular lawn care products perform best when applied evenly and accurately, the Company sells a line of spreaders specifically manufactured and developed for use with its products. This line includes the SpeedyGreen and EasyGreen rotary spreaders, the PrecisionGreen and AccuGreen drop spreaders, and the HandyGreen hand-held rotary

spreader.

Since the acquisition of Republic in November, 1992, the Company has continued to market both its line of Scotts spreaders and Republic's EZ line of spreaders and to integrate the manufacture of its spreaders through Republic. Management estimates that the Company's share of the U.S. market for lawn spreaders was approximately 42% in fiscal 1994.

Garden Products, Tools and Indoor Products. The Company produces and sells a line of boxed Scotts Plant Foods, garden and landscape fertilizers and indoor plant care products and Peters Professional water soluble fertilizers and Once controlled-released garden fertilizers. In September 1994, the Company entered into a licensing agreement with American Lawn Mower Company ("American") under which American, in return for the payment of royalties, is granted the right to produce and market a line of push-type reel lawn mowers bearing the Scotts trademark. The Company also has a licensing agreement in place with Union Tools, Inc. ("Union") under which Union, in return for the payment of royalties, is granted the right to produce and market a line of garden tools bearing the Scotts trademark. In management's estimation, the Company did not have a material share of the markets for these products in fiscal 1994.

Consumer Business Strategy

The Company believes that it has achieved its leading position in the do-it-yourself lawn care market on the basis of its sophisticated technology, the superior quality and value of its products and the service it provides its customers. The Company plans to maintain and expand its market position by emphasizing these qualities and taking advantage of the Scotts name and reputation. Through its Hyponex label, the Company has also focused on increasing sales of its higher margin organic items such as potting soils. In 1994, the Company introduced a line of Scotts potting soils.

The acquisition of Sierra in 1993 provides the Company with numerous strategic opportunities. This includes the expansion of sales of water-soluble fertilizers manufactured by Sierra in to the consumer market and the future introduction into the consumer market of certain bioinsecticides for which Sierra has licenses.

Drawing upon its strong research and development capabilities, the Company intends to continue to develop and introduce new and innovative lawn and garden products. The Company believes that its ability to introduce successful new consumer products has been a key element in Scotts' growth. New consumer products in recent years include PatchMasterr (1992), a unique lawn repair product containing seed, Scotts Starterr fertilizer and mulch; a Poly-Sr lawn fertilizer line(1993), which utilizes Scotts proprietary controlled-release technology to provide a lower priced product offering versus the Premium Turf Builderr line; new AccuGreenr and Speedy Greenr (1994) spreaders which are shipped and sold


fully assembled; and Scotts Planting Soils (1994), a line of ready-to-use, value-added soils which help simplify the do-it-yourself gardener's task and deliver superior growing performance.

The Company also seeks to capitalize upon the competitive advantages stemming from its position as the leading nationwide supplier of a full line of consumer lawn and garden products. The Company believes that this gives it an advantage in selling to larger retailers, who value the efficiency of dealing with a limited number of suppliers.

The Company has developed a program to take advantage of Hyponex's composting expertise and the increasing concern about landfill capacity by entering into agreements with municipalities and waste haulers to compost yard waste. A pilot program was started in 1991 on Company-owned land in Marysville when the Company entered into a five-year contract with Franklin County, Ohio, to compost a minimum of 50,000 tons of yard waste per year for a fee of $20 per ton. The Company now has seventeen compost facilities. In addition to service fees, the Company substitutes the resulting compost for a portion of the raw materials in

Hyponex and other Company products. Revenues in fiscal 1994 and 1993 from composting services were $5.0 million and $2.1 million, respectively.

Marketing and Promotion

The Company employs a 100 person direct sales force and numerous distributors for its consumer products to cover approximately 24,000 retail outlets and headquarters of national, regional and local chains. Most salespeople have college degrees and prior sales experience. In recent years, the percentage of sales to mass merchandisers and large buying groups has increased. The top ten accounts (which include three buying groups of independent retailers) represented 59% of the Consumer Business Group sales in fiscal 1993 and 66% in 1994.

At the same time, the Company continues to support its independent retailers. Most importantly, the Company developed a special line of products, marketed under the Lawn Pro name, which are sold exclusively by independent retailers. These products include the 4-Step program, introduced in 1984, which encourages consumers to purchase four products at one time (fertilizer plus crabgrass preventer, fertilizer plus weed control, fertilizer plus insect control and a special fertilizer for Fall application). The Company promotes the 4-Step program as providing consumers with all their annual lawn care needs for less than half of what a lawn care service would cost. The Company believes that the Lawn Pro line has helped maintain the loyalty of the independent retailers in the face of increasing competition from mass merchandisers.

The Company supports its sales efforts with extensive advertising and promotional programs. Because of the importance of the Spring sales season in the marketing of consumer lawn and garden products, the Company focuses its promotional efforts on this period. Through advertising, consumer rebates, retailer allowances and other promotional efforts, the Company seeks to encourage customers to make the bulk of their lawn and garden purchases in the early Spring. The Company believes that its early season promotions substantially moderate the risk to its consumer sales posed by bad weekend weather.

An important part of the Company's sales effort is its national toll-free consumer hotline, on which its "lawn consultants" answer questions about the Company's products and give general lawn care advice to consumers. The Company's lawn consultants responded to over 372,000 telephone and written inquiries in fiscal 1994 and have handled over 2,500,000 calls since the inception of the consumer hotline in 1972.

Backing up the Company's marketing effort is its well-known "No Quibble" guarantee, instituted in 1958, which promises consumers a full refund if for any reason they are not satisfied with the results after using Scotts products. Refunds under this guarantee have consistently amounted to less than 0.3% of net sales on an annual basis.



Competition

The consumer lawn and garden market is highly competitive. The most significant competitors for the consumer lawn care business are lawn care service companies. At least one of these, Tru Green Company, which also owns the ChemLawn lawn care service business, operates nationally and is significantly larger than the Company. In the do-it-yourself segment, the Company's products compete primarily against regional products and private label products produced by various suppliers and sold by such companies as Kmart. These products compete across the entire range of the Company's product line. In addition, certain of the Company's products compete against branded fertilizers, pesticides and combination products marketed by such companies as Monsanto Company (Ortho and Greensweep), Lebanon Chemical Corp. (Greenview) and Stern's Miracle-Gro Products, Inc.

Most competitors, with the exception of lawn care service companies, sell their products at prices lower than those of the Company. The Company competes primarily on the basis of its strong brand names, quality, value, service and technological innovation. The Company's competitive position is also supported by its national sales force, advertising campaigns and its

unconditional guarantee. There can be no assurance, however, that additional competition from new or existing competitors will not erode the Company's share of the consumer market or its profit margins.

Backlog

The major portion of annual consumer product orders (other than organic products which are normally ordered in season on an "as needed" basis) are received from retailers during the months of October through January and are filled during the months of January through March. As of December 6, 1994, orders on hand for retail customers (excluding orders for Sierra products) totaled approximately $58,693,000 compared to approximately $42,270,000 on the same date in 1993. All such orders are expected to be filled in fiscal 1995.

## Professional Business Group

The Market

The Company sells its professional products to golf courses, commercial nurseries and greenhouses, schools and sportsfields, multi-family housing complexes, business and industrial sites, lawn and landscape services and specialty crop growers. In 1994, the Professional Business Group served over 12,000 North American customers, among them such high profile golf courses as Augusta National (Georgia), Cypress Point, Spyglass and Pebble Beach (California), Desert Mountain (Arizona), Muirfield (Ohio), The Country Club (Massachusetts), Colonial Country Club (Texas) and Butler National (Illinois). Sports complexes such as Fenway Park, Camden Yard, Wrigley Field, Yankee Stadium and the Rose Bowl are professional customers, as are major commercial nursery/greenhouse operations such as Monrovia, Hines and Imperial.

Golf courses accounted for approximately 43% of the Company's professional sales in fiscal 1994. During 1994, the Company sold products to approximately 55% of the over 14,500 golf courses in North America, including 78 of Golf Digest's top 100 U.S. courses. Management estimates, based on an independent bi-annual market survey and other information available to the Company, that the Company's leading share of the North American golf course turf maintenance segment will be approximately 20% in 1994.

According to the National Golf Foundation, approximately 200 new golf courses have been constructed annually for the last three years. Management believes that the increase in the number of


courses, the concentration of the growth in the West/South with a longer growing/maintenance season, the increasing playing time requiring more course maintenance and the trend toward more highly maintained courses will contribute to an annual sales growth rate in the golf course segment of 9%.

Horticulture sales accounted for approximately 38% of the Company's professional sales in fiscal 1994. The Company sold products to thousands of nursery, greenhouse and specialty crop growers through a network of over 100 horticultural distributors. On a full year basis, the Company estimates that its leading share of the North American horticultural segment was approximately 35% in 1994.

Management believes the increasing acceptance of controlled-release fertilizers in horticultural/ agricultural applications due to performance advantages and groundwater leaching concerns will contribute to an increase in the annual sales growth rate in the horticulture segment.

In January, 1994, a new business unit under the ProGrow name was created to better serve the large, but highly fragmented, lawn/landscape service market, in addition to schools/sportsfields, multi-family housing complexes and business/industrial sites. Many small service operators prefer to purchase on an as-needed, "cash and carry" basis, so the Company is establishing a network of distributors to extend local availability of its professional products. By the end of fiscal 1994, over 60 distributors had been added, with plans to add

additional distributors in 1995 and beyond. Management believes changing demographic factors such as increasing time pressures, higher disposable income and an aging population will result in an expanding service segment.

Products

The Company's professional products, marketed under such brand names as ProTurf, ProGrow, Osmocote, Peters, Metro-Mix and Terra-Lite, include a broad line of sophisticated controlled-release fertilizers, water soluble fertilizers, control products (herbicides, insecticides, fungicides and growth regulators), wetting agents, organic products, grass seed and application devices. The fertilizer lines utilize a range of proprietary controlled-release fertilizer technologies, including Polyform, Triaform, Poly-S, Osmocote and ScottKote, and proprietary water soluble fertilizer technologies, including Peters and Peters Excel. The Company applies these technologies to meet a wide range of professional customer needs, ranging from quick release greenhouse fertilizers to controlled-release fairway/greens fertilizers to extended release nursery fertilizers that last up to a year or more.

The Company works very closely with basic pesticide manufacturers to secure exclusive positions on advanced control chemistry which can be formulated on granular carriers, including fertilizers or liquid application. In 1994, over 15 professional products featured exclusive control technologies, including such products as the TGR growth regulator line, Turplex bioinsecticide and DMC weed control. Liquid-applied fertilizers and control products numbered 37 in 1994. Application devices include both rotary and drop action spreaders. Over 20 proprietary grass seed varieties are part of the professional line. The Sierra acquisition added an established line of soilless mixes in which controlled and water soluble fertilizers, wetting agents and control products can be incorporated to customize potting media for nurseries and greenhouses.

During 1994, the Company introduced 24 new professional products, including Poly-S and TGR line extensions, a line of Peters water soluble fertilizers for golf course greens, an Osmocote controlled-release potassium product and Merit insecticide.



Business Strategy

The Company's Professional Business Group focuses its sales efforts on the middle and high end of the professional market and generally does not compete for sales of commodity products. Demand for the Company's professional products is primarily driven by product quality, performance and technical support. The Company seeks to meet these needs with a range of sophisticated, specialized products that are sold by a professional, agronomically-trained sales force.

A primary focus of the Professional Business Group's strategy is to provide a continuing flow of innovative new products to its professional customers. Products introduced since 1989 accounted for over 60% of the Professional Business Group's net sales in fiscal 1994.

The Company intends to use its strong position in the golf course segment to increase sales of Sierra products to those users, and, conversely, to expand the distribution of Scott nursery products in the commercial horticultural segment in which Sierra has a strong position.

The Professional Business Group also is working to increase market coverage by focusing on various professional market niches. In 1965, the Company established its first specialized professional sales force, focusing on golf courses. Since 1985, it has established separate sales forces and/or sales managers for lawn and landscape services, sports fields, golf course architects and construction companies, and international segments of the professional market. In 1992, the Company introduced a fairway application service for golf courses. This service has been expanded and is now available in eight markets, with six new

markets planned for 1995. In 1994, the ProGrow business was launched to better serve lawn/landscape services that purchase on an as-needed basis.

Marketing and Promotion

The Professional Business Group's sales force consists of 125 territory managers who cover over 17,000 accounts. Many territory managers are experienced former golf course superintendents or nursery managers and most have degrees in agronomy, horticulture or similar disciplines. Territory managers work closely with golf course and sports field superintendents, turf and nursery managers, and other landscape professionals. In addition to marketing the Company's products, Scott's territory managers provide consultation, testing services, and advice regarding maintenance practices, including individualized comprehensive programs incorporating various products for use at specified times throughout the year. The professional grower segment is served primarily through an extensive network of distributors, most with substantial experience in the horticulture market, with territory managers spending the majority of their time with growers.

To reach potential purchasers, the Company uses trade advertising and direct mail, publishes newsletters, and sponsors seminars throughout the country. In addition, the Company maintains a special toll-free hotline for its professional customers. The professional customer service department responded to over 40,000 telephone inquiries in fiscal 1994.

Competition

In the professional turf and nursery market, the Company faces a broad range of competition from numerous companies ranging in size from multi-national chemical and fertilizer companies such as Monsanto and DowElanco Company, to smaller specialized companies such as Lesco, Inc. and Lebanon Chemical Corp., to local fertilizer manufacturers and blenders. Portions of this market, such as fairway and rough fertilizers for golf courses, are sometimes served by large agricultural fertilizer companies, while other segments, such as fertilizers and pest controls for golf course greens and high value nursery crops, are served by specialized, research-oriented companies. In certain areas of the country, particularly


Florida, a number of companies have begun to offer turf care services, including product application, to golf courses. In addition, the higher margins available for sophisticated products to treat high value crops continue to attract large and small chemical producers and formulators, some of which have larger research departments and budgets than the Company. While the Company believes that its reputation, turf and ornamental market focus, expertise in product development and professional sales force will enable it to continue to maintain and build its share of the professional market, there can be no assurance that the Company's market share or margins will not be eroded in the future by new or existing competitors.

Backlog

The major portion of professional product orders are received during the months of August through November and are filled during the months of September through November. As of September 30, 1994, orders on hand from professional customers (excluding orders for Sierra products) totaled approximately $3.4 million compared with $5.4 million on the same date in 1993. All such orders are expected to be filled in fiscal 1995.

International

The Market

The Company produces and sells its products in over sixty-five countries to both consumer and professional markets. Growth potential exists in both markets, and the Company has positioned itself to grow through both direct sales and distributor arrangements.

Consumer lawn and garden products are sold under the Scotts label mainly in Canada, the Far East and Europe. The Company's United Kingdom subsidiary has continued to make inroads into the

lawn and garden market in Great Britain. The Company's long-term relationship with Hyponex Japan Corporation, Ltd. has allowed it to maintain its presence in Japan's consumer market under its Hyponex label. International sales of consumer products in fiscal 1994 totaled approximately $7.3 million.

Professional markets include both the turf and horticulture industries. The Company currently distributes its professional products in Canada, Latin America, Europe and Asia Pacific. Turf products are mainly distributed under the Scotts name, while horticultural products are distributed primarily under the Sierra label. Professional horticultural products are also distributed under the Hyponex label in Japan. International sales of Scotts' professional products in fiscal 1994 totaled approximately $10 million. International sales of Sierra professional products from December 17, 1993 through September 30, 1994 totaled approximately $30.3 million.

Business Strategy

With the acquisition of Sierra, the Company now has manufacturing facilities in Europe and an established distribution network worldwide. The Company intends to capitalize on these strengths to expand into new areas and market segments. At the same time, the Company plans to increase international awareness of the Scotts name and oval logo. By positioning the Scotts' name worldwide, the Company believes it can build awareness of its products' quality, reliability and value.

The Company intends to continue to market its products internationally through both direct sales and distributor arrangements. In fiscal 1994, the Company entered into various new distributor agreements. The Company also amicably terminated its European distributor agreement with Wolf-Gerate AG, and Sierra terminated several distributor arrangements with W. R. Grace.



Competition

The Company's international consumer business faces strong competition in the garden center segment, particularly in Canada and the United Kingdom. Competitors in the United Kingdom include Fisons, ICI, PBI and various local companies. Competitors in Canada include Nu-Gro, So-Green and Vigoro. The Company intends to respond to this competition by increasing brand awareness and loyalty through increased marketing and improved customer service.

The international professional products market is very competitive particularly in the controlled-release fertilizer segment. Numerous United States and European companies are pursuing this segment internationally, including Pursell Industries, Lesco, Lebanon, Vigoro, Noram, BASF, Helena and Coron. The Company will respond to this competition by educating customers as to the quality and value of its products.

Management believes the Company is well-positioned to obtain an increased share of the international market. However, there can be no assurance that the Company's market share or margins will not be eroded by new or existing competitors.

Matters Relating to the Company Generally

Patents, Trademarks and Licenses

The "Scotts" and "Hyponex" brand names and logos, as well as a number of product trademarks, including "Turf Builder", "Lawn Pro", "ProTurf", "ProGrow", "Osmocote" and "Peters" are federally registered and are considered material to the Company's business. In 1989, the Company assigned all its rights to certain Hyponex trademarks in the Far East to a Japanese company.

As of September 30, 1994, the Company held over 100 patents on processes, compositions, grasses, and mechanical spreaders and has several additional patent applications pending. Over the past two years, the Company has been granted a number of patents covering key new process and product technologies. This new patent protection will extend well into the next decade. The Company also holds exclusive and nonexclusive patent licenses

from certain chemical suppliers permitting the use and sale of patented pesticides.

Research and Development

The Company has a long history of innovation, and its research and development successes can be measured in terms of sales of new products and by the Company's patents. Virtually all of the Company's fertilizer products, many of its grasses and many of its mechanical devices are covered by one or more of over 100 U.S. and foreign patents owned by the Company.

The Company's research and development department is headquartered in the Dwight G. Scott Research Center in Marysville, Ohio. The Company also operates three research field stations in Florida, Texas and Oregon. In addition, the Company funds research at universities across the United States and conducts cooperative projects with key professional customers. Research to develop new and improved application devices is conducted at Republic's manufacturing facility in Carlsbad, California. Investment in research is directed toward developing new technology and products to increase manufacturing efficiency, reduce product cost, improve performance, solve specific problems, improve packaging and simplify lawn, turf and horticultural plant care.

Since its introduction of the first home lawn fertilizer in 1928, the Company has used its research and development strengths to build the do-it-yourself market. Technology continues to be a Company



hallmark. The Company's introduction of the TGR line in 1987 to control poa annua on golf courses is an example. In 1992, the Company introduced Poly-S, a proprietary controlled-release fertilizer technology. In 1993, ScottKote, another controlled-release technology primarily for the nursery market, was introduced. In addition, the Company has modified its Marysville facility to utilize a new, patented production process which is expected to reduce costs and improve product quality, while increasing production capacity. (See "Production Facilities.") Since the Hyponex acquisition in 1988, the Company's research and development department has worked to improve the quality and reduce the production cost of branded organic products, in particular potting soils. One of the results of this effort is the introduction, in 1994, of a line of value-added, premium quality potting soils and planting mixes under the Scotts brand.

Research has also been focused on durability, precision, and reduced production costs of the Republic-produced spreaders. Recently, Republic completely redesigned the major products within the Company's consumer spreader line so that they are now completely preassembled and are distributed and displayed using innovative packaging.

Sierra pioneered the use of controlled-release fertilizers for the horticultural markets with the introduction of "Osmocote" in the 1960's. This polymer-encapsulated technology has achieved a large share of the horticultural markets due to its ability to meet the strict performance requirements of professional growers. The Company's and Sierra's research and development efforts have been fully integrated and are focused on cost reduction and product/process innovation. A new, multi-coated controlled-release technology has been developed and a new production line is nearing completion at the Company's Charleston, South Carolina plant.

Research has resulted in improved Peters' water soluble fertilizers. Reformulated potting soils and planting mixes have been introduced into both the consumer and professional markets.

Combined Company and Sierra R&D expenses were approximately $10.4 million (1.7% of net sales) for 1994, including environmental and regulatory expenses. This compares to $6.2 million (1.5% of net sales) and $7.7 million (1.7% of net sales) in fiscal 1992 and 1993, respectively.

Production Facilities

The manufacturing plants for consumer and professional fertilizer-based products marketed under the Scotts label are

located in Marysville, Ohio. The Company's Taylor Seed Packaging Plant is located on a separate site in Marysville. Hyponex organic products are harvested and packaged in over 20 locations throughout the United States. The Company's lawn spreaders are produced at the Republic facility in Carlsbad, California. Some granular and mechanical products and all liquid products, constituting an aggregate of approximately 16% of the Company's cost of sales in fiscal 1994, are produced for the Company by other manufacturers. Sierra has manufacturing sites in the United States and one located in The Netherlands. Sierra's controlled-release fertilizers are produced in Charleston, South Carolina, Milpitas, California, and at Heerlen, The Netherlands. Water-soluble fertilizers are produced in Allentown, Pennsylvania, and the potting soils are produced in Travelers Rest, South Carolina and in Hope, Arkansas. Resin used for producing Osmocote controlled-release fertilizer is manufactured at Sierra Sunpol Resins, a joint venture company which is 97% owned by Scotts. The Company operates seventeen composting facilities where yard waste (grass clippings, leaves, and twigs) is converted to raw materials for the Company's organic products. Fourteen of the facilities are "stand-alone" facilities with the remainder being located at existing organics products bagging facilities. Recently opened facilities include Pittsburgh, Pennsylvania; Cincinnati, Ohio; and Riverside, California.

Management believes that each of its facilities is well-maintained and suitable for its purpose. Substantially all of the Company's owned properties are mortgaged to secure the Company's indebtedness under various bank agreements.



The Company's fertilizer processing and packaging facilities currently operate, on average, five days per week for three shifts. Because of the seasonal nature of the demand for the Company's products, certain of these facilities operate on a seven day basis or three out of four weekends during periods of peak demand. During 1994, initial steps were taken to integrate some product manufacturing between the Scotts and Sierra manufacturing locations.

The Company's Marysville facilities were substantially modified during fiscal 1992 and 1993. The Company replaced one of the existing fertilizer production lines with a line utilizing a new, patented process which it developed. In addition, the Company erected a new physical-blend facility and added equipment to apply polymer coating to fertilizer materials.

During 1994, approximately $13 million was spent to erect a new Poly-S fertilizer plant, an investment made necessary by very strong forecasted demand. Additionally, approximately $4.0 million was spent on Sierra business needs including $1.5 million for construction of a new processing line at the Charleston, South Carolina facility to produce a technologically advanced controlled-release fertilizer.

Capital Expenditures

Capital expenditures totaled $15.2 million and $33.4 million for the fiscal years ended September 30, 1993 and 1994, respectively. The Company expects that capital expenditures during fiscal 1995 will total approximately $23 million.

Purchasing

The key ingredients in the Company's fertilizer and control products are various commodity and specialty chemicals including vermiculite, phosphates, urea, potash, herbicides, insecticides and fungicides. The Company obtains its raw materials from various sources, which the Company presently considers to be adequate. No one source is considered to be essential to either of the Company's Consumer or Professional Business Groups, or to its business as a whole. The Company has never experienced a significant interruption of supply.

Sierra purchases granular, homogeneous fertilizer substrates to be coated, and the resins for coating. These resins are primarily supplied domestically by Sierra SunPol Resins, a 97%-owned subsidiary of Sierra.

Sphagnum peat, peat humus, vermiculite manure and bark constitute Hyponex's most significant raw materials. At current

production levels, the Company estimates Hyponex's peat reserves to be sufficient for its near-term needs in all locations except the Northeast. Regulatory activities by the Army Corps of Engineers have prevented production at one peat harvesting facility located in Lafayette, New Jersey. See "Environmental and Regulatory Considerations." To meet the demand previously filled by this facility, the Company has been purchasing peat from other nearby producers. Bark products are obtained from sawmills and other wood residue producers and manure is obtained from a variety of sources, such as feed lots, race tracks and mushroom growers. The Company is currently substituting composted yard waste for some organic raw materials and is planning to expand this practice.

Raw materials for Republic include various engineered resins and metals, all of which are available from a variety of vendors. The Company considers its sources of supply for these materials to be adequate.



Distribution

The primary distribution centers for the Company's products are located near the Company's headquarters in central Ohio. The Company's products are shipped by rail and truck. While the majority of truck shipments are made by contract carriers, a portion is made by the Company's own fleet of leased trucks. Inventories are also maintained in field warehouses located in major markets.

Most of Hyponex's organic products have low sales value per unit of weight, making freight costs significant to profitability. Therefore, Hyponex has located approximately twenty distribution locations near large metropolitan areas in order to minimize shipping costs. Hyponex uses its own fleet of approximately 70 trucks as well as contract haulers to transport its products from distribution points to retail customers.

Sierra's products are produced at three fertilizer and two organic manufacturing facilities located in the United States. The majority of shipments are via common carriers to nearby distributors' warehouses. A small private trucking fleet is maintained at the organic facilities for direct shipment of custom orders to customers. Inventories are also maintained in field warehouses.

Republic-produced, Scotts branded spreaders are shipped via common carrier to regional warehouses serving the Company's retail network. Republic's E-Z spreader line and its private label lines are sold free-on-board (FOB) Carlsbad with transportation arranged by the customer.

Significant Customers

Kmart and Home Depot represented approximately 23.9% and 14.9%, respectively, of the Company's sales in fiscal 1994, which reflects their significant position in the retail lawn and garden market. The loss of either of these customers or a substantial decrease in the amount of their purchases could have a material adverse effect on the Company's business.

Employees

The Company's corporate culture emphasizes employee participation in management, comprehensive employee benefits and programs and profit sharing plans. As of September 30, 1994, the Company employed approximately 2,300 full-time year-round workers including 130 located outside the United States. Full-time workers average approximately 10 years employment with the Company or its predecessors. During peak production periods, the Company engages as many as 750 temporary employees. The Company's employees are not unionized, with the exception of twenty-one of Sierra's employees at its Milpitas facility, who are represented by the International Chemical Workers Union.

## Environmental and Regulatory Considerations

Federal, state and local laws and regulations relating to

environmental matters affect the Company in several ways. All products containing pesticides must be registered with the United States Environmental Protection Agency ("United States EPA") (and in many cases, similar state agencies) before they can be sold. The inability to obtain or the cancellation of any such registration could have an adverse effect on the Company's business. The severity of the effect would depend on which products were involved, whether another product could be substituted and whether the Company's competitors were similarly affected. The Company attempts to anticipate regulatory developments and maintain registrations of, and access to, substitute chemicals, but there can be no assurance that it will continue to be able to avoid or minimize these risks. Fertilizer and organic products (including manures) are also subject to state labeling regulations.



In addition, the use of certain pesticide and fertilizer products is regulated by various local, state and federal environmental and public health agencies. These regulations may include requirements that only certified or professional users apply the product or that certain products be used only on certain types of locations (such as "not for use on sod farms or golf courses"), may require users to post notices on properties to which products have been or will be applied, may require notification of individuals in the vicinity that products will be applied in the future or may ban the use of certain ingredients. The Company has been successful in complying with these regulations.

Compliance with such regulations and the obtaining of registrations does not assure, however, that the Company's products will not cause injury to the environment or to people under all circumstances.

State and federal authorities generally require Hyponex to obtain permits (sometimes on an annual basis) in order to harvest peat and to discharge water run-off or water pumped from peat deposits. The state permits typically specify the condition in which the property will be left after the peat is fully harvested, with the residual use typically being natural wetland habitats combined with open water areas. Hyponex is generally required by these permits to limit its harvesting and to restore the property consistent with the intended residual use. In some locations, Hyponex has been required to create water retention ponds to control the sediment content of discharged water.

In July 1990, the Philadelphia district of the Army Corps of Engineers directed that peat harvesting operations be discontinued at Hyponex's Lafayette, New Jersey facility, and the Company complied. In May 1992, the Department of Justice filed suit seeking a permanent injunction against such harvesting at that facility and civil penalties. The Philadelphia District of the Corps has taken the position that peat harvesting activities there require a permit under Section 404 of the Clean Water Act. If the Corps' position is upheld, it is possible that further harvesting of peat from this facility would be prohibited. The Company is defending this suit and is asserting a right to recover its economic losses resulting from the government's actions. Management does not believe that the outcome of this case will have a material adverse effect on the Company's operations or its financial condition.

State, federal and local agencies regulate the disposal, handling and storage of waste and air and water discharges from Company facilities. During fiscal 1994, the Company had approximately $100,000 in environmental capital expenditures and $300,000 in other environmental expenses, compared with approximately $180,000 in environmental capital expenditures and $260,000 in other environmental expenses in fiscal 1993. The Company has budgeted $485,000 in environmental capital expenditures and $350,000 in other environmental expenses for fiscal 1995.

The Company has been identified by the Ohio Environmental Protection Agency (the "Ohio EPA") as a Potentially Responsible Party ("PRP") with respect to a site in Union County, Ohio (the "Hershberger site") that has allegedly been contaminated by hazardous substances whose transportation, treatment or disposal the Company allegedly arranged. Pursuant to a consent order with the Ohio EPA, the Company, together with four other PRP's

identified to date, is investigating the extent of contamination in the Hershberger site and developing a remediation program. Phase I of the investigation has been completed and the Company is seeking resolution to this matter by being designated as a de minimis contributor with minimal financial liability.

Sierra is a PRP in connection with the Lorentz Barrel and Drum Superfund Site in California, as a result of its predecessor having shipped barrels to Lorentz for reconditioning or sale between 1967 and 1972. Many other companies are participating in the remediation of this site, and issues relating to the allocation of the costs have been resolved with the Company being identified as a de minimis contributor. The Company has agreed to settle this matter by means of a one-time total payment of $1,000 to the United States EPA and the State of California. In addition, Sierra is a defendant in a private cost-recovery action relating to the Novak Sanitary Landfill, located near Allentown, Pennsylvania. By agreement with


W. R. Grace-Conn., Sierra's liability is limited to a maximum of $200,000 with respect to this site. The Company's management does not believe that the outcome of these proceedings will in the aggregate have a material adverse effect on its financial condition or results of operations.

ITEM 2. PROPERTIES.

The Company has fee or leasehold interests in approximately sixty-seven (67) facilities. All of the owned properties are mortgaged to secure the Company's indebtedness under the Third Amended and Restated Credit Agreement, as amended ("Credit Agreement") (see Item 7, Liquidity and Capital Resources).

The Company owns approximately 843 acres in two locations at its Marysville, Ohio headquarters. It owns three research facilities in Apopka, Florida; Cleveland, Texas and Gervais, Oregon. The Company leases four fertilizer warehouses in Illinois, California, Ohio and Pennsylvania. Republic leases its twenty (20) acre spreader facility in Carlsbad, California.

The Company's twenty-four (24) organics facilities are located nationwide in eighteen states. Twenty-two are owned, while two are leased. Facilities at most include production lines, warehouses and offices. Six sites also include composting facilities.

The Company has fourteen stand-alone composting facilities. Nine of these sites are leased and are located in Oregon, California, Florida, Indiana, Ohio, Pennsylvania and Illinois. Five sites are utilized through agreements with the municipalities of Greensboro, NC; Shreveport, LA; Spokane, WA; Independent Hill, VA and Balls Ford, VA.

The Company owns two Sierra manufacturing facilities in Fairfield, CA and Heerlen, The Netherlands. It leases three Sierra manufacturing facilities in Allentown, PA; Milpitas, CA and North Charleston, SC.

It is the opinion of the Company's management that its facilities are adequate to serve their intended purposes and that its property leasing arrangements are stable.

ITEM 3. LEGAL PROCEEDINGS.

As noted in the discussion of "Environmental and Regulatory Considerations" in Item 1, the Company is defending a suit filed by the United States Department of Justice which seeks civil penalties and a permanent injunction against peat harvesting at Hyponex's Lafayette, New Jersey facility. The Company has asserted a right to recover its economic losses resulting from the government's actions. The Company also is involved in several other environmental matters, as set forth above in "Environmental and Regulatory Considerations". Management does not believe the outcome of these matters will have a material adverse effect on the Company's operations or its financial condition.

The Company is involved in other lawsuits and claims which arise in the normal course of its business. In the opinion of management, these claims individually and in the aggregate are

not expected to result in an adverse effect on the Company's financial position or operations.



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

A Special Meeting of Stockholders ("Special Meeting") of Scotts Delaware was held in Marysville, Ohio on September 20, 1994. The Special Meeting was held to consider and vote upon a proposal (the "Reincorporation Proposal") which provided, among other things, for the change of the Company's state of incorporation from Delaware to Ohio through a merger of Scotts Delaware into Scotts Ohio, a wholly owned subsidiary of Scotts Delaware. The surviving corporation was Scotts Ohio, and the stockholders of Scotts Delaware became owners of all of the outstanding common shares of Scotts Ohio.

The Reincorporation Proposal was approved and the result of the vote of the stockholders is as follows:

| Votes For | Votes Against | Abstentions |
|---|---|---|
| 9,507,932 | 2,174,194 | 814,765 |

No proxies were solicited for the purpose of electing directors. The Company's board of directors remains unchanged from that identified in the Company's Report on Form 10-Q for the quarter ended July 2, 1994 except that Karen Gordon Mills was appointed to the board of directors on September 21, 1994 to fill the vacancy created by the resignation of Alberto Cribiore.

Executive Officers of Registrant

The executive officers of the Company, their positions and, as of November 30, 1994, their ages and years with Scotts Ohio (and its predecessors) are set forth below.

| Name | Age | Position(s) Held | Years with Scotts Ohio (and its Predecessors) |
|---|---|---|---|
| Tadd C. Seitz | 53 | Director, Chairman of the Board Chief Executive Officer | 22 |
| Theodore J. Host | 49 | Director, President Chief Operating Officer | 3 |
| Paul D. Yeager | 56 | Executive Vice President Chief Financial Officer | 20 |
| Richard B. Stahl | 59 | Senior Vice President Professional Business Group | 27 |
| J. Blaine McKinney | 51 | Senior Vice President, Consumer Business Group | 2 |
| Bernard R. Ford | 51 | Vice President, Strategy and Business Development | 16 |
| Michael P. Kelty | 44 | Senior Vice President, Technology and | 15 |

| | | | |
|---|---|---|---|
| | | Operations | |
| Lawrence M. McCartney | 54 | Vice President, Information Systems | 20 |
| Lisle J. Smith | 38 | Vice President, Administration and Planning | 1 |
| Robert A. Stern | 52 | Vice President, Human Resources | 12 |
| Craig D. Walley | 51 | Vice President, General Counsel, and Secretary | 9 |
| Robert M. Webb | 52 | Vice President, Manufacturing & Logistics | 14 |



Executive officers serve at the discretion of the Board of Directors (and in the case of Mr. Host, pursuant to employment agreements).

The business experience of each of the persons listed above during the past five years is as follows:

Mr. Seitz has been the Chief Executive Officer since 1983. He was also President from 1983 until 1991. Previously, Mr. Seitz served as Director of Marketing and as General Manager of Burpee.

Mr. Host has been President and Chief Operating Officer and a director of the Company since October 1991. From May 1990 to October 1991, he was Senior Vice President, Marketing for Coca-Cola USA. He previously was President of the Boyle-Midway Household Products Division of American Home Products, Inc.

Mr. Yeager has been an Executive Vice President since 1991 and a Vice President and the Chief Financial Officer since 1980. He was first Assistant Comptroller and then Comptroller from 1974 to 1980.

Mr. Stahl has been Senior Vice President since January, 1994. From December 1987 to 1994, he was Vice President and General Manager of the Professional Business Group. Mr. Stahl joined the Company in 1967 as a technical representative in the golf course division.

Mr. McKinney was named Senior Vice President, Consumer Business Group, in June, 1992. From January, 1990 to June, 1992 he was Vice President of Marketing and Sales of Salov, N.A., a manufacturer of consumer products. From July, 1989 to January, 1990 he was Director of Sales of Rickett & Colman, Ltd., a consumer products company.

Mr. Ford has been Vice President, Strategy and Business Development since December 1987. Other positions that Mr. Ford has held include Director of Market Development, Director of Export Marketing Services and Director of Marketing.

Dr. Kelty was named Senior Vice President, Technology and Operations in March, 1994. From 1988 to 1994, he served first as Director, then as Vice President of Research and Development. Prior to that, Dr. Kelty was the Director of Advanced Technology Research, and from 1983 to 1987 he was Director, Chemical Technology Development.

Mr. McCartney has been Vice President, Information Systems since 1989. He joined the Company in 1974 as Systems and Programming Manager, and was Director, Information Systems from 1976 until 1989.

Mr. Stern has been Vice President, Human Resources since 1984.

Mr. Walley has been Vice President, General Counsel and Secretary since 1985.

Mr. Webb has been a Vice President since 1988. He was Vice President - Operations of Hyponex Corporation from 1980 until 1988.



PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS.

Scotts Delaware made an initial public offering of its Class A Common Stock on January 31, 1992. As a result of the merger of Scotts Delaware into Scotts Ohio on September 20, 1994, each share of outstanding Class A Common Stock of Scotts Delaware was converted into one Common Share of Scotts Ohio. The shares of Class A Common Stock of Scotts Delaware were, and the Common Shares of Scotts Ohio are traded in the NASDAQ National Market System, under the symbol "SCTT".

| | Sales Prices | |
|---|---|---|
| | High | Low |
| Fiscal 1993 | | |
| 1st quarter | 18 - 1/2 | 14 - 1/2 |
| 2nd quarter | 20 - 1/2 | 17 - 1/8 |
| 3rd quarter | 18 - 3/4 | 15 - 1/4 |
| 4th quarter | 18 - 3/8 | 15 - 1/4 |
| Fiscal 1994 | | |
| 1st quarter | 20 - 1/8 | 16 |
| 2nd quarter | 20 | 18 |
| 3rd quarter | 19 - 7/8 | 16 - 1/4 |
| 4th quarter | 17 | 15 - 1/4 |

The Company has not paid dividends in the past and does not presently plan to pay dividends. It is presently anticipated that earnings will be retained and reinvested to support the growth of the Company's business. The payment of any future dividends will be determined by the Board of Directors of the Company in light of conditions then existing, including the Company's earnings, financial condition and capital requirements, restrictions in financing agreements, business conditions and other factors. Under a covenant in the Company's Credit Agreement, the Company is restricted in its payment of cash dividends, to an amount not to exceed 33 1/3% of the consolidated net income of the Company and its consolidated subsidiaries during the immediately preceding fiscal year.

As of December 1, 1994, Scotts Ohio estimates there were approximately 6,400 shareholders including holders of record and Scotts Ohio's estimate of beneficial holders.



ITEM 6. SELECTED FINANCIAL DATA

FIVE-YEAR SUMMARY

THE SCOTTS COMPANY AND SUBSIDIARIES

| | For the fiscal year ended September 30 | | | | |
|---|---|---|---|---|---|
| (in thousands except share data) | 1990 | 1991 | 1992 | 1993(1) | 1994(2) |
| Consolidated Statement of Income Data(3) | | | | | |
| Net sales | $350,441 | $388,120 | $413,558 | $466,043 | $606,339 |
| Cost of sales | 186,803 | 207,956 | 213,133 | 244,218 | 319,730 |

| | | | | | |
|---|---|---|---|---|---|
| Gross profit | 163,638 | 180,164 | 200,425 | 221,825 | 286,609 |
| Operating expenses: | | | | | |
| Marketing | 48,681 | 57,489 | 66,245 | 74,579 | 100,106 |
| Distribution | 55,628 | 57,056 | 61,051 | 67,377 | 84,407 |
| General and administrative | 23,965 | 22,985 | 24,759 | 27,688 | 30,189 |
| Research and development | 4,714 | 5,247 | 6,205 | 7,700 | 10,352 |
| Other expenses | 2,880 | 2,000 | 20 | 660 | 2,283 |
| Total operating expenses | 135,868 | 144,777 | 158,280 | 178,004 | 227,337 |
| Income from operations | 27,770 | 35,387 | 42,145 | 43,821 | 59,272 |
| Interest expense | 34,531 | 30,932 | 15,942 | 8,454 | 17,450 |
| Income (loss) before income taxes, extraordinary items and cumulative effect of account changes | (6,761) | 4,455 | 26,203 | 35,367 | 41,822 |
| Income taxes | (143) | 2,720 | 11,124 | 14,320 | 17,947 |
| Income (loss) before extraordinary items and cumulative effect of accounting changes | (6,904) | 1,735 | 15,079 | 21,047 | 23,875 |
| Extraordinary items: | | | | | |
| Loss on early extinguishment of debt, net of tax | - | - | (4,186) | - | (992) |
| Utilization of net operating loss carryforwards | - | 2,581 | 4,699 | - | - |
| Cumulative effect of changes in accounting for postretirement benefits, net of tax and income taxes | - | - | - | (13,157) | - |
| Net income (loss) | $(6,904) | $4,316 | $15,592 | $7,890 | $22,883 |
| Net income (loss) per common share: (4) | | | | | |
| Income (loss) before extraordinary items and cumulative effect of accounting changes | $(0.58) | $0.15 | $0.84 | $1.07 | $1.27 |
| Extraordinary items: | | | | | |
| Loss on early extinguishment of debt, net of tax | - | - | (0.23) | - | (0.05) |
| Utilization of net operating loss carryforwards | - | 0.21 | 0.26 | - | - |
| Cumulative effect of changes in accounting for postretirement benefits, net of tax and income taxes | - | - | - | (0.67) | - |
| Net income (loss) | $(0.58) | $0.36 | $0.87 | $0.40 | $1.22 |
| Weighted average common shares outstanding during the period | 11,976,733 | 11,832,651 | 18,014,151 | 19,687,013 | 18,784,729 |
| Consolidated Balance Sheet Data (3) | | | | | |
| Working capital | $18,230 | $21,260 | $54,795 | $88,526 | $140,566 |
| Capital investment | 8,494 | 8,818 | 19,896 | 15,158 | 33,402 |
| Property, plant and equipment, net | 83,384 | 79,903 | 89,070 | 98,791 | 140,105 |
| Total assets | 270,429 | 260,729 | 268,021 | 321,690 | 528,584 |
| Term debt, including current portion | 192,915 | 182,954 | 31,897 | 92,524 | 223,885 |
| Total stockholders' equity (deficit) | (12,677) | (9,961) | 175,929 | 143,013 | 168,160 |

(1) Includes Republic from November 1992.
(2) Includes Sierra from December 16, 1993
(3) Certain amounts have been reclassified to conform to 1994 presentation; these changes did not impact net income.
(4) Net income (loss) per share for fiscal 1990 and 1991 have been restated to eliminate the effect of accretion to redemption value of redeemable common stock to be comparable with fiscal 1992. All per share amounts for fiscal 1988 through 1991 have been adjusted for the January 1992 reverse stock split, in which every 2.2 shares of old Class A. Common Stock were exchanged for one share of new Class A Common Stock.


ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL

CONDITION
AND RESULTS OF OPERATIONS.

The following discussion should be read in conjunction with the Consolidated Financial Statements of the Company included elsewhere in this Report.

Results of Operations

Fiscal 1994 compared with fiscal 1993.

Net sales of $606.3 million increased by $140.3 million or 30.1%, primarily due to increased sales volume, a portion of which relates to new pre-season promotion programs with major retailers. The increase included $105.6 million of sales from Sierra, which was acquired by the Company on December 16, 1993.

Consumer Business Group sales of $419.6 million increased by $49.4 million or 13.3%. The growth was principally derived from increased sales volume to major retailers, with sales to the Company's top ten accounts up 16% over the prior year, and from sales for Sierra which accounted for $21.3 million of the increase. Professional Business Group sales of $181.7 million increased by $88.0 million or 93.9%. The increase was principally due to sales for Sierra which accounted for $84.3 million of the increase.

On a proforma basis that includes Sierra sales on a historical basis assuming that the acquisition had occurred on October 1, 1992, sales increased by 7.1% for the 1994 year.

Cost of sales at 52.7% of net sales showed a slight increase from 52.4% of net sales last year. The increase reflected a higher proportion of spreader sales, which have lower margins.

Operating expenses of $227.3 million increased by $49.3 million or 27.7%. The increase was caused, in significant part, by the inclusion of Sierra operating expenses this year. The increase was also caused, to a lesser degree, by increased freight costs due to higher sales volume and by higher marketing costs which reflected increased spending for national advertising and promotion programs. The increase was partly offset by reduced general and administrative expenses, exclusive of Sierra expenses, for the year.

Interest expense of $17.5 million increased by $9.0 million principally due to an increase in borrowing levels resulting from the acquisition of Sierra in December, 1993. The increase was also caused, to a lesser degree, by the issuance of $100,000,000 of 97/8% Senior Subordinated Notes due August 1, 2004 (the "Notes") (see "Liquidity and Capital Resources" below) which bear a higher fixed interest rate than the term debt prepaid with their net proceeds.

Net income of $22.9 million increased by $15.0 million from $7.9 million last year. The increase was primarily attributable to a non-recurring charge of $13.2 million, net of tax, last year for the cumulative effect of accounting changes. The increase also reflected increased operating income this year which was partly offset by increased interest expense and also offset, in part, by a $1.0 million non-recurring charge, net of tax, for financing costs related to the term debt prepaid this year with net proceeds from the Notes.

Fiscal 1993 Compared with Fiscal 1992

Net sales of $466.0 million increased by $52.5 million or 12.7%. The majority of the increase resulted from increased sales volume of consumer products. Consumer Business Group sales of $370.2 million increased by $47.6 million or 14.8%. The growth was principally derived from increased


sales volume to major retailers and from sales for Republic, acquired in November 1992, which accounted for approximately 37.5% of the increase in Consumer Business Group sales. Professional Business Group sales of $93.7 million increased by $3.6 million or 4.0%. The majority of the latter increase was due to increased sales volume.

Cost of sales represented 52.4% of net sales compared with 51.5% in 1992. The increase was primarily caused by lower gross

profit margins on Republic's products in the current year. Cost savings from the implementation of new controlled-release fertilizer technology, which exceeded start-up costs incurred early in the year, partly offset the increase.

Operating expenses of $178.0 million increased by $19.7 million or 12.5%. The increase was caused by increased investment in advertising and consumer rebates in 1993, higher distribution costs related to increased sales, and the inclusion of operating expenses for Republic which amounted to approximately $3.0 million from November through the end of fiscal 1993.

Income from operations of $43.8 million increased by $1.7 million or 4.0%, which resulted from increased sales, partially offset by increased operating expenses. The increase was also offset, in part, by additional pretax charges of $2.4 million, in 1993, resulting from the implementation of the Financial Accounting Standards Board ("Board") Statement of Accounting Standards No. 106, "Employers' Accounting for Postretirement Benefits Other Than Pensions", ("SFAS 106").

Interest expense of $8.5 million decreased by $7.5 million or 47.0%. The decrease resulted from reduced borrowings and lower interest rates including the effect of early redemption of subordinated notes and debentures. Reduced borrowings resulted from the application of the net proceeds of the Company's January 1992 initial public offering and cash flow from operations, partly offset by the use of capital resources for the Republic acquisition, the purchase of a block of the Company's Class A Common Stock and capital investment.

Income before extraordinary items and cumulative effect of accounting changes increased by approximately $6.0 million or 39.6% primarily due to increased operating income and lower interest expense. The increase was partially offset by a $1.4 million charge, net of tax, related to adoption of SFAS 106 in fiscal 1993.

Net income of $7.9 million decreased by $7.7 million or 49.4%. The decrease was attributable to expense from the implementation of SFAS 106 and a non-recurring charge for the cumulative effect of the change in accounting in the amount of $14.9 million, net of tax. The decrease was partially offset by a non-recurring benefit of $1.8 million, related to implementation of the Board's Statement of Accounting Standards No. 109, "Accounting for Income Taxes".

Liquidity and Capital Resources

Capital expenditures totaled approximately $33.4 million and $15.2 million for the fiscal years ended September 30, 1994 and 1993, respectively, and are expected to be approximately $23 million in fiscal 1995. The key capital project in fiscal 1994 was an approximately $13 million investment in a new production facility to increase capacity to meet demand for Scotts' Poly-Sr controlled-release fertilizers. The production facility was completed as planned and is currently in operation. The Company's Credit Agreement restricts the amount the Company may spend on future capital expenditures to $35 million per year for fiscal 1995 and each year thereafter. These expenditures will be financed with cash provided by operations and utilization of available credit facilities.

Effective December 16, 1993, the Company completed the acquisition of Sierra for a purchase price of approximately $121.2 million. A description of the Sierra acquisition is found in Item 8, footnote number 2 on page F-10 of this report, which description is incorporated herein by this reference.



Current assets of $250.3 million on September 30, 1994, increased by $96.9 million compared with current assets on September 30, 1993. The increase was partly attributable to the inclusion of Sierra's current assets this year which amounted to $34.0 million and to higher inventory levels this year resulting from the inclusion of planned inventories of spreaders which the Company now produces and other products prepacked in anticipation of seasonal sales as well as by a higher level of accounts receivable this year due to increased sales.

Total assets of $528.6 million on September 30, 1994

increased by $207.0 million compared with total assets on September 30, 1993. The increase was largely due to the inclusion of Sierra's total assets which amounted to $131.9 million including goodwill of $65.8 million. The increase was also caused by the increases in accounts receivable and inventory levels mentioned above.

Total liabilities of $360.4 million on September 30, 1994 increased by $181.8 million compared with total liabilities on September 30, 1993. The increase was principally due to $125.0 million of term debt incurred in December 1993 to facilitate the acquisition and the inclusion of Sierra total liabilities which amounted to $24.6 million at year end. In July, 1994, $96.4 million of the term debt was prepaid with the proceeds of the Notes offering described below.

Shareholders' equity of $168.2 million on September 30, 1994 increased by $25.1 million compared with shareholders' equity on September 30, 1993. The increase resulted from $22.9 million of net income for the year ended September 30, 1994 and from a cumulative foreign currency adjustment of $2.1 million related to translating the assets and liabilities of Sierra's foreign subsidiaries to U.S. dollars.

The primary sources of liquidity for the Company are funds generated by operations and borrowings under the Company's Credit Agreement. The Credit Agreement was amended in December 1993 to provide financing for and permit the acquisition of Sierra. As amended, the Credit Agreement provides a revolving credit commitment of $150,000,000 through March 31, 1996 and provides $195,000,000 of term debt with scheduled maturities extending through September 30, 2000. As of the date of this report, the Credit Agreement provides $93.1 million of term debt. The Credit Agreement contains financial covenants which, among other things, limit capital expenditures, require maintenance of Adjusted Operating Profit, Consolidated Net Worth and Interest Coverage (each as defined therein) and require the Company to reduce revolving credit borrowings to no more than $30,000,000 for 30 consecutive days each year. The covenant to reduce borrowings for 30 consecutive days was satisfied for fiscal 1994 during July. The Credit Agreement was specifically assumed by the Company after the Company Merger and the O. M. Scott Merger.

On July 19, 1994, the Company issued $100,000,000 of Notes at 99.212% of face value. The net proceeds of the offering were $96,402,000 after underwriting discount and estimated expenses and this amount was used to prepay term debt outstanding under the Credit Agreement. Scheduled term debt maturities were adjusted to reflect the prepayment in accordance with the terms of the Credit Agreement. All of the Notes are subordinated to other outstanding debt, principally to banks. The Notes are subject to redemption, at the Company's option, in whole or in part, at any time after August 1, 1999 at redemption prices specified in the Notes indenture. In order to redeem the Notes, the Company must obtain approval of the banks party to the Credit Agreement as specified therein. The Notes require a limited number of financial covenants which are generally less restrictive than the financial covenants contained in the Credit Agreement. As a result of issuing the Notes, the Company recognized a one-time extraordinary non-cash charge of approximately $1.0 million, net of tax, for unamortized deferred financing costs related to the prepayment of the term debt. In addition, the Notes fixed interest rate of 9 7/8% is higher than the floating interest rate paid on the term debt which will cause an increase in interest expense, at least in the near term. Company management believed, however, that it was prudent to obtain what they consider to be attractive fixed rate, ten year financing to replace part of the Company's floating rate borrowings.



The Company's business is highly seasonal which is reflected in working capital requirements. Working capital requirements are greatest from November through May, the peak production period, and are at their highest in March. Working capital needs are relatively low in the summer months.

In the opinion of the Company's management, cash flows from operations and capital resources will be sufficient to meet future debt service and working capital needs.

Inflation

The Company is subject to the effects of changing prices. The Company has, however, generally been able to pass along inflationary increases in its costs by increasing the prices of its products.

Accounting Issues

In November 1992, the Financial Accounting Standards Board issued SFAS No. 112, "Employers' Accounting for Postemployment Benefits" ("SFAS 112"), which changes the prevalent method of accounting for benefits provided after employment but before retirement. The Company must adopt SFAS 112 no later than the first quarter of fiscal 1995. Management has evaluated the provisions of SFAS No. 112. Since most of these benefits are already accounted for by the Company on an accrual method, the impact of this new standard is not expected to be insignificant.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.

The financial statements and other information required by this item are contained in the financial statements, the footnotes thereto and the schedules listed in the Index to Consolidated Financial Statements and Financial Statement Schedules on page F-1 herein.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.

None.


PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT.

The information regarding executive officers required by Item 401 of Regulation S-K is included in Part I hereof following Item 4.

Pursuant to the Code of Regulations of the Company, the Board of Directors has set the authorized number of directors to be elected at nine (9). The directors will hold office until the next annual meeting of shareholders of the Company and until their successors are duly elected and qualified, or until their earlier death, resignation or removal. All of the directors were first appointed or elected at the various dates set forth below and have been elected annually since their respective appointments.

The following information with respect to the principal occupation or employment, other affiliations and business experience of each director during the last five years has been furnished to the Company by each director. Except where indicated, each director has had the same principal occupation for the last five years.

Information Concerning Directors as of December 28, 1994:

James B Beard, age 59 Director of the Company since 1989

Dr. Beard is Professor Emeritus of Turfgrass Physiology and Ecology at Texas A&M University where he served from 1975 to 1992. Presently, he is President and Chief Scientist at the International Sports Turf Institute. Dr. Beard is the author of 6 books and over 500 scientific articles on turfgrass science and is an active lecturer and consultant both nationally and internationally. He is a Fellow of the American Association of the Advancement of Science and was the first President of the International Turfgrass Society.

John S. Chamberlin, age 66 Director of the Company since 1989

Since 1988, Mr. Chamberlin has served as an advisor for investment firms. In 1990 and 1991, he was Chief Executive Officer of N.J. Publishing, Inc. He has been Senior Advisor to Mancuso & Co. since 1990, Chairman of Life Fitness Co. since 1992, Chairman of WNS, Inc. since 1993, and a director of

Healthsouth Corporation since 1993. He was also a director of The Travelers Insurance Company until December, 1993 and was a director of Curaflex Health Services, Inc. from 1992 to July, 1994.

Joseph P. Flannery, age 62 Director of the Company since 1987

Mr. Flannery was a consultant to Clayton, Dubilier & Rice, Inc. from September 1988 to December 1990. Mr. Flannery has been President, Chief Executive Officer and Chairman of the Board of Directors of Uniroyal Holding, Inc. since 1986. Mr. Flannery is also a director of Ingersoll Rand Company, Kmart Corporation, Newmont Mining, Newmont Gold Company, Arvin Industries, Inc., and APS Holding Corporation.



Theodore J. Host, age 49 President, Chief Operating Officer and Director of the Company since 1991

Prior to joining the Company, Mr. Host was Senior Vice President, Marketing with Coca-Cola USA from 1990 to 1991 and was with American Home Products, Inc. for twenty-three years, serving as President of the Boyle-Midway Household Products division for five years before joining Coca-Cola USA.

Karen G. Mills, age 41 Director of the Company since 1994

Ms. Mills is President of MMP Group, Inc., a management company that monitors equity investments and provides consulting and investment banking services. From 1983 to 1993, she served as Managing Director at E.S. Jacobs and Company and as Chief Operating Officer of its Industrial Group. Ms. Mills is currently on the boards of Triangle Pacific Corp., Armor All Products, Inc. and Arrow Electronics, Inc.

Tadd C. Seitz, age 53 Chairman of the Board, Chief Executive Officer and Director of the Company since 1987

Mr. Seitz has been the Chief Executive Officer of the Company since 1987. He was also President of O. M. Scott from 1983 until 1991. Previously, Mr. Seitz served as O. M. Scott's Director of Marketing and as General Manager of The W. Atlee Burpee Company. Mr. Seitz has been employed by the Company for twenty-one years. Mr. Seitz also serves as a director of Holophane Corporation.

Donald A. Sherman, age 43 Director of the Company since 1988

Mr. Sherman has been President of Waterfield Mortgage Company in Fort Wayne, Indiana, since 1989.

John M. Sullivan, age 59 Director of the Company since 1994

Mr. Sullivan was Chairman of the Board from 1987 to 1993, and President and Chief Executive Officer from 1984 to 1993, of Prince Holdings, Inc., a corporation which, through its subsidiaries, manufactures sporting goods. Since his retirement from Prince Holdings, Inc. and its subsidiaries in 1993, Mr. Sullivan has served as an independent director for various corporations, none of which, other than the Company, is registered under or subject to the requirements of the Securities Exchange Act of 1934 or the Investment Company Act of 1940.

L. Jack Van Fossen, age 57 Director of the Company since 1993

Mr. Van Fossen has been President and Chief Executive Officer of Red Roof Inns, Inc., an owner and operator of motels, since 1991. From 1988 to 1991, Mr. Van Fossen was self-employed as an independent business consultant. Mr. Van Fossen also

serves as a director of Cardinal Health, Inc.



To the Company's knowledge, based solely on a review of the copies of the reports furnished to the Company and written representations that no other reports were required, during the fiscal year ended September 30, 1994 (the "1994 Fiscal Year"), all filing requirements applicable to officers, directors and greater than 10% beneficial owners of the Company under Section 16(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), were complied with.

## ITEM 11. EXECUTIVE COMPENSATION.

### Summary of Cash and Certain Other Compensation

The following table shows, for the fiscal years ended September 30, 1994, 1993 and 1992, compensation awarded or paid to, or earned by, the Company's Chief Executive Officer and the four other most highly compensated executive officers of the Company.

SUMMARY COMPENSATION TABLE

| | | Annual Compensation | | Long Term Compensation Awards | |
|---|---|---|---|---|---|
| Name and Principal Position | Fiscal Year | Salary ($) | Bonus ($) | Securities Underlying Options SARs(#)(1) | All Other Compensation($)(2) |
| Tadd C. Seitz: | | | | | |
| Chairman of the Board and Chief Executive Officer | 1994 | $362,500 | $228,965 | 129,447 | $3,270 |
| | 1993 | $341,725 | $189,780 | 85,019 | $3,270 |
| | 1992 | $323,925 | $191,066 | 0 | __ |
| Theodore J. Host: | | | | | |
| President and Chief Operating Officer | 1994 | $307,833 | $196,650 | 82,567 | $3,270 |
| | 1993 | $283,750 | $162,963 | 53,108 | $3,270 |
| | 1992 | $292,745 | $250,000 | 136,364(3) | -- |
| Paul D. Yeager: | | | | | |
| Executive Vice President and Chief Financial Officer | 1994 | $202,250 | $125,000 | 25,342 | $3,270 |
| | 1993 | $192,750 | $115,103 | 18,739 | $3,270 |
| | 1992 | $173,950 | $ 91,827 | 0 | __ |
| J. Blaine McKinney: | | | | | |
| Senior Vice President, Consumer Business Group | 1994 | $191,667 | $105,000 | 31,658 | $1,907 |
| | 1993 | $177,333 | $ 87,365 | 35,409 | $ __ |
| | 1992 | $ 58,333 | $ 30,000 | 0 | __ |
| Richard B. Stahl: | | | | | |
| Senior Vice President and General Manager, Professional Business Group | 1994 | $180,333 | $ 89,000 | 14,932 | $3,270 |
| | 1993 | $163,600 | $ 89,679 | 14,546 | $3,270 |
| | 1992 | $155,000 | $ 82,800 | 0 | -- |



(1) Except as noted, these numbers represent options for Common Shares granted pursuant to the Company's 1992 Long Term Incentive Plan. See the table under "OPTION GRANTS IN LAST FISCAL YEAR" for more detailed information on such options.

(2) In accordance with the transition provisions of the revised rules governing the disclosure of executive compensation adopted by the Securities and Exchange Commission, amounts of "All Other Compensation" are excluded for the Company's 1992 fiscal year. Includes contributions to The Scotts Company Profit Sharing and Savings Plan.

(3) These options expire on January 8, 2002; provided, however, that if Mr. Host's active employment with the Company and its subsidiaries is terminated for cause, these options will be forfeited.

Grants of Options

The following table sets forth information concerning individual grants of options made during the 1994 fiscal year to each of the executive officers named in the Summary Compensation Table. The Company has never granted stock appreciation rights.

OPTION GRANTS IN LAST FISCAL YEAR

| Name | Number of Securities Underlying Options Granted(#) | % of Total Options Granted to Employees in Fiscal Year | Exercise Price ($/Share) | Expiration Date | Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term(1) 5%($) | 10%($) |
|---|---|---|---|---|---|---|
| Tadd C. Seitz | 87,840(2)(3) | 22.5% | $17.25 | 9/30/03 | $953,064 | $2,414,722 |
| | 41,607(3)(4) | 10.6% | $16.25 | 11/03/02 | $372,840 | $ 918,142 |
| Theodore J. Host | 56,580(2)(3) | 14.5% | $17.25 | 9/30/03 | $613,893 | $1,555,384 |
| | 25,987(3)(4) | 6.6% | $16.25 | 11/03/02 | $232,869 | $ 573,455 |
| Paul D. Yeager | 16,180(2)(3) | 4.1% | $17.25 | 9/30/03 | $175,553 | $ 444,788 |
| | 9,162(3)(4) | 2.3% | $16.25 | 11/03/02 | $ 82,101 | $ 202,178 |
| J. Blaine McKinney | 21,680(2)(3) | 5.5% | $17.25 | 9/30/03 | $235,228 | $ 595,983 |
| | 9,978(3)(4) | 2.5% | $16.25 | 11/03/02 | $ 89,413 | $ 220,184 |
| Richard B. Stahl | 7,820(2)(3) | 2.0% | $17.25 | 9/30/03 | $ 84,847 | $ 214,972 |
| | 7,112(3)(4) | 1.8% | $16.25 | 11/03/02 | $ 63,731 | $ 156,940 |

(1) The amounts reflected in this table represent certain assumed rates of appreciation only. Actual realized values, if any, on option exercises will be dependent on the actual appreciation of the Common Shares of the Company over the term of the options. There can be no assurances that the Potential Realizable Values reflected in this table will be achieved.

(2) These options were granted under the Company's 1992 Long Term Incentive Plan and become exercisable in three approximately equal installments on each of the first three anniversaries of the date of grant, subject to right of the Compensation Committee of the Company's Board of Directors to accelerate the exercisability of such options in its discretion.

(3) In the event of a "change in control" (as defined in the 1992 Long Term Incentive Plan), each option will be canceled in exchange for a payment in cash of an amount equal to the excess of the highest price paid (or offered) for Common Shares during the preceding 30 trading days over the exercise price for such option. Notwithstanding the foregoing, if the Compensation Committee determines that the holder of the option will receive a new award (or have his prior award honored) in a manner which preserves its value and eliminates the risk that the value of the award



will be forfeited due to an involuntary termination, no settlement will occur as a result of a change in control. In the event of termination of employment by reason of retirement, long term disability or death, the options may thereafter be exercised in full for a period of 5 years, subject to the stated term of the options. The options are forfeited if the holder's employment is terminated for

cause. In the event an option holder's employment is terminated for any reason other than retirement, long term disability, death or cause, any exercisable options held by him at the date of termination may be exercised for a period of 30 days.

(4) These options (or a percent thereof) were originally to be earned under the 1992 Long Term Incentive Plan based upon the Company's performance during the 1994 fiscal year. However, on December 13, 1994, the Company's Board of Directors approved its Compensation Committees' recommendation to grant 100% of these shares as of September 30, 1994.

Option Exercises and Holdings

The following table sets forth information with respect to unexercised options held as of the end of the 1994 fiscal year by each of the executive officers named in the Summary Compensation Table. No options were exercised during the 1994 fiscal year.

AGGREGATED OPTION EXERCISES IN LAST FISCAL YEAR
AND FISCAL YEAR-END OPTION VALUES

| Name | Number of Securities Underlying Options Exercised | Value Realized($) | Number of Securities Underlying Unexercised Options at FY-End (#) Exercisable | Unexercisable | Value of Unexercised In-the-Money Options at FY-End($)(1) Exercisable | Unexercisable |
|---|---|---|---|---|---|---|
| Tadd C. Seitz | 0 | __ | 98,873 | 157,200 | $ 0 | $ 0 |
| Theodore J. Host | 0 | __ | 198,126 | 99,900 | $763,638 | $ 0 |
| Paul D. Yeager | 0 | __ | 12,623 | 40,621 | $ 0 | $ 0 |
| J. Blaine McKinney | 0 | __ | 28,721 | 48,326 | $ 0 | $ 0 |
| Richard B. Stahl | 0 | __ | 16,912 | 19,679 | $ 0 | $ 0 |

(1) "Value of Unexercised In-the-Money Options at FY-End" is based upon the fair market value of the Company's Common Shares on September 30, 1994 ($15.50) less the exercise price of in-the-money options at the end of the 1994 Fiscal Year.

Pension Plans

The Company maintains a tax-qualified non-contributory defined benefit pension plan (the "Pension Plan"). All employees of the Company and its subsidiaries (except for Hyponex Corporation, a wholly-owned subsidiary of the Company ("Hyponex"), and O. M. Scott & Sons, Ltd., a wholly owned subsidiary of the Company in United Kingdom) are eligible to participate upon meeting certain age and service requirements. The following table shows the estimated annual benefits (assuming payment made in the form of a single life annuity) payable upon retirement at normal retirement age (65 years of age) to an employee in specified compensation and years of service classifications.1

PENSION PLANS TABLE

| Annualized Average Final Pay | Years of Service 10 | 15 | 20 | 25 | 30 |
|---|---|---|---|---|---|
| $ 100,000 | $13,279.50 | $19,919.25 | $26,559.00 | $33,198.75 | $ 39,838.50 |
| 250,000 | 35,779.50 | 53,669.25 | 71,559.00 | 89,448.75 | 107,338.50 |
| 500,000 | 73,279.50 | 109,919.25 | 146,559.00 | 183,198.75 | 219,838.50 |
| 750,000 | 110,579.50 | 166,169.25 | 221,559.00 | 276,948.75 | 332,338.50 |
| 1,000,000 | 148,279.50 | 222,419.25 | 296,559.00 | 370,698.75 | 444,838.50 |

| | | | | | |
|---|---|---|---|---|---|
| 1,250,000 | 185,779.50 | 278,669.25 | 371,559.00 | 464,448.75 | 557,338.50 |

Monthly benefits under the Pension Plan upon normal retirement (age 65) are based upon an employee's average final pay and years of service, and are reduced by 1.25% of the employee's PIA times the number of years of such employee's service. Average final pay is the average of the 60 highest consecutive months' compensation during the 120 months prior to retirement. Pay includes all earnings and a portion of sales incentive payments, management incentive payments and executive incentive payments, but does not include earnings in connection with foreign service, the value of a company car, separation or other special allowances and commissions. Additional provisions for early retirement are included.

At September 30, 1994, the credited years of service (including certain prior service with ITT Corporation, from whom the Company was acquired in 1986) and the 1994 annual covered compensation for purposes of the Pension Plan and the Excess Benefit Plan of the five executive officers of the Company named in the Summary Compensation Table were as follows:

| | Years of Service | Covered Compensation |
|---|---|---|
| Mr. Seitz | 18 years 9 months | $587,965 |
| Mr. Host | 2 years 10 months | $501,650 |
| Mr. Stahl | 18 years 9 months | $264,733 |
| Mr. Yeager | 25 years 1 month | $324,000 |
| Mr. McKinney | 2 years 4 months | $291,667 |

Effective October 1, 1993, the Company also established the Excess Benefit Plan which provides additional benefits to participants in the Pension Plan whose benefits are reduced by limitations imposed under Sections 415 and 401(a)(17) of the Code. Under the Excess Benefit Plan, executive officers and certain key employees will receive, at the same time and in the same form as benefits paid under the Pension Plan, additional monthly benefits in an amount which, when added to the benefits paid to the participant under the Pension Plan, will equal the benefit amount such participant would have earned but for the limitations imposed by the Code to the extent such limitations apply.



Compensation of Directors

Each director of the Company, other than any director employed by the Company, receives a $25,000 annual retainer for Board and committee meetings plus all reasonable travel and other expenses of attending such meetings.

Directors, other than those employed by the Company (the "Nonemployee Directors"), receive an annual grant on the first business day following the date of each annual meeting of stockholders (commencing with the 1994 Annual Meeting) of options to purchase 4,000 Common Shares at an exercise price equal to the fair market value on the date of the grant. In addition, on November 11, 1992, each of the Nonemployee Directors of the Company on that date (Messrs. Beard, Chamberlin, Flannery and Sherman and Henry O. Timnick (who is no longer a director of the Company)) was granted options to purchase 4,000 Common Shares at an exercise price of $16.25. Options granted to Nonemployee Directors become exercisable six months after the date of grant and remain exercisable until the earlier to occur of (I) the tenth anniversary of the date of grant or (ii) the first anniversary of the date the Nonemployee Director ceases to be a member of the Company's Board of Directors.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS

AND MANAGEMENT.

The following table furnishes certain information as of December 28, 1994 (except as otherwise noted), as to the Common Shares beneficially owned by each of the directors of the Company, by each of the executive officers of the Company named in the Summary Compensation Table 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 Common Shares.

Amount and Nature of Beneficial Ownership(1)

| Name of Beneficial Owner or Number of Persons in Group | Common Shares Presently Held | Common 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<br>250 North Bridge Road<br>#33-00 Raffles City Tower<br>Singapore 0607 | 1,135,500(3) | 0 | 1,135,500(3) | 6.08%(3) |
| James B Beard | 16,727 | 8,000 | 24,727 | (4) |
| John S. Chamberlin | 22,727 | 8,000 | 30,727 | (4) |
| Joseph P. Flannery | 25,454 | 8,000 | 33,454 | (4) |
| Theodore J. Host(5) | 45,454(6) | 216,222 | 261,676 | 2.05% |
| Karen Gordon Mills | 0 | 0 | 0 | (4) |
| Tadd C. Seitz(5) | 462,454 | 127,389 | 589,843 | 3.16% |
| Donald A. Sherman | 22,727 | 8,000 | 30,727 | (4) |
| John M. Sullivan | 1,000 | 4,000 | 5,000 | (4) |
| L. Jack Van Fossen | 1,200 | 4,000 | 5,200 | (4) |
| J. Blaine McKinney(5) | 1,100 | 40,666 | 41,766 | (4) |
| Richard B. Stahl(5) | 77,545(7) | 21,890 | 99,435 | (4) |
| Paul D. Yeager(5) | 140,885(8) | 27,538 | 168,423 | (4) |
| All directors and executive officers as a group (18 persons) | 1,244,123(9) | 473,705 | 1,717,828 | 9.20% |

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

(2) The percent of class is based upon the sum of 18,667,064 Common Shares outstanding on November 30, 1994, and the number of Common Shares as to which the named person has the right to acquire beneficial ownership upon the exercise of options exercisable within 60 days of September 30, 1994.

(3) Based on information contained in Amendment No. 1 to a Schedule 13D dated October 18, 1994 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 803,000 Common Shares with the Government of Singapore, shares voting and investment power with respect to 303,500 Common Shares with the Monetary Authority of Singapore and shares voting and investment power with respect to 29,000 Common Shares with the Board of Commissioners of Currency, Singapore.

(4) Represents ownership of less than 1% of the outstanding Common Shares of the Company.

(5) Executive officer of the Company named in the Summary Compensation Table.

(6) Includes 45,454 Common 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.

(7) Includes 25,000 Common Shares held in the Richard B. Stahl and Nancy E. Stahl 1992 Charitable Remainder Trust. In his capacity as trustee of said Trust, Mr. Stahl exercises sole voting and investment power with respect to such Common Shares. Also includes 1,000 Common Shares held by the son of Mr. Stahl who shares his home.

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

(9) See Notes (6), (7) and (8) above. Also includes Common Shares held by the respective spouses of executive officers of the Company and by their children who reside with them.



ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS.

CERTAIN TRANSACTIONS

The Company entered into an Employment Agreement with Mr. Host effective October 1991 providing for his continued employment as President and Chief Operating Officer of the Company until December 1996 at an annual base salary of at least $270,000 per year, plus incentive bonus under The Scotts Company Executive Incentive Plan. If Mr. Host's employment is terminated for specified reasons, the Employment Agreement provides that he will receive, subject to certain limitations, his full base salary which would have been paid until the first anniversary of his date of termination.

In connection with the entering into of his Employment Agreement, Mr. Host received a signing bonus of $250,000, and in January 1992, pursuant to such Agreement, purchased 45,454 Common Shares at a purchase price of $9.90 per share, and pursuant to a Stock Option Plan and Agreement dated as of January 9, 1992, was granted options, which vested one-third on the date of grant and one-third on each of the first and second anniversaries of his date of employment, to purchase 136,364 Common Shares at a purchase price of $9.90 per share.

PART IV

ITEM 14. EXHIBITS, FINANCIAL STATEMENT SCHEDULES, AND REPORTS ON FORM 8-K.

(a) Documents Filed as Part of this Report

1 & 2. Financial Statements and Financial Statement Schedules:

The response to this portion of Item 14 is submitted as a separate section of this Annual Report on Form 10-K. Reference is made to "Index to Consolidated Financial Statements and Financial Statement Schedules "beginning at Page F-1 (page __ as sequentially numbered).

3. Exhibits:

Exhibits filed with this Annual Report on Form 10-K are attached hereto. For a list of such exhibits, see "Index to Exhibits" beginning at page E-1 (page ___ as sequentially numbered). The following table provides certain information containing executive compensation plans and arrangements required to be filed as exhibits to this Annual Report on Form 10-K.

Executive Compensation Plans and Arrangements

| Exhibit | Description | Location |
|---|---|---|

| No. | | |
|---|---|---|
| 10(a) | The Scotts Company Employees' Pension Plan | Pages 134 through 190 |
| 10(b) | Second Restatement of The Scotts Company Profit Sharing and Savings Plan | Pages 191 through 232 |



| | | |
|---|---|---|
| 10(e) | Employment Agreement, dated as of October 21, 1991 between OMS and Theodore J. Host | Incorporated herein by reference to Scotts Delaware's Annual Report on Form 10-K for the fiscal year ended September 30, 1993 (File No. 0-19768) [Exhibit 10(g)] |
| 10(f) | Stock Option Plan and Agreement, dated as of January 9, 1992 between Scotts Delaware and Theodore J. Host | Pages 233 through 249 |
| 10(g) | The O.M. Scott & Sons Company Excess Benefit Plan | Incorporated herein by reference to Scotts Delaware's Annual Report on Form 10-K for the fiscal year ended September 30, 1993 (File No. 0-19768) [Exhibit 10(g)] |
| 10(l) | The Scotts Company 1992 Long Term Incentive Plan | Incorporated herein by reference to Scotts Delaware's Registration Statement on Form S-8 filed on March 26, 1993 (Registration No. 33-60056) [Exhibit 4(f)] |
| 10(i) | O. M. Scott & Sons Company 1994 Executive Annual Incentive Plan | Pages 250 through 254 |

(b) Reports on Form 8-K

Scotts Ohio electronically filed a Current Report on Form 8-K with the Securities and Exchange Commission on September 30, 1994 to report the following: 1) the September 20, 1994 merger of Scotts Delaware into Scotts Ohio; 2) the conversion of each share of Class A Common Stock, $.01 par value of Scotts Delaware into one common share, without par value, of Scotts Ohio; and 3) the September 30, 1994 merger of OMS into Scotts Ohio.

(c) Exhibits

See Item 14(a) (3) above.

(d) Financial Statement Schedules

The response to this portion of Item 14 is submitted as a separate section of this Annual Report on Form 10-K. Reference

is made to "Index to Consolidated Financial Statements and Financial Statement Schedules" beginning at page F-1 (page ___ as sequentially numbered).



SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

THE SCOTTS COMPANY

Dated December 13, 1994 By s/s Tadd C. Seitz

Tadd C. Seitz

Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed below by the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
|---|---|---|
| s/s James B Beard<br>James B Beard | Director | December 13, 1994 |
| s/s John S. Chamberlin<br>John S. Chamberlin | Director | December 13, 1994 |
| s/s Joseph P. Flannery<br>Joseph P. Flannery | Director | December 13, 1994 |
| s/s Theodore J. Host<br>Theodore J. Host | Director/President Operating Officer | December 13, 1994 |
| s/s Karen Gordon Mills<br>Karen Gordon Mills | Director | December 13, 1994 |
| s/s Tadd C. Seitz<br>Tadd C. Seitz | Chairman/Chief Executive Officer and Director | December 13, 1994 |
| s/s Donald A. Sherman<br>Donald A. Sherman | Director | December 13, 1994 |
| s/s John M. Sullivan<br>John M. Sullivan | Director | December 13, 1994 |
| s/s L. Jack Van Fossen<br>L. Jack Van Fossen | Director | December 13, 1994 |
| s/s Paul D. Yeager<br>Paul D. Yeager | Executive Vice President/ Chief Financial Officer/ Principal Accounting Officer | December 13, 1994 |



THE SCOTTS COMPANY

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS AND FINANCIAL STATEMENT SCHEDULES

(Items 8 and 14(a))

Data submitted herewith:

Consolidated Financial Statements of The Scotts Company and Subsidiaries:



Schedules Supporting the Consolidated Financial Statements:



Schedules other than those listed above are omitted since they are not required or are not applicable, or the required information is shown in the consolidated financial statements or notes thereto.



## REPORT OF INDEPENDENT ACCOUNTANTS

To the Shareholders and Board of
Directors of The Scotts Company

We have audited the accompanying consolidated balance sheets of The Scotts Company and Subsidiaries as of September 30, 1993 and 1994, and the related consolidated statements of income, cash flows and changes in shareholders' equity (deficit) for each of the three years in the period ended September 30, 1994. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to

obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of The Scotts Company and Subsidiaries as of September 30, 1993 and 1994, and the consolidated results of their operations and their cash flows for each of the three years in the period ended September 30, 1994, in conformity with generally accepted accounting principles.

As discussed in Notes 3 and 6 to the consolidated financial statements, effective the beginning of fiscal 1993 the Company changed its method of accounting for postretirement benefits other than pensions and income taxes.

Coopers & Lybrand L. L. P.
Columbus, Ohio

November 14, 1994



THE SCOTTS COMPANY AND SUBSIDIARIES
Consolidated Statements of Income
for the years ended September 30,
1992, 1993 and 1994
(in thousands except per share amounts)

| | 1992 | 1993 | 1994 |
|---|---|---|---|
| Net sales | $413,558 | $466,043 | $606,339 |
| Cost of sales | 213,133 | 244,218 | 319,730 |
| Gross profit | 200,425 | 221,825 | 286,609 |
| Marketing | 66,245 | 74,579 | 100,106 |
| Distribution | 61,051 | 67,377 | 84,407 |
| General and administrative | 24,759 | 27,688 | 30,189 |
| Research and development | 6,205 | 7,700 | 10,352 |
| Other expenses, net | 20 | 660 | 2,283 |
| Income from operations | 42,145 | 43,821 | 59,272 |
| Interest expense | 15,942 | 8,454 | 17,450 |
| Income before taxes, extraordinary items and cumulative effect of accounting changes | 26,203 | 35,367 | 41,822 |
| Income taxes | 11,124 | 14,320 | 17,947 |
| Income before extraordinary items and cumulative effect of accounting changes | 15,079 | 21,047 | 23,875 |
| Extraordinary Items: | | | |
| Loss on early extinguishment of debt, net of tax | (4,186) | - | (992) |
| Utilization of net operating loss carryforwards | 4,699 | - | |
| Cumulative effect of changes in accounting for postretirement benefits, net of tax and income taxes | - | (13,157) | - |

| | | | |
|---|---|---|---|
| Net income | $15,592 | $7,890 | $22,883 |
| Net income per common share: | | | |
| Income before extraordinary items and cumulative effect of accounting changes | $ .84 | $ 1.07 | $ 1.27 |
| Extraordinary items: | | | |
| Loss on early extinguishment of debt, net of tax | (.23) | | (.05) |
| Utilization of net operating loss carryforwards | .26 | | |
| Cumulative effect of changes in accounting for postretirement benefits, net of tax and income taxes | - | (.67) | - |
| Net income | $ .87 | $ .40 | $ 1.22 |
| Weighted average common shares outstanding during the period | 18,014 | 19,687 | 18,785 |

See Notes to Consolidated Financial Statements.



THE SCOTTS COMPANY AND SUBSIDIARIES
Consolidated Statements of Cash Flows
for the years ended September 30, 1992, 1993 and 1994

| | 1992 | 1993 | 1994 |
|---|---|---|---|
| CASH FLOWS FROM OPERATING ACTIVITIES | | | |
| Net income | $15,592 | 7,890 | 22,883 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | | |
| Depreciation | 10,206 | 12,278 | 13,375 |
| Amortization | 5,642 | 5,866 | 8,562 |
| Extraordinary loss on early extinguishment of debt | 4,186 | | 992 |
| Cumulative effect of change in accounting for postretirement benefits | | 24,280 | |
| Postretirement benefits | - | 2,366 | 368 |
| Deferred income taxes | 1,588 | (12,740) | 5,378 |
| Loss on sale of equipment | 392 | 94 | 29 |
| Provision for losses on accounts receivable | 990 | 1,409 | 422 |
| Other | 204 | 748 | 234 |
| Changes in assets and liabilities: | | | |
| Accounts receivable | (5,476) | (10,002) | (32,294) |
| Inventories | (3,291 | (11,147) | (10,406) |
| Prepaid and other current assets | (268) | (393) | (2,065) |
| Accounts payable | (654) | (2,390) | 6,400 |
| Accrued liabilities | (5,351) | 1,630 | 6,220 |
| Other assets and liabilities | 3,682 | 4,784 | (10,231) |
| Net cash provided by operating activities | 27,442 | 24,673 | 9,867 |

| | | | |
|---|---|---|---|
| CASH FLOWS FROM INVESTING ACTIVITIES | | | |
| Investment in plant and equipment | (19,896) | (15,158) | (33,402) |
| Acquisitions, net of cash acquired | - | (16,366) | (117,107) |
| Proceeds from sale of equipment | 131 | 194 | 384 |
| Net cash used in investing activities | (19,765) | (31,330) | (150,125) |
| CASH FLOWS FROM FINANCING ACTIVITIES | | | |
| Borrowings under term debt | - | 70,000 | 289,215 |
| Payments on term and other debt | (58,307) | (640) | (166,844) |
| Net (payments) borrowings under revolving credit | (36,500) | (18,238) | 30,500 |
| Net borrowings (payments) under bank line of credit | 349 | (953) | 1,211 |
| Redemption of senior subordinated notes | (53,223) | - | - |
| Redemption of subordinated debentures | (21,132) | - | - |
| Deferred financing cost incurred | (1,117) | (628) | (5,139) |
| Net proceeds from issuance of Class A Common Stock | 160,237 | - | - |
| Issuance (purchase) of Class A Common Stock | - | (41,441) | 160 |
| Net cash (used in) provided by financing activities | (9,693) | 8,100 | 149,103 |
| Effect of exchange rate changes on cash | - | - | (473) |
| Net (decrease) increase in cash | (2,016) | 1,443 | 8,372 |
| Cash, beginning of period | 2,896 | 880 | 2,323 |
| Cash, end of period | $ 880 | $2,323 | $10,695 |
| SUPPLEMENTAL CASH FLOW INFORMATION: | | | |
| Interest (net of amount capitalized) | $16,240 | $6,169 | $10,965 |
| Income taxes paid | 1,189 | 11,500 | 20,144 |
| Businesses acquired: | | | |
| Fair value of assets acquired | | 23,799 | 143,52 |
| Liabilities assumed | | (7,433) | (26,413) |
| Net cash paid for acquisition | | 16,366 | 117,107 |

See Notes to Consolidated Financial Statements



THE SCOTTS COMPANY AND SUBSIDIARIES
Consolidated Balance Sheets
September 30, 1993 and 1994
(in thousands)

ASSETS

| | 1993 | 1994 |
|---|---|---|
| Current Assets: | | |
| Cash | $ 2,323 | $ 10,695 |
| Accounts receivable, less allowance of $2,511 in 1993 and $2,933 in 1994 | 60,848 | 115,772 |
| Inventories | 76,654 | 106,636 |
| Prepaid and other assets | 13,552 | 17,151 |
| Total current assets | | |

| | | |
|---|---|---|
| | 153,377 | 250,254 |
| Property, plant and equipment, net | 98,791 | 140,105 |
| Patents and other intangibles, net | 23,502 | 28,880 |
| Goodwill | 41,340 | 104,578 |
| Other assets | 4,580 | 4,767 |
| Total Assets | $321,590 | $528,584 |
| LIABILITIES AND SHAREHOLDERS' EQUITY | | |
| Current Liabilities: | | |
| Revolving credit line | $ 705 | $23,416 |
| Current portion of term debt | 5,444 | 3,755 |
| Accounts payable | 28,279 | 42,914 |
| Accrued liabilities | 21,170 | 35,220 |
| Accrued taxes | 9,253 | 4,383 |
| Total current liabilities | 64,851 | 109,688 |
| Long-term debt, less current portion | 87,080 | 220,130 |
| Postretirement benefits other than pensions | 26,646 | 27,014 |
| Other liabilities | - | 3,592 |
| Total Liabilities | 178,577 | 360,424 |
| Commitments and Contingencies | | |
| Shareholders' Equity: | | |
| Preferred stock $.01 for value in 1993 | | |
| Common stock, $.01 par value, Issued 21,073 shares in 1993 no par value, Issued 21,082 shares in 1994 | 211 | 211 |
| Capital in excess of par value | 193,263 | 193,661 |
| Retained earnings (deficit) | (9,008) | 13,875 |
| Cumulative translation gain (loss) | (12) | 2,065 |
| Treasury stock 2,415 shares in 1993 and 1994, at cost | (41,441) | (41,441) |
| Total Shareholders' Equity | 143,013 | 168,160 |
| Total Liabilities and Shareholders' Equity | $321,590 | $528,584 |

See Notes to Consolidated Financial Statements



THE SCOTTS COMPANY AND SUBSIDIARIES Consolidated Statements of Changes in Shareholders' Equity (Deficit) for the years ended September 30, 1992, 1993 and 1994

(in thousands)

| | Common Shares Shares | Common Shares Amount | Capital in excess of Par Value | Retained Earnings (Deficit) | Treasury Stock Shares | Treasury Stock Amount | Cumulative Translation Gain (Loss) | Total Shareholders Equity (Deficit) |
|---|---|---|---|---|---|---|---|---|
| Balance, | 9,617 | $96 | $18,083 | ($27,720) | 117 | ($420) | | ($9,961) |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| September 30, 1991 | | | | | | | | |
| Adjustment for redeemable common stock | 2,162 | 22 | 9,826 | | | | | 9,848 |
| Issuance of common stock held in treasury | | | 310 | | (112) | 407 | | 717 |
| Exchange of warrants for common stock | 325 | 3 | 4,754 | (4,770) | (5) | 13 | | - |
| Issuance of common stock | 8,969 | 90 | 159,430 | | | | | 159,520 |
| Net income | | | | 15,592 | | | | 15,592 |
| Amortization of unearned compensation | | | 24 | | | | | 24 |
| Options outstanding | | | 177 | | | | | 177 |
| Foreign currency translation adjustment | | | | | | | $12 | 12 |
| Balance, September 30, 1992 | 21,073 | 211 | 192,604 | (16,898) | | | 12 | 175,929 |
| Net income | | | | 7,890 | | | | 7,890 |
| Amortization of unearned compensation | | | 24 | | | | | 24 |
| Options outstanding | | | 635 | | | | | 635 |
| Foreign currency translation adjustment | | | | | | | (24) | (24) |
| Purchase of common stock | | | | | (2,415) | (41,441) | | (41,441) |
| Balance, September 30, 1993 | 21,073 | 211 | 193,263 | (9,008) | (2,415) | (41,441) | (12) | 143,013 |
| Net income | | | | 22,883 | | | | 22,883 |
| Foreign currency translation adjustment | | | | | | | 2,077 | 2,077 |
| Amortization of unearned compensation | | | 27 | | | | | 27 |
| Issuance of common shares | 9 | | 160 | | | | | 160 |
| Balance, September 30, 1994 | 21,082 | $211 | $193,450 | $13,875 | (2,415) | ($41,441) | $2,065 | $168,16 |

See Notes to Consolidated Financial Statements



NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1.SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Organization and Basis of Presentation

On September 20, 1994, the shareholders voted to reincorporate The Scotts Company from Delaware to Ohio. As a result of the reincorporation, The Scotts Company, a Delaware corporation merged into The Scotts Company, an Ohio corporation ("Scotts Ohio"). Immediately following the consummation of the merger, the O. M. Scott & Sons Company was merged into Scotts Ohio. Scotts Ohio and its wholly-owned subsidiaries, Hyponex Corporation ("Hyponex"), Republic Tool and Manufacturing Corp. ("Republic") and Scott-Sierra Horticultural Products Company ("Sierra"), (collectively, the "Company"), is engaged in the manufacture and sale of lawn care and garden products. All material intercompany transactions have been eliminated.

Shareholders' equity, shares outstanding and per share amounts for all periods have been adjusted for the January 1992 reverse stock split, in which every 2.2 shares of old Class A Common Stock were exchanged for one share of new Class A Common Stock.

Inventories

Inventories are principally stated at the lower of cost or market, determined by the FIFO method; certain inventories of Hyponex and Sierra (primarily organic products) are accounted for by the LIFO method. At September 30, 1993 and 1994, approximately 24% and 31% of inventories, respectively, are valued at the lower of LIFO cost or market. Inventories include the cost of raw materials, labor and manufacturing overhead.

The Company makes provisions for obsolete or slow-moving inventories as necessary to properly reflect inventory value. Inventories as of September 30, 1993 and 1994, net of such provisions, consisted of:

| (in thousands) | 1993 | 1994 |
|---|---|---|
| Finished Goods | $ 44,735 | $ 55,102 |
| Raw Materials | 31,905 | 52,639 |
| FIFO Cost | 76,640 | 107,741 |
| LIFO Reserve | 14 | (1,105) |
| | $ 76,654 | $ 106,636 |

Advertising and Consumer Guarantee

The Company has a cooperative advertising program with customer dealers whereby the Company reimburses dealers for the qualifying portion of dealer advertising costs. Such advertising allowances are based on the timing of dealer orders and deliveries. The Company provides for the cost of this program in the period the sales to dealers are recorded. All other advertising costs are expensed as incurred.

The Company accrues amounts for product non-performance claims by consumers under the Company's product guarantee program. The provision is determined by applying an experience rate to sales in the period the related products are shipped to dealers.

Property, Plant and Equipment

Property, plant and equipment, including significant improvements, are stated at cost. Expenditures for maintenance and repairs are charged to operating expenses as incurred. When properties are retired, or otherwise disposed of, the cost of the asset and the related accumulated depreciation are removed from the accounts.

Depletion of applicable land is computed on the units-of-production method. Depreciation of other property, plant and equipment is provided on the straight-line method and is based on the estimated useful economic lives of the assets as follows:

| | |
|---|---|
| Land improvements | 10-25 years |
| Buildings | 10-40 years |
| Machinery and equipment | 3-15 years |
| Furniture and fixtures | 6-10 years |

Property, plant and equipment at cost at September 30, 1993 and 1994 consisted of the following:

(in thousands)

| | 1993 | 1994 |
|---|---|---|
| Land and improvements | $19,817 | $ 21,856 |
| Buildings | 36,300 | 41,313 |
| Machinery and equipment | 87,250 | 111,639 |
| Furniture and fixtures | 5,952 | 8,861 |
| Construction in progress | 4,687 | 24,340 |
| | 154,006 | 208,009 |
| Less accumulated depreciation | 55,215 | 67,904 |
| | $ 98,791 | $140,105 |

Property subject to capital leases in the amount of $1,484,000 and $1,270,000 (net of accumulated amortization of $1,560,000 in 1993 and $2,303,000 in 1994) has been included in machinery and equipment at September 30, 1993 and 1994, respectively.

The Company capitalized interest costs of $380,000 in fiscal 1992 and $321,000 in fiscal 1994 as part of the cost of major asset construction projects.

Research and Development

Significant costs are incurred each year in connection with research and development programs that are expected to contribute operating profits in future years. All costs associated with research and development are charged to expense as incurred.

Intangible Assets

Goodwill arising from business acquisitions is amortized over 40 years on the straight-line basis. Other intangible assets consist primarily of patents and are being amortized on a straight-line basis over periods varying from 7 to 24 years. Accumulated amortization at September 30, 1993 and 1994 was $33,876,000 and $42,438,000 respectively.




Company Management periodically assesses the recoverability of goodwill, patents and other intangible assets by determining whether the amortization of such assets over the remaining lives can be recovered through projected undiscounted net cash flows generated by such assets.

Other Assets

Included in other assets are debt issuance costs which are being

amortized over the terms of the various agreements and organization costs which are being amortized over five years. During the year ended September 30, 1994, the Company incurred $5.1 million of debt issuance costs related to the issuance of Term Debt and Senior Subordinated Notes and recognized an extraordinary charge of $1.7 million before taxes in unamortized debt issuance costs in connection with certain debt prepayments.

Foreign Currency

All assets and liabilities in the balance sheets of foreign subsidiaries whose functional currency is other than the U.S. dollar are translated into United States dollar equivalents at year-end exchange rates. Translation gains and losses are accumulated as a separate component of shareholders' equity. Income and expense items are translated at average monthly exchange rates. Cumulative foreign currency translation gain (loss) were ($12,000) and $2,065,000 as of September 30, 1993 and 1994, respectively. Foreign currency transaction gains and losses are included in determining net income. In fiscal 1992, 1993 and 1994, the Company recorded foreign currency transaction losses in other expenses of $324,000, $196,000 and $491,000, respectively.

Income Taxes

Effective October 1, 1992, the Company adopted Statement of Financial Accounting Standard ("SFAS") No. 109, "Accounting for Income Taxes", which requires recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been recognized in the financial statements or tax returns. Under this method, deferred tax assets and liabilities are determined based on the difference between the financial statement and tax bases of the assets and liabilities using enacted tax rates.

U.S. federal and state income taxes and foreign taxes are provided currently on the undistributed earnings of foreign subsidiaries, giving recognition to current tax rates and applicable foreign tax credits.

Prior to fiscal 1993, the Company's deferred income tax provision was based on differences between financial reporting and taxable income.

Reclassifications

Certain reclassifications have been made to the prior years' financial statements to conform to fiscal 1994 classifications.



2.ACQUISITIONS

Republic

Effective November 19, 1992, the Company acquired Republic headquartered in Carlsbad, California. Republic designs, develops, manufactures and markets lawn and garden equipment with the substantial majority of its revenue derived from the sale of its products to mass merchandisers, home centers and garden outlets in the United. States. The purchase price of approximately $16,366,000 was financed under the Company's revolving credit agreement.

The acquisition was accounted for using the purchase method. Accordingly, the purchase price was allocated among the assets acquired and liabilities assumed based on their estimated fair values at the date of acquisition. The excess of purchase price over the estimated fair values of the net assets acquired ("goodwill") of approximately $6,400,000 is being amortized on a straight-line basis over 40 years.

Republic's results of operations have been included in the Company's Consolidated Statement of Income since November 19, 1992. As such, the Company's fiscal 1993 pro forma results of operations are not materially different from actual results and are therefore not presented.

Sierra

Effective December 16, 1993, the Company completed the acquisition of Grace-Sierra Horticultural Products Company (all further references to Grace-Sierra, now known as Scott-Sierra Horticultural Products Company, will be made as "Sierra") for an aggregate purchase price of approximately $121,221,000, including transaction costs of $1,221,000. Additionally the Company incurred $2,261,000 of deferred financing fees related to its financing of the acquisition. Sierra is a leading international manufacturer and marketer of specialty fertilizers and related products for the nursery, greenhouse, golf course and consumer markets. Sierra manufactures controlled-release fertilizers in the United States and the Netherlands, as well as water-soluble fertilizers and specialty organics in the United States. Approximately one-quarter of Sierra's net sales are derived from European and other international markets; approximately one-quarter of Sierra's assets are internationally based. The purchase price was financed under an amendment to the Company's Credit Agreement, whereby term debt commitments available thereunder were increased to $195,000,000.

The acquisition was accounted for using the purchase method. Accordingly, the purchase price has been allocated to the assets acquired and liabilities assumed based on their estimated fair values at the date of acquisition. The excess of purchase price over the estimated fair value of the net assets acquired ("goodwill") of approximately $65,755,000 is being amortized on a straight-line basis over 40 years. Sierra results of operations have been included in the Consolidated Statements of Income from the acquisition date.




The following represents pro forma results of operations assuming the Sierra acquisition had occurred effective October 1, 1992 after giving effect to certain related adjustments, including depreciation and amortization on tangible and intangible assets, and interest and expenses on acquisition debt.

| | Year Ended (in thousands, except per share amounts) (unaudited) | |
|---|---|---|
| | September 30 1993 | September 30, 1994 |
| [S] | [C] | [C] |
| Net sales | $ 585,318 | $ 627,165 |
| Income before extraordinary items and cumulative effect of accounting changes | $ 20,274 | $ 23,768 |
| Net income | $ 7,117 | $ 22,776 |
| Income per common share before extraordinary items and cumulative effect of accounting changes | $ 1.03 | $ 1.27 |
| Net income per common share | $ .36 | $ 1.22 |

The pro forma information provided does not purport to be indicative of actual results of operations if the Sierra acquisition had occurred as of October 1, 1992, and is not intended to be indicative of future results or trends.

3.ASSOCIATE BENEFITS

Both Scotts Ohio and Sierra have defined benefit pension plans covering substantially all full-time associates who have completed one year of eligible service and reached the age of 21. The benefits under these plans are based on years of service and the associates' average final compensation for the Scotts Ohio plan and for Sierra salaried employees and stated amounts for Sierra hourly employees. The Company's funding policy, consistent with statutory requirements and tax considerations, is based on actuarial computations using the Projected Unit Credit method.



The following table sets forth the plans' funded status and the related amounts recognized in the consolidated balance sheets.

| (in thousands) | September 30, | |
|---|---|---|
| | 1993 | 1994 |
| Actuarial present value of benefit obligations: | | |
| Accumulated benefit obligation: | | |
| Vested benefits | $ (28,904) | $ (29,768) |
| Nonvested benefits | (1,875) | (5,093) |
| Additional obligation for projected compensation increases | (5,530) | (5,919) |
| Projected benefit obligation for service rendered to date | (36,309) | (40,780) |
| Plan assets at fair value, primarily corporate bonds, U.S. bonds and cash equivalents | 33,214 | 38,901 |
| Plan assets less than projected benefit obligations | (3,095) | (1,879) |
| Unrecognized net asset being amortized over 11 1/2 years | (626) | (234) |
| Unrecognized net loss | 4,609 | 4,137 |
| Prepaid pension costs | $ 888 | $ 2,024 |

Pension cost includes the following components:

| | Year Ended September 30, | | |
|---|---|---|---|
| (in thousands) | 1992 | 1993 | 1994 |
| Service cost | $ 1,571 | $ 1,571 | $ 1,685 |
| Interest cost | 2,438 | 2,628 | 2,968 |
| Actual return on plan assets | (2,602) | (2,774) | (3,092) |
| Net amortization and deferral | (133) | (18) | (53) |
| Net pension cost | $ 1,274 | $ 1,407 | $ 1,508 |

The weighted average settlement rate used in determining the actuarial present value of the projected benefit obligation was 9%, 8% and 8% as of September 30, 1992, 1993 and 1994, respectively. Future compensation is assumed to increase 5% annually for fiscal 1992, and 4% annually for fiscal 1993 and 1994. The expected long-term rate of return on plan assets was 10% in fiscal 1992, and 9% in fiscal 1993 and 1994.

The Company provides comprehensive major medical benefits to some of its retired associates and their dependents. Substantially all of the Company's associates become eligible for these benefits if they retire at age 55 or older with more than ten years of service. The plan requires certain minimum contributions from retired associates and includes provisions to limit the overall cost increases the Company is required to cover. The Company funds its portion of retiree medical benefits on a pay-as-you-go basis.

Effective October 1, 1992, the Company changed its method of accounting for postretirement benefit costs other than pensions by adopting SFAS No. 106, "Employers' Accounting for Postretirement Benefits Other Than Pensions." The Company elected to immediately recognize the cumulative effect of the change in accounting which resulted in a charge of $14,932,000, net of income taxes of $9,348,000, or $.76 per share. In addition to the cumulative effect, the Company's retiree medical costs applying the new accounting method increased $1,437,000, net of income taxes of $929,000, or $.07 per share, during fiscal 1993 as a result of the change in accounting. Prior to October 1, 1993, the Company effected several changes in plan provisions, primiarily related to current and ultimate levels of retiree and dependent contributions.. Current retirees will be entitled to benefits existing prior to these plan changes. These plan changes resulted in a reduction in unrecognized prior service cost, which is being amortized over future years.

Net periodic postretirement benefit costs for fiscal 1993 and 1994 included the following components:

| (in thousands) | 1993 | 1994 |
|---|---|---|
| Service cost - benefits attributed to associate service during the year | $ 930 | $ 419 |
| Interest cost on accumulated postretirement benefit obligation | 2,038 | 1,276 |
| Amortization of prior service costs and gains from changes in assumptions | | (921) |
| Net periodic postretirement benefit cost | $ 2,968 | $ 774 |

The following table sets forth the retiree medical plan status reconciled to the amount included in the consolidated balance sheet as of September 30, 1993 and 1994.

| (in thousands) | 1993 | 1994 |
|---|---|---|
| Accumulated postretirement benefit obligation: | | |
| Retirees | $ 6,738 | $ 7,136 |
| Fully eligible active plan participants | 314 | 437 |
| Other active plan participants | 8,305 | 8,789 |
| Total accumulated postretirement benefit obligation | 15,357 | 16,362 |
| Unrecognized prior service cost | 9,494 | 8,590 |
| Unrecognized gains from changes in assumptions | 1,795 | 2,062 |
| Accrued postretirement benefit cost | $ 26,646 | $ 27,014 |

The discount rate used in determining the accumulated postretirement benefit obligation was 8.5%. For measurement purposes, a 14% annual rate of increase in per capita cost of covered retiree medical benefits was assumed for fiscal 1994; the rate was assumed to decrease gradually to 5.5% through the year 2051 and remain at that level thereafter. A 1% increase in the health care cost trend rate assumptions would increase the accumulated postretirement benefit obligation as of September 30, 1993 and 1994 by $875,000 and $957,000, respectively.

Both Scotts Ohio and Hyponex have defined contribution profit sharing plans. Both plans provide for associates to become participants following one year of service. The Hyponex plan also requires associates to have reached the age of 21 for participation. The plans provide for annual contributions which are entirely at the discretion of the Board of Directors.

Contributions are allocated among the participants employed as of the last day of the calendar year, based upon participants' earnings. Each participant's share of the annual contributions vest according to the provisions of the plans. The Company has provided a profit sharing provision for the plans of $1,750,000, $1,993,000 and $2,097,000 for fiscal 1992, 1993 and 1994, respectively. The Company's policy is to deposit the contributions with the trustee in the following year.

Sierra has a savings and investment plan ("401K Plan") for certain salaried U.S. employees. Participants may make voluntary contributions to the plan between 2% and 16% of their compensation. Sierra contributes the lesser of 50% of each participant's contribution or 3% of each participant's compensation. Sierra's contribution for 1994 was $99,000.

The Company is self-insured for certain health benefits up to $125,000 per occurrence per individual. The cost of such benefits is recognized as expense in the period the claim occurred. This cost was $6,439,000, $6,662,000 and $6,177,000 in 1992, 1993 and 1994, respectively. The Company is self-insured for State of Ohio workers compensation up to $500,000 per claim. The cost for workers compensation was $127,000, $268,000 and $297,000 in 1992, 1993 and 1994, respectively. Claims in excess of stated limits of liability and claims for workers compensation outside of the State of Ohio are insured with commercial carriers. The Company had an accrued vacation liability of $3,612,000 and $4,903,000 at September 30, 1993 and 1994, respectively.

In November 1992, the Financial Accounting Standards Board issued SFAS No. 112, "Employers' Accounting for Postemployment Benefits", which changes the prevalent method of accounting for benefits provided after employment but before retirement. The Company is required to adopt SFAS No. 112 no later than the first quarter of fiscal 1995. Management has evaluated the provisions of SFAS No. 112. Since most of these benefits are already accounted for by the Company on an accrual method, the impact of this new standard is not expected to be significant.

4. LONG-TERM DEBT
(in thousands)

| | 1993 | 1994 |
|---|---|---|
| Revolving credit line | $ 21,705 | $ 53,416 |
| Senior Subordinated Notes $100 million face amount | - | 99,221 |
| Term loan | 70,000 | 93,598 |
| Capital lease obligations and other | 1,524 | 1,066 |
| | 93,229 | 247,301 |
| Less current portions | 6,149 | 27,171 |
| | $ 87,080 | $ 220,130 |



Maturities of term debt for the next five years are as follows:

| | (in thousands) |
|---|---|
| 1995 | $27,171 |
| 1996 | 41,034 |
| 1997 | 15,779 |
| 1998 | 15,608 |
| 1999 and thereafter | 148,497 |

On December 16, 1993, the Company entered into an amendment to the Third

Amended and Restated Credit Agreement ("Agreement") with Chemical Bank and various participating banks to finance the Sierra acquisition. The amendment increased the term debt commitments available under the Credit Agreement to $195,000,000. The Credit Agreement continues to provide a revolving credit commitment of $150,000,000 through the scheduled maturity date of March 31, 1996. The facility contains a requirement limiting the maximum amount borrowed under the revolving credit commitment to $30,000,000 for a minimum of 30 consecutive days each fiscal year.

For both term and revolving credit borrowings under the Agreement, the Company can elect to borrow domestic funds at the reference rate ("prime") of Chemical or Eurodollars at 1% in excess of the London Interbank Offered Rate ("LIBOR"). Interest on Chemical rate loans is payable quarterly and interest on Eurodollar loans is payable at three month intervals from the date of each Eurodollar contract. Applicable rates for Chemical and Eurodollar loans were 7.75% and 5.88% to 6.00%, respectively, at September 30, 1994. A commitment of 3/8 of 1% is charged on the average daily unused portion of the available commitment. An additional 1/4 of 1% is charged on the average daily aggregate principal amount of commercial paper obligations outstanding. Loans under the Agreement are collateralized by substantially all of the Company's tangible and intangible assets.

The Agreement contains certain financial and operating covenants, the most restrictive of which requires the Company to maintain earnings before interest, taxes, profit sharing, certain depreciation charges and the effect of certain accounting changes, as defined, to meet specified requirements. The Company was in compliance with all required covenants at September 30, 1994.

At September 30, 1994, the Company had available an unsecured $2,000,000 line of credit with a bank, which is renewable annually, of which $705,000 and $1,916,000 was outstanding at September 30, 1993 and 1994, respectively.

On July 19, 1994, the Company issued $100,000,000 9 7/8% Senior Subordinated Notes. Net proceeds were $96,354,000, after original issue discount of $788,000 and expenses of $2,858,000. The Notes are subject to redemption, at the option of the Company, in whole or in part at any time on or after August 1, 1999 at a declining premium to par until 2001 and at par thereafter and are not subject to sinking fund requirements. The fair market value of the Senior Subordinated Notes, estimated based on the quoted market prices for same or similar issues is approximately $101,000,000 at September 30, 1994.

The Company recorded extraordinary charges of $4,186,000, net of income taxes of $2,157,000, related to the early extinguishment of 13% Senior Subordinated Notes and 13.5% Subordinated Debentures in 1992 and $992,000, net of income taxes of $662,000 related to the early extinguishment of term loans in 1994.




5.SHAREHOLDERS' EQUITY

Stock

| (in thousands) | 1993 | 1994 |
|---|---|---|
| Preferred stock $.01 par value: | | |
| Authorized | 10,000 shares | None |
| Issued | None | None |
| Common stock $.01 par value: | | |
| Class A - voting: | | |
| Authorized | 35,000 shares | None |
| Issued | 21,074 shares | None |
| Class B - non-voting: | | |
| Authorized: | 35,000 shares | None |
| Issued: | None | None |
| Common shares, no par | | |

value

| | |
|---|---|
| Authorized | 35,000 shares |
| Issued | 21,082 shares |

The Class A and Class B Common Stock were identical in all respects except for voting rights and the right of the holder of non-voting Class B stock to convert into an equal number of shares of voting Class A stock and the right of the holder of voting Class A stock to convert into an equal number of shares of non-voting Class B stock. In January 1992, every 2.2 shares of old Scotts Class A Common Stock were exchanged for one share of new Scotts Class A Common Stock ("Shares"). On February 7, 1992, the Company closed the initial public offering of its Shares pursuant to which Scotts sold 8,968,750 newly issued Shares and certain non-management shareholders of Scotts sold an aggregate of 5,406,250 Shares. On September 20, 1994, as a result of the reincorporation, outstanding shares of Class A Common Stock were converted into an equal number of common shares, without par value, of Scotts Ohio. Additionally, the Class B Common Stock and preferred stock is no longer authorized. The Scotts Ohio Common Shares are listed on the NASDAQ National Market System under the symbol "SCTT".

On February 23, 1993, the Company purchased all of the shares of Class A Common Stock held by a fund managed by Clayton, Dubilier & Rice, Inc. In aggregate, 2,414,895 shares of Class A Common Stock were purchased for approximately $41,441,000, including transaction costs. As a result of this transaction, 18,658,535 shares of Class A Common Stock and 18,667,064 Common Shares were outstanding as of September 30, 1993 and 1994, respectively.




On November 4, 1992, the Company adopted The Scotts Company 1992 Long Term Incentive Plan (the "Plan"). The Plan was accepted by the shareholders at Scotts' annual meeting on February 25, 1993. Under the Plan, stock options, stock appreciation rights and performance share awards may be granted to officers and other key employees of the Company. The Plan also provides for Board members, who are neither employees of the Company nor associated with Clayton, Dubilier & Rice, Inc., to receive stock options. The maximum number of shares of Common Shares that may be issued under the Plan is 1,700,000, plus the number of shares surrendered to exercise options (other than director options) granted under the Plan, up to a maximum of 1,000,000 surrendered shares.

In addition, pursuant to various employment agreements, the Company granted 136,364 and 300,000 stock options in fiscal 1992 and 1993, respectively.

Aggregate stock option activity consists of the following:

| | Year Ended September 30, | | |
|---|---|---|---|
| | 1992 | 1993 | 1994 |
| [S] | [C] | [C] | [C] |
| Options outstanding at October 1 | - | 136,364 | 586,289 |
| Options granted | 136,364 | 449,925 | 942,354 |
| Options exercised | - | - | (8,529) |
| Options canceled | - | - | (155,525) |
| Options outstanding at September 30 | 136,364 | 586,289 | 1,364,589 |
| Options exercisable at September 30 | 45,455 | 90,910 | 204,422 |
| Option prices per share: | | | |
| Granted | $9.90 | $16.25-$18.75 | $17.25-$19.375 |
| Exercised | | | $18.75 |

During fiscal 1993 and 1994, 128,880 and 117,220, respectively, of performance share awards were granted. These awards entitle the grantee

to receive shares or, at the grantees election, the equivalent value in cash or stock options, subject to stock ownership requirements. These awards are conditioned on the attainment of certain performance and other objectives established by the Compensation Committee of the Company's Board of Directors.

Compensation for certain stock options results from the difference between the grant price and market price at the date of grant, and is recognized over the vesting period of the options. Compensation for performance share awards is initially measured at the grant date based upon the current market value of the common stock, with adjustments made quarterly for market price fluctuations. The Company recognized compensation expense for stock options and performance share awards of $177,000, $635,000 and $0 in fiscal 1992, 1993 and 1994, respectively.




In October 1991, an officer of Scotts purchased 22,727 Shares and three other Scotts associates purchased an aggregate of 44,318 Shares at a purchase price of $3.98 per share. Pursuant to an employment agreement, an officer of Scotts purchased 45,454 Shares at a purchase price of $9.90 per share in January 1992. The Company has recognized $118,000 of unearned compensation equivalent to the difference between the fair market value and the purchase price of the Shares as a charge to capital in excess of par value. This unearned compensation is being amortized on a straight line basis over the period of the employment agreement.

A significant portion of the price paid by certain officers and management associates is financed by a major bank. The Company has guaranteed the full and prompt payment of debt outstanding by management investors to purchase stock of approximately $1,729,000, $230,000 and $140,000 at September 30, 1992, 1993 and 1994, respectively.

In connection with the 1988 acquisition of the lawn and garden business of Hyponex, the Company entered into a warrant purchase agreement with the prior majority shareholder of Hyponex. In January 1992, the warrants were exchanged for 330,000 Shares. The repurchase and retirement of the warrants was valued at the estimated value of the Shares at the date of the exchange less the original consideration received.

## 6. INCOME TAXES

The Company adopted SFAS No. 109 effective October 1, 1992, resulting in a benefit of $1,775,000 being reported as a cumulative effect of accounting change in the fiscal 1993 Consolidated Statement of Income. Assets recorded in prior business combinations net-of-tax were adjusted to pre-tax amounts, resulting in recognition of $1,501,000 of deferred tax liabilities at the date of adoption. Prior to fiscal 1993 the Company accounted for income taxes under Accounting Principles Board Opinion No. 11.

The provision for income taxes consists of the following:

| (in thousands) | Year Ended September 30, 1992 | 1993 | 1994 |
|---|---|---|---|
| Currently Payable: | | | |
| Federal | $ 1,802 | $14,537 | $ 7,400 |
| State | 878 | 1,400 | 2,131 |
| Foreign | - | - | 2,376 |
| Deferred: | | | |
| Federal | 1,588 | (11,694) | 4,290 |
| State | - | (1,046) | 1,088 |
| Income Tax Expense | $ 4,268 | $ 3,197 | $17,285 |

Income tax expense is included in the financial statements as follows:

| (in thousands) | | | |
|---|---|---|---|
| Operations | $11,124 | $14,320 | $17,947 |
| Cumulative effect of change in accounting principle | - | (11,123) | - |

| | | | |
|---|---|---|---|
| Extraordinary items | (6,856) | - | (662) |
| Income Tax Expense | $ 4,268 | $ 3,197 | $17,285 |



Deferred income taxes for fiscal 1993 and 1994 reflect the impact of "temporary differences" between the amounts of assets and liabilities for financial reporting purposes and such amounts as determined by tax regulations. These temporary differences are determined in accordance with SFAS No. 109 and are more inclusive in nature than "timing differences" as determined under previously applicable accounting principles.

The components of the net deferred tax asset (liability) are as follows:

| (in thousands) | September 30, 1993 | 1994 |
|---|---|---|
| Assets | | |
| Accounts receivable | $ 687 | $ 987 |
| Inventory | 2,359 | 1,816 |
| Accrued expenses | 6,589 | 7,649 |
| Postretirement benefits | 10,458 | 10,576 |
| Other | 652 | 4,166 |
| Gross deferred tax assets | $ 20,745 | $ 25,194 |
| Liabilities | | |
| Property and equipmen | (9,913) | (16,511) |
| Safe harbor lease | (1,181) | - |
| Taxes on repatriated foreign earnings | - | ( 500) |
| Gross deferred tax liabilities | (11,094) | (17,011) |
| Net asset | $ 9,651 | $ 8,183 |

The net current and non-current components of deferred income taxes recognized in the balance sheet at September 30 are:

| (in thousands) | 1993 | 1994 |
|---|---|---|
| Net current asset | $9,635 | $ 10,452 |
| Net non-current asset (liability) | 16 | (2,269) |
| Net asset | $ 9,651 | $ 8,183 |

A reconciliation of the Federal corporate income tax rate and the effective tax rate on income before income taxes is summarized below:

| | Year Ended September 30, 1992 | 1993 | 1994 |
|---|---|---|---|
| Statutory income tax rate | 34.0% | 35.0% | 35.0% |
| Pension amortization | 0.3 | 0.7 | 0.1 |
| Goodwill amortization and other permanent differences resulting from purchase accounting | 4.0 | 4.7 | 2.1 |
| State taxes, net of federal benefit | 2.2 | 3.4 | 5.6 |
| Other | 2.0 | (3.3) | 0.1 |
| Effective income tax rate | 42.5% | 40.5% | 42.9% |

The Company acquired certain tax credit carryforwards in connection with its acquisition of Sierra. Foreign tax credit carryforwards total $704,000 and expire through 1997. Net operating loss carryforwards in the U.S. total $5,500,000 and expire through 2007, net operating loss carryforwards in foreign jurisdictions total $1,100,000 and expire through 1999. The use of these acquired carryforwards are subject to limitations imposed by the Internal Revenue Code.

In fiscal 1992, for financial reporting purposes the Company utilized $13,800,000 of net operating loss carryforwards and reflected the related tax benefits of $4,699,000 as an extraordinary item. At September 30, 1992, the Company fully utilized its financial reporting net operating loss carryforwards. For tax purposes, the Company utilized its remaining net operating loss carryforwards of approximately $5,000,000 on the fiscal 1993 Federal income tax return. The variance between the operating loss carryforwards on a tax basis and a financial reporting basis is principally due to excess tax depreciation, uniform capitalization rules, nondeductible reserves, capitalization and amortization of package and design costs, and various accrued liabilities that are not deductible for tax purposes until paid. During 1992, the Company recognized $1,588,000 of deferred taxes previously offset by net operating loss carryforwards.

During fiscal 1992, the Company was subject to the alternative minimum tax ("AMT") for financial reporting purposes resulting in AMT expense of $1,200,000. During fiscal 1992, the Company fully utilized its AMT net operating loss carryforwards. AMT paid results in a tax credit carryforward which can be used in subsequent years to offset regular income tax to the extent it exceeds AMT tax in those years. At September 30, 1992, the Company had $1,480,000 of AMT credit carryforwards which were utilized on the fiscal 1993 Federal income tax return.

7. LEASES

The Company leases buildings, land and equipment under various noncancellable lease agreements for periods of two to six years. The lease agreements generally provide that the Company pay taxes, insurance and maintenance expenses related to the leased assets. Certain lease agreements contain purchase options. At September 30, 1994, future minimum lease payments were as follows:

| Year Ending September 30, (in thousands) | Capital Leases | Operating Leases | Total |
|---|---|---|---|
| 1995 | $ 22 | $ 9,490 | $ 10,112 |
| 1996 | 481 | 8,766 | 9,247 |
| 1997 | 168 | 6,722 | 6,890 |
| 1998 | 72 | 5,571 | 5,643 |
| 1999 | - | 2,713 | 2,713 |
| 2000 and thereafter | - | 7 | 7 |
| Total minimum lease payments | $1,343 | $33,269 | $34,612 |
| Less: Amount representing interest | 277 | | |
| Present value of net minimum lease payments | $ 1,066 | | |




The Company also leases transportation and production equipment under various one-year operating leases, which provide for the extension of the initial term on a monthly or annual basis. Total rental expense for operating leases was $7,281,000, $9,125,000 and $12,914,000 for fiscal 1992, 1993 and 1994, respectively.

COMMITMENTS AND CONTINGENCIES

8. Seed production agreements obligate the Company to make future purchases

based on estimated yields. Seed purchases under production agreements for fiscal 1992, 1993 and 1994 were approximately $9,281,000, $4,692,000 and $6,508,000, respectively. At September 30, 1994, estimated annual seed purchase commitments were as follows:

(in thousands)

| Year Ending September 30, | |
|---|---|
| 1995 | $ 12,049 |
| 1996 | 6,800 |
| 1997 | 2,189 |
| 1998 | 1,184 |

The Company has a contractual commitment to purchase neem-based bioinsecticide. The commitment is a multi-year, take or pay arrangement. There is a penalty for falling short of the purchase commitment. Minimum commitments are $438,000 in 1995 and $875,000 in 1996. The Company has accrued $1,137,500 in the financial statements for estimated purchase shortfalls.

Sierra has a supply agreement through 2000, subject to renewal thereafter, under which Sierra is required to purchase, at prices determined by formulas, 100% of its requirements for vermiculite.

The Company is involved in various lawsuits and claims which arise in the normal course of business. In the opinion of management, these claims individually and in the aggregate are not expected to result in a material adverse effect on the Company's financial position or results of operations, however, there can be no assurance that future quarterly or annual operating results will not be materially affected by final resolution of these matters. The following details the more significant of these matters.

The Company has been involved in studying a landfill to which it is believed some of the Company's solid waste had been hauled in the 1970's. In September 1991, the Company was named by the Ohio Environmental Protection Agency ("Ohio EPA") as a Potentially Responsible Party ("PRP") with respect to this landfill. Pursuant to a consent order with the Ohio EPA, the Company, together with four other PRP's identified to date, is investigating the extent of contamination at the landfill and developing a remediation program.



In July 1990, the Company was directed by the Army Corps of Engineers (the "Corps") to cease peat harvesting operations at its New Jersey facility. The Corps' has alleged that the peat harvesting operations were in violation of the Clean Water Act ("CWA"). The United States Department of Justice has commenced a legal action to seek a permanent injunction against peat harvesting at this facility and to recover civil penalties under the CWA. This action had been suspended while the parties engaged in discussion to resolve the dispute. Those discussions have not resulted in a settlement and accordingly the action has been reinstated. The Company intends to defend the action vigorously but if the Corps' position is upheld the Company could be prohibited from further harvesting of peat at this location and penalties could be assessed against the Company. In the opinion of management, the outcome of this action will not have a material adverse effect on the Company's financial position or results of operations. Furthermore, management believes the Company has sufficient raw material supplies available such that service to customers will not be adversely affected by continued closure of this peat harvesting operation.

Sierra has been named as a Potentially Responsible Party ("PRP") in an environmental contamination action in connection with a landfill near Allentown, Pennsylvania. By agreement with W. R. Grace-Conn., Sierra's liability is limited to a maximum of $200,000 with respect to this site. Based on estimates of the clean-up costs and that the Company denies any liability in connection with this matter, management believes that the ultimate outcome will not have a material impact on the financial position or results of operations of the Company.

Sierra is subject to potential fines in connection with certain EPA labeling violations under the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"). The fines for such violations are based upon

formulas as stated in FIFRA. As determined by these formulas, Sierra's maximum exposure for the violations is approximately $810,000. The formulas allow for certain reductions of the fines based upon achievable levels of compliance. Based upon management's anticipated levels of compliance, they estimate Sierra's liability to be $200,000, which has been accrued in the financial statements.

9. CONCENTRATIONS OF CREDIT RISK

Financial instruments which potentially subject the Company to concentration of credit risk consist principally of trade accounts receivable. The Company sells its consumer products to a wide variety of retailers, including mass merchandisers, home centers, independent hardware stores, nurseries, garden outlets, warehouse clubs and local and regional chains.

Professional products are sold to golf courses, sports fields, nurseries, lawn care service companies and growers of specialty agriculture crops. In 1992, 1993 and 1994, two customers accounted for 15.3% and 7.5%, 18.0% and 9.3% and 15.1% and 9.5% of consolidated net sales, respectively. No other customer accounted for more than 5% of consolidated net sales. As of September 30, 1994, two accounts comprised 15.2% and 5.4% of outstanding trade accounts receivable. The Company performs a credit review before extending credit to a customer. The Company establishes its allowances for doubtful accounts based on factors surrounding the credit risk of specific customers, historical trends and other information.

10. RELATED PARTIES

Clayton, Dubilier & Rice, Inc., a private investment firm in which a director of the Company is an owner, was paid $300,000 in fiscal 1992, and $125,000 in 1993 by the Company for financial advisory and management consulting services. These services ceased effective with the Class A Common Stock purchase described in Note 5.




11. QUARTERLY CONSOLIDATED FINANCIAL INFORMATION (UNAUDITED)

The following is a summary of the unaudited quarterly results of operations for fiscal 1993 and 1994 (in thousands except share data):

| Fiscal 1993 | January 2 | April 3 | July 3 | September 30 | Full Year |
|---|---|---|---|---|---|
| Net sales | $67,757 | $161,102 | $156,327 | $80,857 | $466,043 |
| Gross profit | 30,703 | 78,621 | 74,814 | 37,687 | 221,825 |
| Income (loss) before cumulative effect of accounting changes (1) | (471) | 10,847 | 7,986 | 2,685 | 21,047 |
| Net income (loss) (2) | (13,628) | 10,847 | 7,986 | 2,685 | 7,890 |
| Net income (loss) per common share: | | | | | |
| Income (loss) before cumulative effect of accounting changes (1) | (.02) | .54 | .43 | .14 | 1.07 |
| Net income (loss) (2) | (.65) | .54 | .43 | .14 | .40 |
| Weighted average common | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| shares outstanding during the period | 21,128,564 | 20,138,585 | 18,743,752 | 18,737,150 | 19,687,013 |

| Fiscal 1994 | January 1 | April 2 | July 2 | Septem-ber 30 | Full Year |
|---|---|---|---|---|---|
| Net sales | 68,326 | 207,424 | 200,915 | 129,674 | 606,339 |
| Gross profit | 30,962 | 98,324 | 96,376 | 60,947 | 286,609 |
| Income (loss) before extraordinary items | (1,557) | 13,013 | 9,405 | 3,014 | 23,875 |
| Net income (loss) | (1,557) | 13,013 | 9,405 | 2,022 | 22,883 |
| Net income (loss) per common share: | | | | | |
| Income (loss) before extraordinary item | (.08) | .69 | .50 | .16 | 1.27 |
| Net income (loss) | (.08) | .69 | .50 | .11 | 1.22 |
| Weighted average common shares outstanding during the period | 18,658,535 | 18,890,221 | 18,810,783 | 18,727,711 | 18,784,729 |

(1) Income (loss) before cumulative effect of accounting changes for each of the first three quarters of fiscal 1993 has been restated to reflect the ongoing charge resulting from the adoption of SFAS 106 effective October 1, 1992. The net of tax charge was $462 or $.02 per share for the quarter ended January 2, 1993 and $325 or $.02 per share for each of the subsequent two quarters.

(2) The net loss for the quarter ended January 2, 1993 has been restated to reflect the cumulative effect of accounting for postretirement benefits (a net of tax charge of $14,932 or $.71 per share) and income taxes (a benefit of $1,775 or $.08 per share).



## REPORT OF INDEPENDENT ACCOUNTANTS ON FINANCIAL STATEMENT SCHEDULES

To the Shareholders and Board of
Directors of The Scotts Company

Our report on the consolidated financial statements of The Scotts Company is included on page F-2 of this Form 10-K. In connection with our audits

of such financial statements, we have also audited the financial statement schedules listed in the index on page F-1 of this Form 10-K.

In our opinion, the financial statement schedules referred to above, when considered in relation to the consolidated financial statements taken as a whole, present fairly, in all material respects, the information required to be included therein.

Coopers & Lybrand L. L. P.
Columbus, Ohio

November 14, 1994



THE SCOTTS COMPANY AND SUBSIDIARIES
SCHEDULE V - PROPERTY, PLANT AND EQUIPMENT
for the year ended September 30, 1992

| Column A | Column B | Column C | Column D | Column E | Column F |
|---|---|---|---|---|---|
| Classification | Balance at beginning of period | Additions at Cost | Retirement or Sales | Other | Balance at end of period |
| Land and land improvements | $ 18,361,000 | $200,000 | $24,000 | $ - | $18,537,000 |
| Buildings | 30,610,000 | 734,000 | 37,000 | - | 31,307,000 |
| Machinery and equipment | 59,261,000 | 4,573,000 | 1,752,000 | - | 62,082,000(1) |
| Furniture and fixtures | 5,480,000(1) | 100,000 | 19,000 | - | 5,561,000(1) |
| Construction in progress | 2,625,000 | 14,289,000 | - | - | 16,914,000 |
| Total | $116,337,000 | $19,896,000 | $ 1,832,000 | | $134,401,000 |

(1) Amounts reported in the prior year have been adjusted to reflect amounts reclassified in fiscal 1993; $1,745,000 computer equipment cost was reclassified to furniture and fixtures from machinery and equipment.

THE SCOTTS COMPANY AND SUBSIDIARIES
SCHEDULE V - PROPERTY, PLANT AND EQUIPMENT
for the year ended September 30, 1993

| Column A | Column B | Column C | Column D | Column E | Column F |
|---|---|---|---|---|---|
| Classification | Balance at beginning of period | Additions at Cost | Retirement or Sales | Other | Balance at end of period |
| Land and land improvements | $ 18,537,000 | $988,000 | $ - | $292,000(1) | $19,817,000 |
| Buildings | 31,307,000 | 5,001,000 | 8,000 | - | 36,300,000 |
| Machinery and equipment | 62,082,000(3) | 20,649,000 | 1,990,000 | 6,152,000(1)<br>357,000(2) | 87,250,000 |
| Furniture and fixtures | 5,561,000 (3) | 899,000 | 684,000 | 176,000(1) | 5,952,000 |
| Construction in progress | 16,914,000 | (12,379,000) | - | 152,000(1) | 4,687,000 |
| Total | $134,401,000 | $ 15,158,000 | $2,682,000 | $7,129,000 | $154,006,000 |

(1) Amounts reported in the prior year have been adjusted to reflect amounts reclassified in fiscal 1993; $1,745,000 computer equipment cost was reclassified to furniture and fixtures from machinery and equipment.

(2) Reclassification of remaining tax basis differential of previously acquired assets as a result of the fiscal 1993 adoption of SFAS No. 109.

(3) Effective October 1, 1993, $1,745,000 of computer equipment cost was reclassified to furniture and fixtures from machinery and equipment.

THE SCOTTS COMPANY AND SUBSIDIARIES
SCHEDULE V - PROPERTY, PLANT AND EQUIPMENT
for the year ended September 30, 1994

| Column A | Column B | Column C | Column D | Column E | Column F |
|---|---|---|---|---|---|
| Classification | Balance at beginning of period | Additions at Cost | Retirement or Sales | Other | Balance at end of period |
| Land and land improvements | $ 19,817,000 | $989,000 | $14,000 | $1,051,000(1)<br>13,000(2) | $21,856,000 |
| Buildings | 36,300,000 | 751,000 | - | 4,262,000(1) | 41,313,000 |
| Machinery and equipment | 87,250,000 | 10,845,000 | 1,171,000 | 14,346,000(1)<br>369,000(2) | 111,639,000 |

| | | | | | |
|---|---|---|---|---|---|
| Furniture and fixtures | 5,952,000 | 1,443,000 | 129,000 | 1,595,000(1) | 8,861,000 |
| Construction in progress | 4,687,000 | 19,374,000 | - | 279,000(1) | 24,340,000 |
| Total | $154,006,000 | $33,402,000 | $1,314,000 | $21,915,000 | $208,009,000 |

(1) Fair market value of property, plant and equipment associated with the acquisition of Grace-Sierra Horticulture Products Company effective December 16, 1993.

(2) Translation adjustments associated with International divisions.

THE SCOTTS COMPANY AND SUBSIDIARIES
SCHEDULE VI - ACCUMULATED DEPRECIATION AND AMORTIZATION OF PROPERTY, PLANT AND EQUIPMENT
for the year ended September 30, 1992

| Column A | Column B | Column C | Column D | Column E | Column F |
|---|---|---|---|---|---|
| Classification | Balance at beginning of period | Additions charged to expenses (1) | Retirement or Sales | Other | Balance at end of period |
| Land improvements | $1,701,000 | $502,000 | $7,000 | $ - | $ 2,196,000 |
| Buildings | 3,788,000 | 997,000 | 6,000 | - | 4,779,000 |
| Machinery and equipment | 28,067,000(2) | 8,070,000(2) | 1,285,000 | - | 34,852,000(2) |
| Furniture and fixtures | 2,878,000(2) | 637,000(2) | 11,000 | - | 3,504,000(2) |
| Total | $ 36,434,000 | $10,206,000 | $1,309,000 | - | $45,331,000 |

(1) Included in additions charged to expenses for machinery and equipment are $454,000 of depreciation on assets under capital leases.

(2) Amounts reported in the prior year have been adjusted to reflect amounts reclassified in fiscal 1993; $694,000 of accumulated depreciation on computer equipment was reclassified to furniture and fixtures from machinery and equipment, and $291,000 of additions charged to expense were reclassified in a like manner.

THE SCOTTS COMPANY AND SUBSIDIARIES
SCHEDULE VI - ACCUMULATED DEPRECIATION AND AMORTIZATION OF PROPERTY, PLANT AND EQUIPMENT
for the year ended September 30, 1993

| Column A | Column B | Column C | Column D | Column E | Column F |
|---|---|---|---|---|---|
| Classification | Balance at beginning of period | Additions charged to expenses (1) | Retirement or Sales | Other | Balance at end of period |

| | | | | | |
|---|---|---|---|---|---|
| Land improvements | $2,196,000 | $522,000 | $ - | $ - | $ 2,718,000 |
| Buildings | 4,779,000 | 1,114,000 | 2,000 | - | 5,891,000 |
| Machinery and equipment | 34,852,000 (2) | 10,065,000 | 1,729,000 | - | 43,188,000 |
| Furniture and fixtures | 3,504,000(2) | 577,000 | 663,000 | - | 3,418,000 |
| Total | $ 45,331,000 | $12,278,000 | $2,394,000 | - | $55,215,000 |

(1) Included in additions charged to expenses for machinery and equipment are $233,000 of depreciation on assets under capital leases.

(2) Effective October 1, 1993, $985,000 of accumulated depreciation on computer equipment was reclassified to furniture and fixtures from machinery and equipment.

THE SCOTTS COMPANY AND SUBSIDIARIES
SCHEDULE VI - ACCUMULATED DEPRECIATION AND AMORTIZATION OF PROPERTY, PLANT AND EQUIPMENT
for the year ended September 30, 1994

| Column A | Column B | Column C | Column D | Column E | Column F |
|---|---|---|---|---|---|
| Classification | Balance at beginning of period | Additions charged to expenses (1) | Retirement or Sales | Other (2) | Balance at end of period |
| Land improvements | $2,718,000 | $614,000 | $7,000 | $ - | $ 3,325,000 |
| Buildings | 5,891,000 | 1,462,000 | - | 20,000 | 7,373,000 |
| Machinery and equipment | 43,188,000 | 10,251,000 | 842,000 | 262,000 | 52,859,000 |
| Furniture and fixtures | 3,418,000 | 1,048,000 | 119,000 | - | 4,347,000 |
| Total | $ 55,215,000 | $13,375,000 | $968,000 | $282,000 | $67,904,000 |

(1) Included in additions charged to expenses for machinery and equipment are $430,000 of depreciation on assets under capital leases.

(2) Translation adjustment associated with International divisions.

THE SCOTTS COMPANY AND SUBSIDIARIES
SCHEDULE VIII - VALUATION AND QUALIFYING ACCOUNTS
for the year ended September 30, 1992

| Column A | Column B | Column C | Column D | Column E |
|---|---|---|---|---|
| Classification | Balance at beginning of | Additions charged to costs and expenses | Deduction from reserves | Balance at end of period |

| | | | | |
|---|---|---|---|---|
| Valuation and qualifying accounts deducted from the assets to which they apply: | | | | |
| Inventory reserve | $ 2,970,000 | $ 283,000 | $ 94,000 | $ 3,159,000 |
| Allowance for doubtful accounts | $ 2,250,000 | $ 990,000 | $ 1,130,000 | $ 2,110,000 |
| Other valuation and qualifying account: | | | | |
| Product guarantee | $ 273,000 | $ 670,000 | $ 743,000 | $ 200,000 |

THE SCOTTS COMPANY AND SUBSIDIARIES
SCHEDULE VIII - VALUATION AND QUALIFYING ACCOUNTS
for the year ended September 30, 1993

| Column A | Column B | Column C | Column D | Column E |
|---|---|---|---|---|
| Classification | Balance at beginning of | Additions charged to costs and expenses | Deduction from reserves | Balance at end of period |
| Valuation and qualifying accounts deducted from the assets to which they apply: | | | | |
| Inventory reserve | $ 3,159,000 | $ 829,000 | $ 177,000 | $ 3,811,000 |
| Allowance for doubtful accounts | $ 2,110,000 | $ 1,409,000 | $ 1,008,000 | $ 2,511,000 |
| Other valuation and qualifying account: | | | | |
| Product guarantee | $ 200,000 | $ 620,000 | $ 690,000 | $ 130,000 |

THE SCOTTS COMPANY AND SUBSIDIARIES
SCHEDULE VIII - VALUATION AND QUALIFYING ACCOUNTS
for the year ended September 30, 1994

| Column A | Column B | Column C | Column D | Column E |
|---|---|---|---|---|
| Classification | Balance at | Additions charged to costs and expenses | Deduction from reserves | Balance at end of period |
| Valuation and qualifying accounts deducted | | | | |

| | | | | |
|---|---|---|---|---|
| from the assets to which they apply: | | | | |
| Inventory reserve | $ 3,811,000 | $ 2,987,000 | $ 690,000 | $ 6,108,000 |
| Allowance for doubtful accounts | $ 2,511,000 | $ 1,974,000 | $1,552,000 | $ 2,933,000 |
| Other valuation and qualifying account: | | | | |
| Product guarantee | $ 130,000 | $ 778,000 | $ 789,00 0 | $ 119,000 |

THE SCOTTS COMPANY AND SUBSIDIARIES
SCHEDULE IX - SHORT-TERM BORROWINGS
for the year ended September 30, 1992

| Column A | Column B | Column C | Column D | Column E | Column F |
|---|---|---|---|---|---|
| Category of short-term borrowings | Balance at beginning of period | Weighted average interest rate at end of period | Maximum amount outstanding during the period | Average amount outstanding during the period (Note A) | Weighted average interest rate during the pd (Note A) |
| Revolving credit | $ 4,000,000 | 6.0% | $ 74,000,000 | $22,549,000 | 7.73% |
| Bank note payable | $ 1,658,000 | 6.0% | $ 2,000,000 | $725,000 | 6.56% |

Note A: The average amount outstanding was calculated by dividing total daily borrowings by the number of days in the period. The weighted average interest rate was calculated by dividing actual interest expense for the period by the average amount outstanding.

THE SCOTTS COMPANY AND SUBSIDIARIES
SCHEDULE IX - SHORT-TERM BORROWINGS
for the year ended September 30, 1993

| Column A | Column B | Column C | Column D | Column E | Column F |
|---|---|---|---|---|---|
| Category of agrregate short-term borrowings | Balance at beginning of period | Weighted average interest rate at end of period | Maximum amount outstanding during the period | Average amount outstanding during the period (Note A) | Weightedaverage Average average interest rate during the pd (Note A) |

| | | | | | |
|---|---|---|---|---|---|
| Revolving credit | $ 21,000,000 | 4.9% | $134,500,000 | $60,892,000 | 5.5% |
| Bank note payable | $ 705,000 | 6.0% | $2,000,000 | $ 1,128,000 | 6.0% |

Note A: The average amount outstanding was calculated by dividing total daily borrowings by the number of days in the period. The weighted average interest rate was calculated by dividing actual interest expense for the period by the average amount outstanding.

THE SCOTTS COMPANY AND SUBSIDIARIES
SCHEDULE IX - SHORT-TERM BORROWINGS
for the year ended September 30, 1994

| Column A | Column B | Column C | Column D | Column E | Column F |
|---|---|---|---|---|---|
| Category of agrregate short-term borrowings | Balance at beginning of period | Weighted average interest rate at end of period | Maximum amount outstanding during the period | Average amount outstanding during the period (Note A) | Weighted average average interest rate during the pd (Note A) |
| Revolving credit | $ 21,500,000 | 7.34% | $103,750,000 | $35,535,000 | 6.18% |
| Bank note payable | $ 1,916,000 | 7.75% | $ 2,000,000 | $ 1,237,000 | 7.07% |
| | | | 2,000,000 | 1,237,000 | |

Note A: The average amount outstanding was calculated by dividing total daily borrowings by the number of days in the period. The weighted average interest rate was calculated by dividing actual interest expense for the period by the average amount outstanding.

THE SCOTTS COMPANY AND SUBSIDIARIES
SCHEDULE X - SUPPLEMENTAL INCOME STATEMENT INFORMATION
for the years ended September 30, 1992, 1993 and 1994

| Column A | Column B | | |
|---|---|---|---|
| | Charged to costs and expenses | | |
| ITEM: | 1992 | 1993 | 1994 |
| Media advertising costs | $22,719,000 | $24,901,000 | $29,396,000 |
| Amortization of intangible assets: | | | |
| Patents | $ 2,942,000 | $ 2,975,000 | $ 2,070,000 |
| Goodwill | 1,004,000 | 1,164,000 | 2,517,000 |
| Other | 238,000 | 592,000 | 2,312,000 |
| | $ 4,184,000 | $ 4,731,000 | $ 6,899,000 |
| Amortization of deferred financing costs | $ 1,458,000 | $ 1,135,000 | $ 1,037,000 |

| | | | |
|---|---|---|---|
| Repairs and maintenance | $ 6,182,000 | $ 6,501,000 | $ 8,022,000 |

The amount of royalties and taxes, other than payroll and income taxes, are not material.

THE SCOTTS COMPANY
Annual Report on Form 10-K
for the
Fiscal Year Ended September 30, 1994

INDEX TO EXHIBITS

| Exhibit No. | Description | Location |
|---|---|---|
| 2(a) | Agreement of Merger, dated as of August 16, 1994, by and between The Scotts Company, a Delaware corporation ("Scotts Delaware"), and The Scotts Company, an Ohio corporation ("Registrant") | Incorporated herein by reference to Registrant's Current Report on Form 8-K filed on September 30, 1994 (File No. 0-19768) [Exhibit 2(a)] |
| 2(b) | Agreement of Merger, dated as of September 21, 1994, by and between The O.M. Scott & Sons Company, a Delaware corporation ("OMS") and The Scotts Company, an Ohio corporation ("Registrant") | Incorporated herein by reference to Registrant's Current Report on Form 8-K filed on September 30, 1994 (File No. 0-19768) (Exhibit 2(b)) |
| 3(a) | Amended Articles of Incorporation of Registrant | Pages 74 through 76 |
| 3(b) | Regulations of Registrant | Pages 77 through 95 |
| 4(a) | Third Amended and Restated Revolving Credit Agreement, dated as of April 7, 1992, among Scotts Delaware, The O. M. Scott & Sons Company ("OMS"), Manufacturers Hanover Trust Company ("MHT"), as agent, and the banks parties thereto | Incorporated herein by reference to Scotts Delaware's Quarterly Report on Form 10-Q for the fiscal quarter ended March 28, 1992 (File No. 0-19768) [Exhibit 10(a)] |
| 4(b) | First Amendment and Waiver, dated as of November 19, 1992, to the Third Amended and Restated Revolving Credit Agreement among Scotts Delaware, OMS, the banks listed therein and Chemical Bank, as agent | Incorporated herein by reference to Scotts Delaware's Current Report on Form 8-K dated December 2, 1992 (File No. 0-19768) [Exhibit 4(a)] |
| 4(c) | Second Amendment, dated as of February 23, 1993, to the Third Amended and Restated Credit Agreement, among Scotts Delaware, OMS, the banks listed therein and Chemical Bank, as agent | Incorporated herein by reference to Scotts Delaware's Annual Report on Form 10-K for the fiscal year ended September 30, 1993 (File No. 0-19768) [Exhibit 4(c)] |
| 4(d) | Third Amendment to the Third Amended and Restated Credit Agreement, dated December 16, 1993, among Scotts Delaware, OMS, the banks listed therein and Chemical Bank, as agent | Incorporated herein by reference to Scotts Delaware's Annual Report on Form 10-K for the fiscal year ended September 30, 1993 (File No. 0- |

| | | |
|---|---|---|
| | | 19768) [Exhibit 4(d)] |
| 4(e) | Fourth Amendment, dated as of July 5, 1994, to the Third Amended and Restated Credit Agreement among Scotts Delaware, OMS, the banks listed therein and Chemical Bank, as agent | Pages 96 through 104 |



| | | |
|---|---|---|
| 4(f) | Fifth Amendment and Consent, dated as of September 20, 1994, to the Third Amended and Restated Credit Agreement among Registrant, OMS, the banks listed therein and Chemical Bank, as agent | Pages 105 through 122 |
| 4(g) | Subordinated Indenture, dated as of June 1, 1994, among Scotts Delaware, OMS and Chemical Bank, as trustee | Incorporated herein by reference to Scotts Delaware's Registration Statement on Form S-3 filed June 1, 1994 (Registration No. 33-53941) [Exhibit 4(b)] |
| 4(h) | First Supplemental Indenture, dated as of July 12, 1994, among Scotts Delaware, OMS and Chemical Bank, as trustee | Incorporated herein by reference to Scotts Delaware's Current Report on Form 8-K dated July 18, 1994 (File No. 0-19768) [Exhibit 4.1] |
| 4(i) | Second Supplemental Indenture, dated as of September 20, 1994, among Registrant, OMS, Scotts Delaware and Chemical Bank, as trustee | Pages 123 through 128 |
| 4(j) | Third Supplemental Indenture, dated as of September 30, 1994, between Registrant and Chemical Bank, as trustee | Pages 129 through 133 |
| 10(a) | The Scotts Company Employees' Pension Plan | Pages 134 through 190_ |
| 10(b) | Second Restatement of The Scotts Company Profit Sharing and Savings Plan | Pages 191 through 232 |
| 10(c) | Supplemental Indemnification Agreement, dated as of November 10, 1988, between RSL Holding Company, Inc. and OMS Acquisition Corp. ("Hyponex") | Incorporated herein by reference to Scotts Delaware's Current Report on Form 8-K dated November 9, 1988 (File No. 33-18713) [Exhibit 2(d)] |
| 10(d) | Tax Administration Agreement, dated November 10, 1988, between RSL Holding Company, Inc. and Hyponex | Incorporated herein by reference to Scotts Delaware's Annual Report on Form 10-K for the fiscal year ended September 30, 1988 (File No. 33-18713) [Exhibit 10(rr)] |
| 10(e) | Employment Agreement, dated as of October 21, 1991, between OMS and Theodore J. Host | Incorporated herein by reference to Scotts Delaware's Annual Report on Form 10-K for the fiscal year ended September 30, 1993 (File No. 0-19768) [Exhibit 10(g)] |

| | | |
|---|---|---|
| 10(f) | Stock Option Plan and Agreement, dated as of January 9, 1992, between Scotts Delaware and Theodore J. Host | Pages 233 through 249 |



| | | |
|---|---|---|
| 10(g) | The O. M. Scott & Sons Company Excess Benefit Plan | Incorporated herein by reference to Scotts Delaware's Annual Report on Form 10-K for the fiscal year ended September 30, 1993 (File No. 0-19768) [Exhibit 10(h)] |
| 10(h) | The Scotts Company 1992 Long Term Incentive Plan | Incorporated herein by reference to Scotts Delaware's Registration Statement on Form S-8 filed on March 26, 1993 (Registration No. 33-60056) [Exhibit 4(f)] |
| 10(i) | O. M. Scott & Sons Company 1994 Executive Annual Incentive Plan | Pages 250 through 254 |
| 11(a) | Computation of Net Income Per Common Share | Page 255 |
| 21 | Subsidiaries of Registrant | Page 256 |
| 23 | Consent of Independent Accountants | Page 257 |
| 27 | Financial Data Schedule | Page 258 |



Exhibit 11(a)

THE SCOTTS COMPANY
Computation of Net Income Per Common Share
(in thousands except share amounts)

| | For the Three Months Ended | | For the Year Ended | |
|---|---|---|---|---|
| | September 30 1993 | September 30 1994 | September 30 1993 | September 30 1994 |
| Net income for | | | | |

| | | | | |
|---|---|---|---|---|
| computing net income per common share: | | | | |
| Income before extraordinary items and cumulating effect of accounting changes | $ 2,685 | $ 3,014 | $ 21,047 | $ 23,875 |
| Extraordinary items: Loss on early extinguishment of debt, net of tax | - | (992) | - | (992) |
| Cumulative effect of changes in accounting for postretirement benefits, net of tax and income taxes | - | - | (13,157) | - |
| Net income | $ 2,685 | $ 2,022 | $ 7,890 | $ 22,883 |
| Net income per common share: | | | | |
| Income before extraordinary items and cumulative effect of accounting changes | $ .14 | $ .16 | $ 1.07 | $ 1.27 |
| Extraordinary items: Loss on extinguishment of debt, net of tax | - | (.05) | - | (.05) |
| Cumulative effect of changes in accounting for postretirement benefits, net of tax and income taxes | - | - | (.67) | - |
| Net income | $ .14 | $ .11 | $ .40 | $ 1.22 |

Computation of Weighted Average Number of Common Shares Outstanding

| | For the Three Months Ended September 30 1993 | For the Three Months Ended September 30 1994 | For the Year Ended September 30 1993 | For the Year Ended September 30 1994 |
|---|---|---|---|---|
| Weighted average common shares outstanding during the period | 18,658,535 | 18,667,064 | 19,607,244 | 18,662,998 |
| Performance based shares | 12,043 | - | 6,271 | 36,336 |
| Effect of options based upon the Treasury Stock Method: | | | | |
| October 1991 - 136,364 at $ 9.90 | 63,707 | 60,647 | 61,575 | 68,458 |
| November 1992 - 123,925 at $16.25 | 2,865 | - | 7,439 | 12,088 |
| December 1992 - 300,000 at $18.00 | - | - | 4,484 | - |
| June 1992 - 15,000 at $16.25 | - | - | - | 1,260 |
| October 1993 - 129,950 at $17.25 | - | - | - | 3,589 |
| Weighted average common shares outstanding during the period for computing net income | | | | |

| | | | | |
|---|---|---|---|---|
| (loss) per common share | 18,737,150 | 18,727,711 | 19,687,013 | 18,784,729 |

Fully diluted weighted average shares outstanding were not materially different than primary weighted average shares outstanding for the periods presented.

EXHIBIT 23

CONSENT OF INDEPENDENT ACCOUNTANTS

We consent to the incorporation by reference in the Registration Statements of The Scotts Company on Form S-8 (File Nos. 33-47073 and 33-60056) of our report dated November 14, 1994 on our audits of the consolidated financial statements and our report dated November 14, 1994 on our audits of the financial statement schedules of The Scotts Company as of Septembe 30, 1993 and 1994 and for the years ended September 30, 1992, 1993 and 1994, which reports are included in this Annual Report on Form 10-K.

Coopers & Lybrand L.L.P.
Columbus, Ohio
December 28, 1994

Exhibit 27. Financial Data Schedule

THIS SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM THE CONSOLIDATED BALANCE SHEETS AND STATEMENTS OF INCOME OF THE SCOTTS COMPANY AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH FORM 10-K FOR THE YEAR ENDED SEPTEMBER 30, 1994.

| | |
|---|---|
| TYPE: | EX-27 |
| DESCRIPTION: | FINANCIAL DATA SCHEDULE |
| ARTICLE: | 5 |
| MULTIPLIER: | 1000 |
| CURRENCY: | US DOLLARS |
| FISCAL YEAR END: | SEPT-30-1995 |
| PERIOD START | OCT-1-1993 |
| PERIOD END | SEPT-30-1994 |
| PERIOD TYPE | YEAR |
| CASH | 10,695 |
| SECURITIES | |
| RECEIVABLES (net) | 115,772 |
| ALLOWANCES | |
| INVENTORY | 106,636 |
| CURRENT ASSETS | 250,254 |
| PP&E | 208,009 |
| DEPRECIATION | 67,904 |
| TOTAL ASSETS | 528,584 |
| CURRENT | 109,688 |
| LIABILITIES | |
| BONDS | |
| PREFERRED | |
| MANDATORY | |
| PREFERRED | |
| COMMON | |

| | | |
|---|---|---|
| OTHER SE | | 167,949 |
| TOTAL LIABILITY AND EQUITY | | 528,584 |
| SALES | | 606,339 |
| TOTAL REVENUES | | 608,239 |
| CGS | | 319,730 |
| TOTAL COSTS | | 544,287 |
| OTHER EXPENSE | | 4,183 |
| LOSS PROVISION | | |
| INTEREST EXPENSE | | 17,947 |
| INCOME PRETAX | | 41,822 |
| INCOME CONTINUING | | 23,875 |
| DISCONTINUED | | |
| EXTRAORDINARY | (992) | |
| CHANGES | | |
| NET INCOME | | 22,883 |
| EPS PRIMARY | | 1.22 |
| EPS DILUTE | | 1.22 |

_____

1The Internal Revenue Code of 1986, as amended (the "Code"), places certain limitations on the annual pension benefits which can be paid from the Pension Plan. Such limitations are not reflected in the table. This table reflects the total aggregate benefits payable annually upon retirement under both the Pension Plan and The Scotts Company Excess Benefit Plan (the "Excess Benefit Plan"), which is discussed below. The Pension Plan and the Excess Benefit Plan require an offset of 1.25% of the Social Security primary insurance amount ("PIA") for each year of service and such amount has been deducted from the figures in the table. The PIA used in developing the above figures is $13,764.00. Thus, the offset is $5,161.50 for a person with 30 years of service. The maximum possible offset is $6,882.00 for a person with 40 years of service.

Exhibit 3(a)

Amended Articles of Incorporation
of Registrant

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.

Exhibit 21

Subsidiaries of Registrant

The following are the significant subsidiaries of The Scotts Company, an Ohio corporation (the "Registrant"), each of which is wholly-owned by the Registrant:

| Name of Subsidiary | State of Incorporation |
|---|---|

| | |
|---|---|
| Hyponex Corporation | Delaware |
| Republic Tool & Manufacturing Corp. | California |
| Scotts-Sierra Horticultural Products Company | California |

The subsidiaries of the Registrant which are not named above would not, when considered in the aggregate as a single subsidiary, constitute a significant subsidiary of the Registrant as of September 30, 1994 for purposes of Rule 1-02(v) of Regulation S-X and Item 601(b)(21) of Regulation S-K.

Exhibit 4(e)

Fourth Amendment and Consent, dated as of July 5, 1994, among Scotts Delaware, OMS, the banks listed therein and Chemical Bank, as agent

FOURTH AMENDMENT AND CONSENT, dated as of July 5, 1994 (this "Amendment"), to the Third Amended and Restated Credit Agreement dated as of April 7, 1992, as amended by a First Amendment dated as of November 19, 1992, a Second Amendment dated as of February 23, 1993, and a Third Amendment dated as of December 15, 1993 (as so amended and as the same may be further amended, supplemented or otherwise modified from time to time, the "Credit Agreement"; capitalized terms used herein which are defined in the Credit Agreement, as amended hereby, are used herein as so defined), among The Scotts Company, a Delaware corporation ("Holdings"), The O.M. Scott & Sons Company, a Delaware corporation (the "Company"), the lenders from time to time parties thereto (collectively, the "Banks"; individually, a "Bank") and CHEMICAL BANK, a New York banking corporation, as successor by merger to Manufacturers Hanover Trust Company ("Chemical"), as agent for the Banks (in such capacity, the ("Agent").

W I T N E S S E T H :

WHEREAS, the Company and Holdings have requested that the Required Banks (i) consent, subject to the terms and conditions of this Amendment, to issuance of Subordinated Notes by the Company and (ii) amend and modify the terms of the Credit Agreement on the terms and subject to the conditions set forth herein;

WHEREIN, the Required Banks have agreed to (i) consent, subject to the terms and conditions of this Amendment, to issuance of Subordinated Notes by the Company and (ii) amend and modify the terms of the Credit Agreement on the terms and subject to the conditions set forth herein;

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

ARTICLE 1. AMENDMENTS TO CREDIT AGREEMENT

1.1 Amendment to Subsection 1.1 (Definitions).

(a) Addition of Certain Definitions. Subsection 1.1 of the Credit Agreement is hereby amended by adding thereto the following new definition in its appropriate alphabetical order:

> "Subordinated Note Indenture": the Indenture dated as of June 1, 1994 between the Company, Holdings and Chemical Bank as trustee, as supplemented by the First Supplemental Indenture dated as of July 1994, in each case as the same may be amended, supplemented, waived or otherwise modified from time to time in accordance with the terms of subsection 7.1(h).

(b) Substitution of Certain Definitions. Subsection 1.1 of the Credit Agreement is hereby amended by deleting the definition set forth below in its entirety, and substituting therefor, the corresponding new definition set forth below:

> "Subordinated Notes" shall mean subordinated indebtedness issued by Holdings and the Company on or prior to the one-year anniversary of the Third Amendment Effective Date in an aggregate principal amount of not less than $100,000,000; provided that (i) such indebtedness is subordinated and junior in right of payment and all other respects to the Obligations and all obligations of the Company, Holdings and their respective Subsidiaries to any Hedging Bank under any Hedging Agreement provided by such Hedging Bank, (ii) such indebtedness is unsecured and (iii) all terms and conditions of such indebtedness are satisfactory to the Required Banks.

1.2 Amendment to Section 9 (Events of Default). Subsection 9(i) of the Credit Agreement is hereby amended by deleting such subsection in its entirety and substituting therefor the following new subsection 9(i);

(i) Change in Control. The occurrence of any of the following events: (i) any Person shall at any time own more than 30% of the issued and outstanding capital stock of Holdings, (ii) Holdings shall cease at any time to own 100% of the capital stock of the Company or to have the power to elect a majority of the Board of Directors of the Company (or otherwise have effective voting control of the Company) or (iii) a "Change in Control" as defined in the Section 1008 of the Subordinated Note Indenture shall occur; or

ARTICLE 2. CONSENT TO THE ISSUANCE OF THE SUBORDINATED NOTES; REPRESENTATIONS AND WARRANTIES; NO DEFAULT.

2.1 Consent of the Required Banks. Each of the undersigned hereby consents to the issuance by the Company of $100,000,000 aggregate principal amount of Subordinated Notes on the terms and conditions set forth in the Prospectus dated June 21, 1994 and Prospectus Supplement dated June 23, 1994 relating to such Subordinated Notes attached hereto as Exhibit A; provided that such consent shall not be effective unless (i) Holdings and the Company shall have prepaid the Term Loans in accordance with subsection 2.9 of the Credit Agreement no later than the third Business Day following such issuance of Subordinated Notes in an amount equal to the Net Cash Proceeds from such issuance of Subordinated Notes, together with all accrued and unpaid interest on the amount prepaid to the date of prepayment and any amounts owing pursuant to subsection 2.18 of the Credit Agreement, (ii) the Agent shall have received counterparts of this Amendment executed by Holdings, the Company and the Required Banks and acknowledged and consented to by each of the Subsidiaries parties hereto and (iii) all corporate and other proceedings and all other documents and legal matters in connection with the transactions contemplated by this Amendment shall be satisfactory in form and substance to the Agent and its counsel.

2.2 Representations and Warranties; No Default. On and as of the date hereof and after giving effect to this Amendment and the transactions contemplated hereby, each of Holdings and the Company hereby (a) confirms, reaffirms and restates the representations and warranties set forth in Section 4 of the Credit Agreement, except to the extent that such representations and warranties relate solely to an earlier date in which case each of Holdings and the Company hereby confirms, reaffirms and restates such representations and warranties for such earlier date, provided that the references to the Credit Agreement therein shall be deemed to be to the Credit Agreement as amended by this Amendment; and (b) represents that no Default or Event of Default has occurred and is continuing.

ARTICLE 3. MISCELLANEOUS.

3.1 Limited Effect. Except as expressly amended hereby, all of the provisions, covenants, terms and conditions of the Credit Agreement and the other Basic Agreements shall continue to be, and shall remain, in full force and effect in accordance with their respective terms.

3.2 Expenses. Holdings and the Company shall be obligated to reimburse the Agent for all its reasonable costs and expenses (including, without limitation, reasonable legal expenses) incurred in connection with the preparation, execution and delivery of this Amendment.

3.3 GOVERNING LAW. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

3.4 Counterparts. This Amendment may be executed by one or more parties to this Amendment on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered by their proper and duly authorized officers as of the date first above written.

THE SCOTTS COMPANY

By: /s/ Craig D. Walley
Title: Vice President

THE O.M. SCOTT & SONS COMPANY

By: /s/ Craig D. Walley
Title: Vice President

CHEMICAL BANK, as Agent and as
a Bank

By:_____
Title:_____

BANK ONE, COLUMBUS, N.A.

By:_____
Title: V.P.

COMERICA BANK

By:_____
Title: Vice President

NBD BANK, N.A.

By: /s/ Victoria L. Becker
Title: Vice President

PNC BANK, OHIO NATIONAL ASSOCIATION

By:_____
Title:_____

NATIONAL CITY BANK, COLUMBUS,
F.K.A. BANKOHIO NATIONAL BANK

By:_____
Title:_____

THE BANK OF TOKYO TRUST COMPANY

By:_____
Title:_____

THE FIRST NATIONAL BANK OF CHICAGO

By:_____
Title: Vice President

THE BANK OF NOVA SCOTIA

By: /s/ A.S. Norsworthy
Title: A.S. Norsworthy,
Assistant Agent

THE TORONTO-DOMINION BANK

By: /s/ Debbie A. Greene
Title: Debbie A. Greene,
Mgr. Cr. Admin.

UNION BANK

By:_____
Title: Vice President &
District Manager
CREDIT LYONNAIS CAYMAN
ISLAND
BRANCH

By:_____
Title: Authorized Signature

SOCIETE GENERALE

By:_____
Title: Vice President

SOCIETY NATIONAL BANK

By:_____
Title: Vice President

Each of the undersigned hereby consent to the foregoing Amendment and hereby confirms, reaffirms and restates that its obligations under each Loan Document to which it is a party will remain in full force and effect after giving effect to such Amendment and the amendments to the Credit Agreement and the other Loan Documents effected thereby.

BUNYON ENTERPRISES, INC.
BUNYON TRUCKING COMPANY, INC.
HYPER-HUMUS COMPANY, INC.
HYPONEX COMPANY, INC.
HYPONEX CORPORATION-MISSOURI
HYPONEX CORPORATION-CALIFORNIA
HYPONEX CORPORATION-COLORADO
HYPONEX CORPORATION-FLORIDA
HYPONEX CORPORATION-TEXAS
OLD FORT FINANCIAL CORP.
SCOTTS GRASS CO.
SCOTTS SOD CO.
SCOTTS ENERGY CO.
SCOTTS PESTICIDE CO.
SCOTTS GREEN LAWNS CO.
SCOTTS SERVICE CO.
SCOTTS PRODUCTS CO.
SCOTTS PLANT CO.
SCOTTS TREE CO.
SCOTTS PARK CO.
SCOTTS PRO TURF CO.
SCOTTS FERTILIZER CO.
SCOTTS PROFESSIONAL PRODUCTS CO.
SCOTTS TURF CO.
SCOTTS BEST LAWNS CO.
SCOTTS WEED CONTROL CO.
SCOTTS DESIGN CO.
SCOTTS TECH REP CO.
SCOTTS BROAD LEAF CO.
SCOTTS INSECTICIDE CO.
SCOTTS SPREADER CO.
SCOTTS IMPROVEMENT CO.
SCOTTS GOLF CO.
SCOTTS GARDEN CO.
SCOTTS CONTROL CO.
REPUBLIC TOOL & MANUFACTURING CORP.

By: /s/ Craig D. Walley
Title: Vice President

SCOTTS-SIERRA HORTICULTURAL
PRODUCTS COMPANY (formerly
known as Grace-Sierra
Horticultural Products
Company)

By: /s/ Lisle J. Smith
Title: Vice President

SCOTTS-SIERRA CROP PROTECTION
COMPANY (formerly known as
Grace-Sierra Crop Protection
Company)

By: /s/ Lisle J. Smith
Title: Vice President

GRACE-SIERRA INTERNATIONAL, BV
GRACE-SIERRA UNITED KINGDOM
GRACE-SIERRA ESPANA, S.A.
GRACE-SIERRA BELGIUM B.V.B.A.
GRACE-SIERRA DEUTSCHLAND
GARDENBAUPRODUKBE GmbH

By: /s/ Lisle J. Smith
Title: Director

GRACE-SIERRA FRANCE, SARL

By: /s/ Lisle J. Smith
Title: Director

By:_____
Title:_____

GRACE-SIERRA AUSTRALIA PTY

By: /s/ Lisle J. Smith
Title: Director

Exhibit 10(a)

The Scotts Company Employees' Pension Plan

# THE SCOTTS COMPANY

# EMPLOYEES' PENSION PLAN

Amended Effective January 1, 1989

THE SCOTTS COMPANY
EMPLOYEES' PENSION PLAN

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# THE SCOTTS COMPANY

# EMPLOYEES' PENSION PLAN

WHEREAS, The O.M. Scott & Sons Company established The O.M. Scott & Sons Company Employees' Pension Plan (the "Plan") effective January 1, 1954, in recognition of the contribution made to its successful operation by its employees and for the exclusive benefit of its eligible employees and their beneficiaries; and

WHEREAS, the Plan was previously amended and restated effective January 1, 1976, January 1, 1985 and December 31, 1986; and

WHEREAS, The O.M. Scott & Sons Company has been merged into The Scotts Company, an Ohio corporation (the "Company"), which assumes sponsorship of the Plan; and

WHEREAS, under the terms of the Plan, the Company has the power to amend the Plan, provided the Trustee consents to such amendment if the provisions of the Plan affecting the Trustee are amended; and

WHEREAS, the Company wishes to amend, restate and rename the Plan to reflect the change in sponsorship and comply with changes in the law;

NOW, THEREFORE, the Company hereby amends the Plan in its entirety and restates the Plan as of the Effective Amendment Date to provide as follows:

## ARTICLE 1 - DEFINITIONS

"Administrative Committee" shall mean the committee established for the purposes of administering the Plan as provided in Article 5.

"Affiliate" shall mean the Company and any entity which, with the Company, constitutes: (a) a controlled group of corporations (within the meaning of Section 414(b) of the Code); (b) a group of trades or businesses under common control (within the meaning of Section 414(c) of the Code); (c) an affiliated service group (within the meaning of Section 414(m) of the Code); or (d) a group of entities required to be aggregated pursuant to Section 414(o) of the Code and the regulations thereunder.

"Appendix A" shall mean the tables of factors, attached to the Plan as exhibits, which are used in determining the amount of the various forms of benefits payable under the Plan.

"Appendix B" shall mean an attachment to the Plan containing the names of those Members, surviving spouses, contingent annuitants and beneficiaries for whom supplemental benefits are provided, and the amount thereof.

"Average Final Compensation" shall mean the average annual Compensation of a Member for the 60 consecutive calendar months included in his Years of Vesting Service during the last 120 consecutive calendar months of his Years of Vesting Service affording the highest such average, or for all the calendar months of his Years of Vesting Service if he has less than 60 calendar months included in his Years of Vesting Service. For purposes of determining a Member's Average Final Compensation in Plan Years starting after December 31, 1988, Compensation in excess of $200,000 (as adjusted under Sections 401(a)(17) and 415(d) of the Internal Revenue Code) shall not be taken into account. For purposes of determining a Member's Average Final Compensation in Plan Years starting after December 31, 1993, Compensation in excess of $150,000 (as adjusted under Section 401(a)(17) and 415(d) of the Internal Revenue Code) shall not be taken into account. Notwithstanding the foregoing, the accrued benefit of a Section 401(a)(17) Employee (as that term is defined in Section 1.401(a)(17)-1(e)(2) of the regulations under the Internal Revenue Code) shall be determined under the extended wear-away method of Section 1.401(a)(4)-13(c)(4)(iii) of the regulations under the Internal Revenue Code.

"Board of Directors" shall mean the Board of Directors of the Company.

"Code" shall mean the Internal Revenue Code of 1986, as may be amended from time to time.

"Company" shall mean: (a) The O. M. Scott & Sons Company, a Delaware corporation, until the merger of The O.M. Scott & Sons Company into The Scotts Company, an Ohio corporation; and (b) thereafter, The Scotts Company or any successor by merger, purchase or otherwise.

"Compensation" shall mean total earnings for the Plan Year paid to the Member by an Affiliate. Compensation shall include: (a) commissions but only up to the salary band maximum; (b) salary reduction contributions to The Scotts Company Profit Sharing and Savings Plan and any other Section 401(k) plans sponsored by an Affiliate; and (c) salary reduction contributions for welfare benefits. Compensation shall exclude: (a) commissions in excess of the salary band maximum; and (ii) foreign service, automobile, separation and other special allowances. Compensation taken into account under the Plan with respect to any Employee for a Plan Year shall not exceed: (a) effective January 1, 1989, $200,000 (as automatically adjusted for increases in the cost of living as prescribed by the Secretary of the Treasury); and (b) effective January 1, 1994, $150,000 (as adjusted under Section 401(a)(17) of the Code). Notwithstanding the foregoing, the accrued benefit of a Section 401(a)(17) Employee (as that term is defined in Section 1.401(a)(17)-1(e)(2) of the regulations under the Code) shall be determined under the extended wear-away method of Section 1.401(a)(4)-13(c)(4)(iii) of the regulations under the Code. In determining the Compensation of a Member for purposes of this limitation, the rules of Section 414(q)(6) of the Code shall apply, except in applying such rules, the term "family" shall include only

the spouse of the Member and any lineal descendants of the Member who have not attained age 19 before the close of the Plan Year. If, as a result of the application of such rules, Compensation would exceed the adjusted $200,000 or $150,000 limitation, then the limitation shall be prorated among the affected persons in proportion to each such person's Compensation as determined under this paragraph prior to the application of this limitation.

"Deferred Retirement Date" shall mean, with respect to Employees who do not retire at Normal Retirement Date but who continue without interruption to work beyond such date, the first day of the calendar month coincident with or next following the date on which such Employee retires from active service. No retirement allowance shall be paid to the Employee until his Deferred Retirement Date, except as otherwise provided in Article 4.

"Earnings" shall mean all compensation received by a Member including bonuses paid by the Company in accordance with its bonus policy. Earnings shall be recognized only for the purpose of determining an annual Current Service Benefit as provided pursuant to the last sentence of Section 4.01(b)(i). Earnings taken into account under the Plan with respect to any Employee for a Plan Year shall not exceed: (a) effective January 1, 1989, $200,000 (as automatically adjusted for increases in the cost of living as prescribed by the Secretary of the Treasury); and (b) effective January 1, 1994, $150,000 (as adjusted under Section 401(a)(17) of the Code). Notwithstanding the foregoing, the accrued benefit of a Section 401(a)(17) Employee (as that term is defined in Section 1.401(a)(17)-1(e)(2) of the regulations under the Code) shall be determined under the extended wear-away method of Section 1.401(a)(4)-13(c)(4)(iii) of the regulations under the Code. In determining the Earnings of a Member for purposes of this limitation, the rules of Section 414(q)(6) of the Code shall apply, except in applying such rules, the term "family" shall include only the spouse of the Member and any lineal descendants of the Member who have not attained age 19 before the close of the Plan Year. If, as a result of the application of such rules, Earnings would exceed the adjusted $200,000 or $150,000 limitation, then the limitation shall be prorated among the affected persons in proportion to each such person's Earnings as determined under this paragraph prior to the application of this limitation.

"Effective Amendment Date" of this amendment and restatement of the Plan shall be January 1, 1989.

"Effective Date" of the Plan shall mean January 1, 1976.

"Eligible Employee" shall mean an Employee working either with The Scotts product line or in corporate management or administration of The Scotts Company, other than a person: (a) whose terms and conditions of employment are determined by collective bargaining with a third party, with respect to whom inclusion in this Plan has not been provided for in the collective bargaining agreement setting forth those terms and conditions of employment; (b) who is nonresident alien described in Section 410(b)(3)(C) of the Code; and (c) who is a leased employee within the meaning of Section 414(n)(2) of the Code.

"Employee" shall mean a person employed by an Affiliate.

"Hour of Service" means (a) each hour for which an Employee is paid or entitled to payment for the performance of duties for an Affiliate during the applicable computation period, (b) each hour for which an Employee is paid or entitled to payment by an Affiliate on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury or military duty, or leave of absence, and (c) each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by an Affiliate. In computing Hours of Service on a weekly or monthly basis when a record of hours of employment is not available, the Employee shall be assumed to have worked 40 hours for each full week of employment and eight hours for each day in less than a full week of employment, regardless of whether the Employee has actually worked fewer hours. Notwithstanding the foregoing, (i) not more than 501 Hours of Service shall be credited to an Employee on account of any single continuous period during which the Employee performs no duties, (ii) no credit shall be granted for any period with respect to which an Employee receives payment or is entitled to payment under a plan maintained solely for the purpose of

complying with applicable workers' compensation or disability insurance laws, and (iii) no credit shall be granted for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee. In the case of a person who was a Leased Employee and who subsequently becomes an Employee, hours of service as a Leased Employee shall count as Hours of Service as an Employee. Determination and crediting of Hours of Service shall be made under Department of Labor Regulations Sections 2530.200b-2 and 3.

"Investment Committee" shall mean the committee established by the Company for the purposes of managing the assets of the Plan as provided in Article 5.

"Leased Employee" shall mean any person (other than an employee of the recipient) who, pursuant to an agreement between the recipient and any other person (leasing organization), has performed services for the recipient (or for the recipient and related persons determined in accordance with Sections 414(n)and 414(o) of the Code) on a substantially full-time basis for a period of at least one year and such services are of a type historically performed by employees in the business field of the recipient employer. Contributions or benefits provided a Leased Employee by the leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer. A Leased Employee shall not be considered an employee of the recipient (and thus not otherwise an Employee) if (a) such employee is covered by a money purchase pension plan providing (i) a nonintegrated employer contribution rate of at least 10% of compensation, as defined in Code Section 415(c)(3), but including amounts contributed by the employer pursuant to a salary reduction agreement which are excludable from the employee's gross income under Code Section 125, Section 402(a)(8), Section 402(h) or Section 403(b); (ii) immediate participation; and (iii) full and immediate vesting; and (b) Leased Employees do not constitute more than 20% of the recipient's non-highly-compensated work force.

"Member" shall mean any person included in the membership of the Plan as provided in Article 3. The pronoun he, his or him is used in this document solely for convenience and does not in any way connote a limit or restriction to persons of the masculine gender. In all cases, when he, his or him is used it means with equal effect persons of the feminine gender, and vice versa.

"Normal Retirement Date" shall mean the first day of the calendar month coincident with or next following the 65th anniversary of an Employee's birth. The Member's right to a normal retirement allowance shall be non-forfeitable upon the attainment of age 65 whether or not the Employee retires on such date.

"Parental Leave" shall mean a period in which a person is absent from work on or after January 1, 1985 because of the person's pregnancy, the birth of a person's child, the adoption by a person of a child, or, for purposes of caring for that child for a period beginning immediately following such birth or adoption.

"Plan" shall mean The Scotts Company Employees' Pension Plan as set forth herein or as hereafter amended.

"Plan Year" shall mean the 12 month period ending each December 31.

"Social Security Benefit" shall mean the amount of old-age insurance benefit under Title II of the Federal Social Security Act as determined by the Administrative Committee under reasonable rules uniformly applied, on the basis of such Act as in effect at the time of retirement or termination to which a Member or former Member is or would upon application be entitled, even though the Member does not receive such benefit because of his failure to apply therefor or he is ineligible therefor by reason of earnings he may be receiving in excess of any limit on earnings for full entitlement to such benefit; provided, however, if a Member remains in employment on or after his Normal Retirement Date, the Social Security Benefit hereunder shall be calculated as of his Normal Retirement Date on the basis of the Federal Social Security Act in effect as of such Normal Retirement Date. For all years prior to retirement or other termination of employment with the Company where actual earnings are not available, the Member's Social Security Benefit shall be determined on the basis of the Member's actual earnings in conjunction with a salary increased assumption based on the actual yearly change in national average wages as

determined by the Social Security Administration. If, within a reasonable time after the later of (i) the date of retirement or other termination of employment or (ii) the date on which a Member is notified of the retirement allowance or vested benefit to which he is entitled, the Member provides documentation from the Social Security Administration as to his actual earnings history with respect to those prior years, his Social Security Benefit shall be redetermined using the actual earnings history. If this recalculation results in a different Social Security Benefit, his retirement allowance or vested benefit shall be adjusted to reflect this change. Any adjustment to his retirement allowance or vested benefit shall be made retroactive to the date his payments commenced. The Administrative Committee shall resolve any questions arising under this Section 1.18 on a basis uniformly applicable to all Employees similarly situated.

"Trustee" shall mean the trustee or trustees by which the funds of the Plan are held as provided in Article 7.

"Year of Benefit Service" shall mean employment recognized as such for the purposes of computing a benefit under the Plan with respect to service on or after January 1, 1976, as provided under Article 2.

"Year of Eligibility Service" shall mean any employment recognized for purposes of meeting the eligibility requirements for membership in the Plan, as provided in Article 2.

"Year of Vesting Service" shall mean any employment recognized for purposes of meeting the requirements for vesting in benefits, as provided in Article 2.

## ARTICLE 2 - SERVICE

2.01 Eligibility Service for Regular or Full-Time Employees

For an Employee who is classified as a regular full-time Employee according to the Employer's policies and practices, "Year of Eligibility Service" and "Break in Eligibility Service" shall have the same meaning as "Year of Vesting Service" and "Break in Vesting Service."

2.02 Eligibility Service for Temporary or Part-Time Employees

For an Employee who is classified as a temporary Employee or a part-time Employee according to the Employer's policies and practices:

(a) "Break in Eligibility Service" shall mean failure by an Employee to complete more than 500 Hours of Service during any Computation Period. Any Break in Service shall be deemed to have commenced on the first day of the Computation Period in which it occurs. In the case of an absence from work beginning after December 31, 1984, if an Employee is absent from work for any period by reason of pregnancy, the birth or placement for adoption of a child, or for caring for a child for a period immediately following the birth or placement, then for purposes of determining whether a Break in Service has occurred (and not for purposes of determining Years of Eligibility Service) such Employee shall be credited with the Hours of Service which otherwise normally would have been credited to such Employee, or, if the Administrator is unable to determine the number of such Hours of Service, eight Hours of Service for each day of absence, in any case not to exceed 501 Hours of Service. The Hours of Service credited to an Employee under this definition shall be treated as Hours of Service in the Computation Period in which the absence from work begins, if the Employee would be prevented from incurring a Break in Service in such year solely because of such Hours of Service or, in any other case, in the immediately following year. The Administrator may require that the Employee certify and/or supply documentation that his or her absence is for one of the permitted reasons and the number of days for which there as such an absence.

(b) "Computation Period" shall mean a 12 month period starting on an Employee's most recent date of employment commencement or any anniversary of that date.

(c) "Year of Eligibility Service" shall mean a Computation Period during which an Employee has 1,000 or more Hours of Service for an Affiliate.

2.03 Vesting Service and Benefit Service for All Employees

For all Employees:

(a) "Break in Vesting Service" shall mean each 12 consecutive months in the period: (i) commencing on an Employee's Severance from Service Date; and (ii) ending on the date the Employee is again credited with an Hour of Service for the performance of duties for an Affiliate. If an Employee is absent from work for any period by reason of a pregnancy, the birth or placement for adoption of a child, or caring for a child for a period immediately following the birth or placement, and the absence continues beyond the first anniversary of the absence, the Employee's Break in Vesting Service will commence no earlier than the second anniversary of the absence. The period between the first and second anniversaries of the first date of the absence is not part of either a Period of Service or a Break in Vesting Service. The Administrative Committee may require the Employee to certify and/or supply documentation that his or her absence is for one of the permitted reasons and the number of days for which there was such an absence.

(b) "Period of Service" shall mean the period: (i) commencing on the date an Employee is first credited with an Hour of Service for the performance of duties for an Affiliate; and (ii) ending on the Employee's Severance from Service Date. A Period of Service will include any period after an Employee's Severance from Service Date if within 12 months of the Employee's Severance from Service Date, the Employee has an Hour of Service for an Affiliate.

(c) "Severance from Service Date" is the earlier of: (i) the date on which an Employee quits, is discharged, retires or dies; or (ii) the first anniversary of the first date of any other absence.

(d) "Year of Benefit Service" shall mean a full 365 days in an Employee's Period of Service, excluding: (i) the period before the Employee became a Member; (ii) any period during which the Employee is not an Eligible Employee; and (iii) service before January 1, 1976. A Member shall not receive credit for more than 40 Years of Benefit Service.

(e) "Year of Vesting Service" shall mean a full 365 days in an Employee's Period of Service.

2.04 Effect of Breaks in Eligibility Service

(a) If an Employee has a Break in Eligibility Service, Years of Eligibility Service before such break will not be taken into account until the Employee has completed a Year of Eligibility Service after such Break in Eligibility Service.

(b) If an Employee who does not have a vested benefit under the Plan incurs five consecutive Breaks in Eligibility Service (and the number of consecutive Breaks in Eligibility Service exceeds the number of Years of Eligibility Service completed before such break), Years of Eligibility Service before such break will not be taken into account.

(c) If an Employee's Years of Eligibility Service may not be disregarded pursuant to this Section, such Years of Eligibility Service shall be taken into account.

2.05 Effect of Breaks in Vesting Service

(a) If an Employee has a Break in Vesting Service, Years of Vesting Service before such break will not be taken into account until the Member has completed a Year of Vesting Service after such Break in Vesting Service.

(b) If an Employee who does not have a vested benefit under

the Plan incurs a Break in Vesting Service (and the number of consecutive Breaks in Vesting Service exceed the number of Years of Vesting Service completed before such break), Years of Vesting Service and Years of Benefit Service before such break will not be taken into account.

(c) If an Employee's Years of Vesting Service and Years of Benefit Service may not be disregarded pursuant to this Section, such Years of Vesting Service and Years of Benefit Service shall be taken into account.

2.06 Questions Relating to Service under the Plan

If any question shall arise hereunder as to an Employee's Years of Benefit Service, Years of Eligibility Service or Years of Vesting Service, such question shall be resolved by the Administrative Committee on a basis uniformly applicable to all Employee(s) similarly situated.

## ARTICLE 3 - MEMBERSHIP

3.01 Members of the Plan on December 31, 1984

Every Employee who was a Member of the Plan on December 31, 1984 shall continue to be a Member of the Plan on and after January 1, 1985.

3.02 All Other Employees

An Employee shall become a Member of the Plan as of the first day of the calendar month, commencing with January 1, 1985, coincident with or next following the later of:

(a) the date on which he attains the 21st anniversary of his birth,

(b) the date on which he completes one Year of Eligibility Service, or

(c) the date on which he becomes an Eligible Employee.

3.03 Leased Employees

Any person who is a Leased Employee shall not be eligible to participate in the Plan. However, if such a person subsequently becomes an Employee, or if an Employee subsequently becomes employed as a Leased Employee, uninterrupted employment with Affiliates as a Leased Employee, subject to the provisions of Section 414(n)(4) of said Code, shall be counted for the sole purpose of determining Years of Eligibility Service but not for the purpose of determining Years of Benefit Service.

3.04Reemployment

The membership of any person reemployed by an Affiliate as an Eligible Employee shall be immediately resumed if such Employee was previously a Member of the Plan.

If a retired Member or a former Member is reemployed by an Affiliate, his membership in the Plan shall be immediately resumed and any payment of a retirement allowance with respect to his original retirement or any payment of a vested benefit with respect to his original employment shall cease in accordance with the provisions of Section 4.09.

3.05 Termination of Membership

Unless otherwise determined by the Administrative Committee under rules uniformly applicable to all person(s) or Employee(s) similarly situated, an Employee's membership in the Plan shall terminate if he ceases to be an Eligible Employee otherwise than by reason of retirement under the Plan, except that an Employee's membership shall continue (a) during any period while on leave of absence approved by an Affiliate, or (b) while absent by reason of temporary disability for a period of not more than six months, or (c) while he is not an Eligible Employee herein defined but is in the employ of an Affiliate. Employees covered by the Plan may not waive such coverage.

3.06 Questions Relating to Membership in the Plan

If any question shall arise hereunder as to the commencement, duration or termination of the membership of any person(s) or Employee(s) employed by an Affiliate, such question shall be resolved by the Administrative Committee under rules uniformly applicable to all person(s) or Employee(s) similarly situated.

## ARTICLE 4 - BENEFITS

4.01 Normal Retirement Allowance

(a) Retirement Date - A Member may retire from active service on a normal retirement allowance upon reaching his Normal Retirement Date or, if he continues in active service after his Normal Retirement Date, upon reaching his Deferred Retirement Date. A Member shall be retired from active service on a normal retirement allowance upon reaching his Deferred Retirement Date. However, in accordance with the procedure established by the Administrative Committee, on a basis uniformly applicable to all Employees similarly situated, the monthly benefit payments commencing on his Deferred Retirement Date shall be adjusted, if necessary, in compliance with Title 29 of the Code of Federal Regulations, Section 2530.203-3, to reflect the amount of any monthly benefits that would have been payable, had he retired on his Normal Retirement Date, with respect to each month during the deferral period in which he was not credited with eight days of service.

(b) Benefit - Prior to adjustment in accordance with Section 4.04(a), the annual normal retirement allowance payable on a lifetime basis upon retirement at a Member's Normal Retirement Date or at his Deferred Retirement Date shall be equal to the sum of the Member's Current Service Benefit and Past Service Benefit, if any, as follows, and as further provided in Appendix B:

(i) Current Service Benefit - One and one-half percent (1-1/2%) of the Member's Average Final Compensation multiplied by his Years of Benefit Service on and after January 1, 1976, not in excess of 40 years, reduced by one-half of his Social Security Benefit; except, however, that if the Member has less than 40 Years of Benefit Service on and after January 1, 1976, the Social Security Benefit reduction shall not exceed one and one-quarter percent (1-1/4%) of the Social Security Benefit multiplied by his Years of Benefit Service. However, the annual Current Service Benefit payable to any Member who was a

participant of the Plan on December 31, 1975, and who had attained age 51 on or before December 31, 1975, shall not be less than 1.3% of the Member's Earnings in each calendar year during his Years of Benefit Service up to $7,800 plus 2% of such Earnings in excess of $7,800.

(ii) Past Service Benefit - With respect to any Member who was a participant of the Plan on December 31, 1975, an amount equal to the annual normal retirement benefit accrued up to and including December 31, 1975, to such Member under the Plan in respect of service prior to January 1, 1976, with such retirement benefit being computed in accordance with the provisions of the Plan as in effect on December 31, 1975.

The annual normal retirement allowance determined prior to any Social Security Benefit offset shall be an amount not less than the greatest annual early retirement allowance which would have been payable to a Member had he retired under Section 4.02 at any time before his Normal Retirement Date, and as such early retirement allowance would have been reduced to commence at such earlier date, but prior to any Social Security Benefit offset; provided, however, that such offset shall in any event be based on the Federal Social Security Act in effect at the earlier of the Member's actual retirement or Normal Retirement Date.

Except as adjusted in accordance with the election of any optional form of pension under Sections 4.04 and/or 4.05 and unless the Company determines otherwise, the retirement allowance payable to a Member who retires on his Deferred Retirement Date shall be determined in accordance with the provisions of the Plan in effect on his Normal Retirement Date and as if he had retired from active service on his Normal Retirement Date.

4.02 Early Retirement Allowance

(a) Eligibility - A Member who has not reached his Normal Retirement Date but who has reached the 55th anniversary of his birth and completed ten Years of Vesting Service is eligible to retire on an early retirement allowance on the first day of the calendar month next following termination of employment, which date shall be his Early Retirement Date.

(b) Special Eligibility - A Member who retires on or after January 1, 1987, who has not reached his Normal Retirement Date but who has reached the 55th anniversary of his birth and completed fifteen Years of Vesting Service, is eligible to retire on a special early retirement allowance on the first day of the calendar month next following termination of employment, which date shall be his Special Early Retirement Date.

(c) Benefit if Retiring under Section 4.02(a) - Except as hereinafter provided and prior to adjustment in accordance with Section 4.04(a), the early retirement allowance payable upon retirement in accordance with Section 4.02(a) shall be a deferred allowance commencing on the Member's Normal Retirement Date and shall be equal to the normal retirement allowance computed in accordance with Section 4.01(b) on the basis of his Average Final Compensation (or Earnings, if applicable) and Years of Benefit Service prior to the time of early retirement.

The Member may, however, elect to receive an early retirement allowance commencing with his Early Retirement Date or the date specified in his later request therefor in a reduced amount which shall be equal to such deferred allowance prior to the reduction to be made to the Current Service Benefit on account of the Social Security Benefit, if applicable, reduced by 1/4 of 1 percent per month for each month by which the commencement date of his retirement allowance precedes his Normal Retirement Date.

The reduction to be made on account of the Social Security Benefit shall be determined on the assumption

that the Member had no earnings after his Early Retirement Date and, if retirement allowance payments commence prior to the Member's Normal Retirement Date, shall not be made until such time as the Member is or would upon proper application first be entitled to receive said Social Security Benefit.

(d) Benefit if Retiring under Section 4.02(b) - Except as hereinafter provided and prior to adjustment in accordance with Section 4.04(a), the special early retirement allowance shall be an immediate allowance commencing on the Member's Special Early Retirement Date and shall be equal to the following:

(i) In the case of a Member whose Special Early Retirement Date occurs at or after age 60 with fifteen Years of Vesting Service, the immediate allowance shall be equal to the normal retirement allowance under Section 4.01(b) earned up to the Member's Special Early Retirement Date (prior to the reduction to be made to the Current Service Benefit on account of the Social Security Benefit, if applicable), computed on the basis of his Average Final Compensation (or Earnings, if applicable) and Years of Benefit Service at Special Early Retirement Date; or

(ii) In the case of a Member whose Special Early Retirement Date occurs at or after age 55 but prior to age 60 with fifteen Years of Vesting Service, the special early retirement allowance shall be a deferred allowance commencing on the first day of the calendar month coincident with or next the 60th anniversary of his birth and shall be following equal to the normal retirement allowance under Section 4.01(b) earned up to the Member's Special Early Retirement Date (prior to the reduction to be made to the Current Service Benefit on account of the Social Security Benefit, if applicable), computed on the basis of his Average Final Compensation (or Earnings, if applicable) and Years of Benefit Service at Special Early Retirement Date. The Member, may, however, elect to receive a special early retirement allowance commencing with his Special Early Retirement Date or the date specified in his later request therefore in a reduced amount which shall be equal to such deferred allowance reduced by 5/12 of 1 percent for each month by which the commencement date of his retirement allowance precedes the first day of the calendar month coincident with or next following the 60th anniversary of his birth.

A Member may elect to defer commencement of his special early retirement allowance to any date after the first day of the calendar month coincident with or next following the 60th anniversary of his birth, up to an including his Normal Retirement Date. If the Member elects to defer commencement of his special early retirement allowance, the amount of such retirement allowance shall not be increased to reflect such later commencement date.

The reduction to be made on account of the Social Security Benefit, if applicable, shall be determined on the assumption that the Member has no earnings after his Special Early Retirement Date and, if retirement allowance payments commence prior to the Member's Normal Retirement Date, shall not be made until such time as the Member is or would upon proper application first be entitled to receive said Social Security benefit.

4.03 Vested Benefit

(a) Eligibility - On or after December 31, 1986, a Member who has not reached his Normal Retirement Date shall be entitled to a vested benefit if his services are terminated for reasons other than death or early retirement after he has completed five Years of Vesting Service.

(b) Benefit - Prior to adjustment in accordance with Section

4.04(a), the vested benefit payable to a Member who terminates employment shall be a deferred benefit commencing on the former Member's Normal Retirement Date and shall be equal to the normal retirement allowance computed in accordance with section 4.01(b) on the basis of his Average Final Compensation (or Earnings, if applicable) and Years of Benefit Service at date of termination, with the Social Security Benefit determined on the assumption that he continued in service to his Normal Retirement Date at his rate of Compensation in effect as of his date of termination. If a former Member had completed at least 10 Years of Vesting Service on the date he terminated service, he may elect to receive a benefit commencing on the first day of the calendar month next following the 55th anniversary of his birth or a later date specified in his request therefor, after receipt by the Administrative Committee of written application therefor made by the former Member and filed with the Administrative Committee. Upon such earlier payment, the vested benefit will be reduced by 1/180th for each month up to 60 by which the commencement date of such payments precedes the former Member's Normal Retirement Date and further reduced by 1/360th for each such month in excess of 60.

4.04 Optional Forms of Benefit after Retirement

(a) (i) Automatic Joint and Survivor Option applicable to Current Service Benefit - Unless the Member or the former Member elects otherwise, the retirement allowance attributable to Section 4.01(b)(i) payable to a Member who retires under Section 4.01 or Section 4.02, or the vested benefit attributable to Section 4.01(b)(i) payable to a former Member whose service is terminated under Section 4.03, shall be equal to the retirement allowance or vested benefit attributable to Section 4.01(b)(i), computed in accordance with Section 4.01, 4.02, or 4.03, as the case may be, and multiplied by the appropriate factor contained in Table 1 of Appendix A; such retirement allowance or vested benefit shall be payable during the retired Member's or former Member's life with the provision that after his death a benefit at one-half the rate of the reduced retirement allowance or vested benefit payable to the retired Member or former Member shall automatically be paid during the life of, and to, his spouse, if any; provided, however, in the case of a Member who retires on his Deferred Retirement Date, the appropriate factor shall be determined as of his Normal Retirement Date. It shall also be provided hereunder that the spouse shall have been married to the Member on his retirement date or married to the former Member on the date on which benefit payments to the former Member commence; and provided further that the spouse of a former Member shall not be entitled to receive a benefit (other than provided in Section 4.05) unless the Member or former Member's death occurs after the first day of the month in which his first benefit payment is due or, in the case of a former Member whose vested benefit has not commenced, unless his death occurs after his Normal Retirement Date. In the case of a Member who retires on his Normal Retirement Date or Deferred Retirement Date and who dies before his retirement allowance commences, his spouse shall be entitled to receive a benefit after his death as provided in Section 4.05(d).

If the former Member who is entitled to a vested benefit under Section 4.03 does not wish to provide a benefit to his spouse after his death as provided above, he shall make an election, in accordance with the provisions of Section 4.04(e), to provide that the vested benefit attributable to Section 4.01(b)(i) payable to him under Section 4.03 shall be in the form of a lifetime benefit payable during his own lifetime with no further benefit payable after his death. If a retired Member who is entitled to a retirement allowance under Section 4.01 or Section 4.02 does not wish to provide a benefit to his spouse after his death as provided

above, he shall make an election, in accordance with the provisions of Section 4.04(e), to provide that the retirement allowance payable to him attributable to Section 4.01(b)(i) under Section 4.01 or Section 4.02 shall be in the form of a lifetime benefit payable during his own lifetime with no further benefit payable after his death unless he makes an election in accordance with Section 4.04(b), Section 4.04(c) or Section 4.04(d) of the Plan.

(ii) Automatic joint and survivor benefit applicable to Past Service Benefit - Unless the Member or the former Member elects otherwise in accordance with the provisions of Section 4.04(e), the retirement allowance attributable to Section 4.01(b)(ii) payable to a Member who retires under Section 4.01 or Section 4.02, or the vested benefit attributable to Section 4.01(b) (ii) payable to a former Member under Section 4.03, shall be computed in accordance with Section 4.01, 4.02 or 4.03, as the case may be, and shall be payable during the retired Member's or former Member's life with the provision that after his death a benefit at one-half the rate of such retirement allowance or vested benefit payable to the retired Member or former Member shall automatically be paid during the life of, and to, his spouse; provided, however, that the spouse shall have been married to the Member or former Member on the date on which benefit payments to the retired Member or former Member commence; and provided further that the spouse shall not be entitled to receive a benefit unless the former Member's death occurs after the first day of the month in which his first benefit payment is due or, in the case of a former Member whose vested benefit has not commenced, unless his death occurs after his Normal Retirement Date.

Not more than 90 days before the date of commencement of his benefit, the Administrative Committee shall notify each married Member or married former Member of the general terms and conditions of the Automatic Joint & Survivor Option as described above and the financial effect of an election to receive, in place thereof, a lifetime benefit payable to him during his own lifetime with no further benefit payable after his death. If, prior to the date of commencement of his benefit, a married Member or married former Member exercises his right to file a written request with the Administrative Committee for detailed information as to (i) the amount of his retirement allowance or vested benefit payable on an Automatic Joint & Survivor Option basis and (ii) the amount payable on a lifetime basis, then the period during which he may elect to receive his retirement allowance or vested benefit on a lifetime basis shall be extended, if necessary, to include the 60 days following receipt by the Member or former Member of such information.

A married Member entitled to, but not in receipt of, a vested benefit as of August 23, 1984 who terminated service prior to January 1, 1976 shall have his vested benefit payable in the form of the Automatic Joint and Survivor Option as described in Section 4.04(a)(ii) above, unless he elects otherwise in accordance with the provisions of Section 4.04(e) prior to the date as of which his vested benefit commences.

If a Member is not married on the date his benefit payments commence, his retirement allowance or vested benefit shall be in the form of a lifetime benefit payable during his own lifetime with no further benefit payable after his death unless the Member is eligible for and makes an election in accordance with Section 4.04(c) or Section 4.04(d) of the Plan.

(b) Spouse's Contingent Annuitant Option - Any Member who retires from active service under Section 4.01 or Section 4.02 and who elects not to receive the optional form of

benefit under Section 4.04(a)(i) may elect to convert the retirement allowance attributable to Section 4.01(b)(i), prior to any optional modification under said Section 4.04(a)(i), into one of the following alternative benefits payable to him and his surviving spouse, provided the Member and his spouse are married at the time such election is made. It is provided that:

(i) the retirement allowance attributable to Section 4.01(b)(i) payable to the Member and his spouse under Option I below shall not be less than the retirement allowance that would have been payable without optional modification at retirement under Section 4.01 or Section 4.02 multiplied by the appropriate factor contained in Table 3 of Appendix A, and

(ii) the retirement allowance attributable to Section 4.01(b)(i) payable to the Member and his spouse under Option II below shall not be less than the retirement allowance that would have been payable if the Member had elected Option 1 under Section 4.04(c).

Option I - In order to provide a lifetime benefit to his surviving spouse equal to 50% of the retirement allowance attributable to Section 4.01(b)(i) without optional modification otherwise payable to the Member at retirement under Section 4.01 or Section 4.02, the Member shall elect to receive a reduced retirement allowance payable during his own lifetime equal to 90% of the retirement allowance attributable to Section 4.01(b)(i), without optional modification, otherwise payable to him under said Section.

If the spouse is more than five years older than the Member, the reduced retirement allowance payable to the Member shall be increased for each such additional year in excess of five years, but for not more than 20 years, by one-half of 1%. of the retirement allowance payable to the Member prior to optional modification. If the spouse is more than five years younger than the Member, the reduced retirement allowance payable to the Member shall be further reduced for each such additional year in excess of five years by one-half of 1% of the retirement allowance payable to the Member prior to optional modification.

Option II - In order to provide a lifetime benefit to his surviving spouse equal to the Member's retirement allowance as herein reduced, the Member shall elect to receive a reduced retirement allowance payable during his own lifetime equal to 80% of the retirement allowance attributable to Section 4.01(b)(i) and payable to him at retirement under Section 4.01 or Section 4.02.

If the spouse is more than five years older than the Member, the reduced retirement allowance payable to the Member shall be increased for each such additional year in excess of five years, but for not more than 20 years, by 1% of the retirement allowance payable to the Member prior to optional modification. If the spouse is more than five years younger than the Member, the reduced retirement allowance payable to the Member shall be further reduced for each such additional year in excess of five years by 1% of the retirement allowance payable to the Member prior to optional modification.

(c) Standard Contingent Annuity Option - Any Member who retires from active service under Section 4.01 or Section 4.02 and who was not eligible for or elected not to receive the optional form of benefit under Section 4.04(a) may elect, in accordance with the provisions of Section 4.04(e), to convert the retirement allowance attributable to Section 4.01(b)(i) and/or Section 4.01(b)(ii) otherwise payable to him under Section 4.01 or Section 4.02 into one of the following alternative options. If the contingent annuitant selected is other

than the Member's spouse, the reduced retirement allowance payable to the Member shall in no event be less than 50% of the retirement allowance which would otherwise be payable to the Member prior to optional modification. The optional benefit elected shall be the retirement allowance without optional modification otherwise payable to the Member under Section 4.01 or Section 4.02, multiplied by the appropriate factor contained in Appendix A.

Option 1 - A reduced retirement allowance payable during the 4 Member's life, with the provision that after his death it shall be paid during the life of, and to, the contingent annuitant designated by him; or

Option 2 - A reduced retirement allowance payable during the Member's life with the provision that after his death an allowance at one-half (or any other percentage approved by the Administrative Committee) of the rate of his reduced allowance shall be paid during the life of, and to, the contingent annuitant designated by him.

Option 3 - A reduced retirement allowance payable during the member's life with the provision that if he should die prior to receiving 120 monthly benefit payments, the balance of such payments shall be paid to the beneficiary designated by him, or to his legal representative if there is no surviving designated beneficiary. Option 3 may not be elected if the payment period would extend beyond the combined life expectancy of the Member and his beneficiary.

(d) Any election made under Section 4.04(a), Section 4.04(b), Section 4.04(c), or Section 4.04(d) shall be made on a form approved by the Administrative Committee. Any such election shall become effective 30 days before the due date of the first payment of the retirement allowance or vested benefit provided the appropriate form is filed with and received by the Administrative Committee not less than 30 days before said due date. In the case of a Member retired early under Section 4.02 of the Plan with the payment of the early retirement allowance deferred to commence at a date later than his Early Retirement Date, the survivor's benefits applicable before retirement under Section 4.05 of the Plan shall apply for the period between his Early Retirement Date and the effective date of any election of an optional form of benefit under Section 4.04. The provisions of this Section 4.04(e) shall be administered to accommodate such an early retired Member under rules uniformly applicable to all Members similarly situated.

A married Member's or a married former Member's election made on or after January 1, 1985 of a life only form of payment under Section 4.04(a), or any form of payment under Section 4.04(c) or Section 4.04(d) which does not provide for monthly payments to his spouse for life after the Member's or former Member's death in an amount equal to at least 50% but not more than 100% of the monthly amount payable under that form of payment to the Member or former Member, shall be effective only if (i) it is made within 90 days of benefit commencement, and (ii) his spouse's consent to the election has been received by the Administrative Committee. The spouse's consent shall be witnessed by a notary public or in accordance with uniform rules of the Administrative Committee, by a Plan representative and shall acknowledge the effect on the spouse of the Member's or former Member's election of such form of payment.

The requirement for spouse's consent may be waived by the Administrative Committee in accordance with applicable law.

Any election made under Section 4.04(a), Section 4.04(b), Section 4.04(c) or Section 4.04(d), after having been filed, may be revoked or changed by the Member only by written notice received by the Administrative Committee before the election becomes effective; provided, however, that a married Member may revoke or make n election under Section 4.04(a) any time prior to the date his retirement allowance or vested benefit commences. If, however, the

Member or the spouse or the contingent annuitant or the beneficiary designated in the election dies before the election has become effective, the election shall thereby be revoked.

The benefit payable in accordance with Section 4.04(a), Section 4.04(b), Section 4.04(c) or Section 4.04(d) to the designated spouse or contingent annuitant or beneficiary of a Member or former Member in receipt of a retirement allowance whose death occurs prior to the age at which the Member or former Member is, upon-proper application, first entitled to receive his Social Security Benefit, if applicable, shall be based upon the appropriately reduced retirement allowance which is or would be payable to the Member or former Member after he attained such age.

4.05 Optional Forms of Benefit Before Retirement

The term Beneficiary for purposes of this Section 4.05 shall mean any person designated by the Member to receive benefits payable under this Section; provided, however, that, for any married Member who is first eligible for or continues to be eligible for the coverage provided under this Section 4.05 on and after August 23, 1984, the term "Beneficiary" shall automatically mean the Member's spouse and any prior designation to the contrary will be cancelled, unless the Member designates otherwise. An election on or after January 1, 1985 of a non-spouse Beneficiary by a married Member shall be effective only if the Member's spouse consents to such designation and such consent has been received by the Administrative Committee. The spouse's written consent shall be witnessed by a notary public or, in accordance with uniform rules of the Administrative Committee, by a Plan representative and shall acknowledge the effect on the spouse of the Member's Beneficiary designation. This requirement for spouse's consent may be waived by the Administrative Committee in accordance with applicable law. If the Member dies without an effective designation of Beneficiary, the Member's Beneficiary for purposes of this Section 4.05 shall automatically be the Member's spouse, if any. The Administrative Committee shall resolve any questions arising hereunder as to the meaning of Beneficiary on a basis uniformly applicable to all Members similarly situated.

(a) Death in Service Benefit applicable to Past Service Benefit - In the event of the death prior to the date payments commence of a Member who was a participant of the Plan on December 31, 1975, his spouse to whom he was married not less than one year prior to his date of death shall be entitled to receive a benefit equal to one-half of the Member's retirement allowance attributable to Section 4.01(b)(ii), commencing on what would have been the Member's Normal Retirement Date, or commencing on the first day of the month following the death of the Member, if later, and continuing during the life of such spouse; provided, however, that if a Member dies prior to his Normal Retirement Date, his spouse can elect, by written application filed with the Administrative Committee, to have such payments begin as of the first day of any month following the Member's date of death and prior to what would have been the Member's Normal Retirement Date.

(b) Death in Service Option applicable to Current Service Benefit for Members eligible for Vested Benefits - On and after December 31 1986, the spouse of a Member shall be eligible for a benefit payable to, and for the lifetime of, such spouse if the Member should die:

(i) while in active service after completing five Years of Vesting Service but prior to becoming eligible for early retirement in accordance with Section 4.02(a), provided that the Member had not, by timely written notice to the Pension Administrative Committee and with his spouse's written consent, elected to waive such benefit, or

(ii) after termination of employment on or after August 23, 1984 with entitlement to a vested benefit attributable to Section 4.01(b)(i), but prior to the earlier of the date such benefit commences or his Normal Retirement Date, provided that the Member had

not, by timely written notice to Pension Administrative Committee and with his spouse's written consent, elected to waive such benefit.

The benefit payable to the spouse under this paragraph (b) shall begin as of the month in which the Member's Normal Retirement Date would have occurred. However, in the case of the death of any eligible Member,who had completed 10 Years of Vesting Service prior to attaining his Normal Retirement Date, the spouse may elect to begin receiving payments as of any month following the month in which the Member's 55th birthday would have occurred (or following the month in which his date of death occurred, if later) and prior to what would have been his Normal Retirement Date.

Prior to its reduction set forth below, if applicable, the benefit payable to the spouse covered under this Section 4.05(b) shall be equal to the amount of benefit the spouse would have received if the vested benefit attributable to Section 4.01 (b)(i) to which the Member was entitled at his date of death had commenced as of the month in which his Normal Retirement Date would have occurred in accordance with Section 4.04(a)(i), and the Member had died immediately thereafter. However, if the spouse elects early commencement, the amount of benefit payable to the spouse shall be based on the amount of vested benefit to which the Member would have been entitled if he had requested benefit commencement at that earlier date, reduced in accordance with Section 4.03(b).

The retirement allowance attributable to Section 4.01(b)(i) payable to a Member whose spouse is covered under Section 4.05(b)(ii) or, if applicable, the benefit payable under Section 4.05(b)(ii) to his spouse upon his death, shall be equal to the vested benefit to which he would otherwise be entitled, reduced by the applicable percentages shown below for the period, or periods, that coverage under Section 4.05(b)(ii) was in effect:

Annual Reduction for Spouse's Coverage
After Termination of
Employment Other Than Retirement

| Age | Reduction |
|---|---|
| 60 and over | 1% per year |
| 55 - 59 | 5/10 of 1% per year |
| 50 - 54 | 3/10 of 1% per year |
| 40 - 49 | 2/10 of 1% per year |
| Prior to 40 | 1/10 of 1% per year |

Such annual reduction shall be prorated to include months in which coverage was in effect for at least one day. Under rules uniformly applicable to all Employees similarly situated, the reduction will be waived until the Employee is given a reasonable period of time to waive such coverage and thereby avoid the charge.

Coverage under Section 4.05(b)(i) shall become effective on the later of the date a Member completes the eligibility requirement for a vested benefit or the date the Member marries. Coverage under Section 4.05(b)(ii) shall become effective on the later of the date a Member terminates employment on or after August 23, 1984 under Section 4.03(a) or the date the Member marries. Except in the event of a waiver or revocation as described in paragraph (f) of this Section 4.05, coverage under this Section 4.05(b) shall cease on the earlier of (i) the date the Member meets the eligibility requirements of Section 4.05(c), (ii) the date such Member's marriage is legally dissolved by a divorce decree, or (iii) the date such Member's spouse dies. If the Member or his spouse dies prior to the time such coverage becomes effective, no benefit shall be payable.

(c) Death in Service Option applicable to Current Service Benefit for Members Eligible for Early Retirement -

(i) The Beneficiary of a Member who has reached the 55th anniversary of his birth and completed 10 Years of

Vesting Service shall automatically receive a retirement allowance in the event said Member should die after the effective date of coverage hereunder and before his Early, Special Early or Normal Retirement Date. In the case of a Member retired early under Section 4.02 of the Plan with the payment of the early or special early retirement allowance deferred to commence at a date later than his Early or Special Early Retirement Date, the provisions of this Section 4.05(c) shall also apply to the period between his Early or Special Early Retirement Date and the effective date of any election of an optional form of benefit under Section 4.04 of the Plan, provided the Member does not waive coverage under this Section 4.05(c).

The benefit payable to the Beneficiary shall be equal to one-half of the amount of the Member's retirement allowance under Section 4.01(b)(i) accrued to the date of his death which would have been payable if the Member had retired on his Normal Retirement Date, computed pursuant to and effective election of Option 1 under Section 4.04(c) with his Beneficiary nominated as his contingent annuitant, reduced by one-half of 1% per year for each year between the date on which coverage hereunder became effective and the date of his death. Notwithstanding anything to the contrary herein contained, if the Beneficiary is the Member's Spouse, the benefit payable to such spouse under this Section 4.05(c)(i) shall not be less than the benefit said spouse would have received under Section 4.04(a) had the Member been retired on the first day of the month following the month in which he dies. Coverage hereunder shall be effective on the earlier of (1) the date the Member elected coverage under the provisions of the Plan as in effect prior to August 23, 1984, or (2) August 23, 1984 or, if later, the date the Member first meets the eligibility requirements described in this Section 4.05(c). In the case of a married Member, coverage under Section 4.05(b) shall cease on the date coverage under this Section 4.05(c) is effective, as set forth in the preceding sentence.

(ii) 1% Election - In lieu of the benefit described in subparagraph (i) above, an eligible Member may elect to reduce the retirement allowance attributable to Section 4.01(b)(i), otherwise payable to him under Section 4.01 or Section 4.02, by 1% per year to provide a benefit payable to his Beneficiary upon his death (1) in active service, or (2) during the period between his Early Retirement Date and the effective date of any election of an optional form of benefit under Section 4.04. This benefit shall be equal to the amount of the Member's retirement allowance under Section 4.01(b)(i) accrued to the date of his death which would have been payable if the Member had retired on his Normal Retirement Date, computed pursuant to an effective election of Option 1 under Section 4.04(c) with his Beneficiary nominated as his contingent annuitant, reduced by 1% per year for each year between the date on which the election became effective and the date of his death. If the Member does not make this election until after he is first eligible to do so, it shall become effective one year after the first day of the calendar month coincident with or next following the date the notice is received by the Administrative Committee or on the date specified on such notice, if later. In the case of a married Member, coverage under Section 4.05(b) shall cease on the date coverage under this Section 4.05(c) is effective, as set forth in the preceding sentence.

The benefit payable under this Section 4.05(c)(i) or (ii) shall be payable for the life of the Beneficiary commencing on what would have been the Member's Normal Retirement Date; provided, however, that the Beneficiary of the Member may elect, by written application filed with the Administrative Committee, to have such payments begin as of the

first day of any month following the Member's date of death and prior to what would have been the Member's Normal Retirement Date. If the Beneficiary elects to commence payment of the death benefit prior to what would have been the Member's Normal Retirement Date. If the Beneficiary elects to commence payment of the death benefit prior to what would have been the Member's Normal Retirement Date, the amount of such benefit shall be reduced to reflect such early commencement in accordance with the provisions of Section 4.02(c) or (d), whichever is applicable.

(d) Death in service option after Normal Retirement Date -

(i) Automatic Spouse's Benefit - If a married Member reaches his Normal Retirement Date and does not retire from active service and if he should die after his Normal Retirement Date and before his Deferred Retirement Date, a benefit shall automatically be paid during the life of, and to, his spouse, if any.

The benefit payable to the spouse shall be equal to one-half of the amount of the Member's normal retirement allowance accrued to his Normal Retirement Date, adjusted with respect to the benefit determined under Section 4.01(b)(i) as if the Member had elected Option 1 under Section 4.04(c) with his spouse as the contingent annuitant thereunder and as if the spouse had been the age she would have been on the 65th anniversary of the Member's birth. Notwithstanding anything to the contrary herein contained, the benefit payable to such spouse shall not be less than the benefit said spouse would have received under Section 4.04(a) had the Member been retired on his Normal Retirement Date.

If a married Member does not wish to provide a benefit under this Section 4.05(d)(i) with respect to the benefit determined under Section 4.01(b)(i) payable to his spouse in the event of his death in active service before his Deferred Retirement Date, he shall make an election to waive such coverage. For such an election by a married Member to be effective, the Administrative Committee must have received a written consent to such election by the Member's spouse. This spouse's written consent shall be witnessed by a notary public or, in accordance with uniform rules of the Administrative Committee, by a Plan representative and shall acknowledge the effect on the spouse of such election. This requirement for spouse's consent may be waived by the Administrative Committee in accordance with applicable law.

(ii) Other Options Available - If a Member reaches his Normal Retirement Date and does not retire from active service, such Member shall make an election indicating whether or not he wishes to provide that, if he should die after his Normal Retirement Date and before his Deferred Retirement Date, a benefit shall be paid during the life of, and to, any person designated by him. No married Member shall make an election under one of the following optional forms of benefits unless he has elected not to receive the benefit under Section 4.05(d)(i).

No Death Protection - If a Member does not wish to provide a benefit payable to anyone with respect to the benefit determined under Section 4.01(b)(i) in the event of his death before Deferred Retirement Date, he shall so elect. In such event, no further benefit shall be payable to anyone after his death prior to his Deferred Retirement Date with respect to the benefit determined under Section 4.01(b)(i).

100% Election - The Member may elect to reduce the normal retirement allowance to which he would otherwise be entitled at his Deferred Retirement Date under Section 4.01(b)(i) by one-half of 1% per year for each year

between his Normal Retirement Date and the earliest of the Member's Deferred Retirement Date, the date the designated person dies, the date the Member dies, or the date the election is revoked as provided in Section 4.05(d). The benefit payable to the designated Beneficiary shall be equal to (1) the amount of the Member's normal retirement allowance accrued to his Normal Retirement Date, (2) reduced by one-half of 1% per year for each year between his Normal Retirement Date and the date of his death, and (3) further adjusted as if the Member had elected Option 1 under Section 4.04(c) at Normal Retirement Date with the designated person nominated as his contingent annuitant thereunder and as if the designated person had been the age he would have been on the 65th anniversary of the Member's birth.

Post-65 Standard Contingent Annuity Option Election - The Member may elect to provide that, if he should die after his Normal Retirement Date and before his Deferred Retirement Date, a benefit shall be payable during the life of, and to, the Beneficiary designated by him. The benefit payable to the designated Beneficiary shall be equal to (1) one-half of the amount of the Member's normal retirement allowance accrued to his Normal Retirement Date, but adjusted as if the Member had elected Option 1 under Section 4.04(c) with the designated person nominated as his contingent annuitant thereunder and as if the designated person had been the age he would have been on the 65th anniversary of the Member's birth. Notwithstanding anything to the contrary herein contained, if the designated Beneficiary is the member's spouse, the benefit payable to such spouse under this election shall not be less than the benefit said spouse would have received under Section 4.04(a) had the Member been retired on his Normal Retirement Date.

If a retired Member or a former Member is re-employed at or after his Normal Retirement Date, his rights with respect to the election of an optional form of benefit under the Plan shall be determined in accordance with Section 4.09(b).

(e) Election of coverage by former Members who terminated employment on or after January 1, 1976 and prior to August 23, 1984. Notwithstanding the provisions of Section 4.05(b), a former Member whose employment terminated on or after January 1, 1976 and prior to August 23, 1984, who is married and entitled to a vested benefit pursuant to the provisions of Section 4.03 but who is not yet in receipt thereof, may elect, prior to the commencement of such vested benefit, to have the provisions of Section 4.05(b) apply to him. Such coverage shall become effective on the first of the month coincident with or following the date the completed election form is received by the Administrative Committee.

(f) Election Procedure - Any election made under Section 4.05 shall be made on a form approved by the Administrative Committee. The Administrative Committee shall furnish to each married Member a written explanation in nontechnical language which describes (i) the terms and conditions of the benefit payable to a Member's spouse under Section 4.05(b), (c) or (d), (ii) the Member's right to make, and the effect of, an election to waive the such benefit, (ii) the rights of the Member's spouse, and (iv) the right to make, and the effect of, a revocation of such a waiver. Such written explanation shall be furnished (i) in the case of a Member in active service, within the three-year period immediately preceding the first day of the Plan Year in which the Member would first complete the eligibility requirements for an early or normal retirement allowance, and (ii) in the case of a Member who terminates employment with entitlement to a vested benefit prior to age 35, as soon as practicable within the 12-month period beginning on his date of termination.

An election to waive the spouse's benefit payable under Section 4.05(b), (c) or (d), or any revocation of that election, may be made at any time during the period which begins on the first day of the Plan Year in which the

Member would first complete the eligibility requirements for an early or normal retirement allowance, and ends on the date payment of the Member's retirement allowance or vested benefit commences. However, in the case of a Member who has terminated employment, the period during which he may make an election to waive this spouse's benefit coverage with respect to his benefit accrued before his termination of employment shall begin not later than the date his employment terminates. An election to waive this spouse's benefit coverage or any revocation of that election shall be made on a form provided by the Pension Administrative Committee, and any such waiver of coverage shall require the written consent of the spouse, duly witnessed by a notary public, unless the spouse's consent is waived by the Pension Administrative Committee in accordance with applicable law. The election or revocation shall be effective when the completed form is filed with the Pension Administrative Committee.

Any other election made under Section 4.05(c) or (d) may be changed or revoked either before or after it becomes effective. If the designated Beneficiary dies after the effective date of the election, the election is thereby cancelled and there shall be no further reduction to the Member's retirement allowance for the period between the date of the designated Beneficiary's death and the Member's retirement date unless the Member makes a new election in accordance with this Section. Such Member is entitled to make a new election within 60 days following the designated Beneficiary's death or a subsequent marriage. Such new election will become effective on the first day of the calendar month coincident with or next following the date the notice is received by the Administrative Committee. If the Member does not make a new election within said 60 days, any subsequent election shall become effective one year after the first day of the calendar month coincident with or next following the date the notice is received by the Administrative Committee or on the date specified in such notice, if later.

If the person designated in an election under Section 4.05(c) or (d) is the Member's spouse and if the Member's marriage to said spouse is legally dissolved by a divorce decree, the election shall be automatically revoked as of the effective date of the divorce decree. Such Member is entitled to make a new election within 60 days following the effective date of the divorce decree or a subsequent marriage. Such new election shall become effective on the first day of the calendar month coincident with or next following the date the notice is received by the Administrative Committee. If the Member does not make a new election within said 60 days, any subsequent election shall become effective one year after the first day of the calendar month coincident with or next following the date the notice is received by the Administrative Committee or on the date specified in such notice, if later.

If the Member dies prior to the time the election becomes effective, the election shall be revoked.

4.06 Maximum Benefits

(a) The maximum annual normal, early retirement allowance, death in service benefit, or vested benefit attributable to Company contributions, payable after adjustment for any optional elections under Section 4.05(b), or Options 1 or 2 of Section 4.05(c), provided the Member's spouse is the designated contingent annuitant, when added to any retirement allowance attributable to contributions of the Company or an Affiliate provided to a Member under any other qualified defined benefit plan, shall be equal to the lesser of:

(i) $90,000 adjusted in accordance with regulations issued under Section 415 of the Internal Revenue Code by the Secretary of the Treasury or his delegate; provided, however, that each year in which such an adjustment is made, it shall not become effective prior to January 1 of such year, or

(ii) the Member's average annual remuneration during the three consecutive Years of Benefit Service affording the highest such average, or during all of Years of Benefit Service if less than three years; provided that if the Member has not completed 10 Years of Benefit Service, such maximum annual retirement allowance or vested benefit shall be reduced by the ratio which the number of Years of Benefit Service bears to 10.

(b) If the benefit begins before the Member's social security retirement age (as defined in Section 415(b) of the Code), the $90,000 limitation set forth in this Section shall be reduced:

(i) for the period between the Member's attainment of age 62 and the Member's social security retirement age, in a manner that is consistent with the reduction for old-age social security benefits commencing before such Member's social security retirement age;

(ii) for the period before the month in which the Member attains age 62, actuarially in accordance with the an interest rate assumption which is the greater of 5% or the interest rate used in Appendix A and the mortality assumption used in Appendix A.

In the case of a Member whose benefits hereunder commence after his attainment of social security retirement age, the $90,000 limitation in this Section shall be increased so that it is equivalent of such a benefit commencing at the Member's social security retirement age, using the interest rate assumption of the lesser of 5% or the interest rate used in Appendix A and the mortality assumption used in Appendix A.

(c) In the case of a Member who is participating in The Scotts Company Profit Sharing and Savings Plan or any other defined contribution plan of an Affiliate, the maximum benefit limitation shall not exceed the adjusted limitation computed as follows:

(i) Determine the "defined contribution fraction" as set forth in sub-paragraph (i) of the following paragraph (d).

(ii) Subtract the result of (i) from one (1.0) with the result not to be less than zero.

(iii) Multiply the dollar amount in Section 4.06(a)(i) by 1.25.

(iv) Multiply the amount described in Section 4.06(a)(ii) by 1.4.

(v) Multiply the lesser of the result of (iii) or the result of (iv) by the result of (ii) to determine the adjusted maximum benefit limitation applicable to the Member.

(d) For purposes of this Section 4.06(d)

(i) The "defined contribution fraction" for a Member who is participating in The Scotts Company Profit Sharing and Savings Plan or any other defined contribution plans of an Affiliate shall be a fraction the numerator of which is the sum of the following:

(A) Affiliates' contributions credited to the Member's accounts under any defined contribution plan or plans, including the amount of any contribution made on a Member's behalf on a salary reduction basis under any such plan qualified under Section 401(k) of the Code.

(B) the Member's contributions to such plan or plans, and

(C) any forfeitures allocated to his accounts under such plan or plans, but reduced by any amount permitted by regulations promulgated by the Commissioner of Internal Revenue; and the denominator of which is the lesser of the following amounts determined for each of the Member's Years of Vesting Service:

(D) 1.25 multiplied by the maximum dollar amount allowed by law for that year; or

(E) 1.4 multiplied by 25% of the Member's remuneration for that year. At the direction of the Administrative Committee, the portion of the denominator of that fraction with respect to calendar years before 1983 shall be computed as the denominator for 1982, as determined under the law as then in effect, multiplied by a fraction the numerator of which is the lesser of:

(F) $51,875, or

(G) 1.4 multiplied by 25% of the Member's remuneration for 1981, and the denominator of which is the lesser of:

(H) $41,500, or

(I) 25% of the Member's remuneration for 1981;

(ii) a "defined contribution plan" means a qualified pension plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to that participant's accounts, subject to (iii) below;

(iii) a "defined benefit plan" means any qualified pension plan which is not a defined contribution plan; however in the case of a defined benefit plan which provides a benefit which is based partly on the balance of the separate account of a participant, that plan shall be treated as a defined contribution plan to the extent benefits are based on the separate account of a participant and as a defined benefit plan with respect to the remaining portion of the benefits under the plan; and

(iv) the term "remuneration" for purposes of this Section 4.06 with respect to any Member shall mean the wages, salaries and other amounts paid to such Member by the Company for personal services actually rendered, determined after any reduction for contributions made on his behalf on a salary reduction basis under any plan qualified under Section 401(k) of the Internal Revenue Code, and shall include, without being limited to, bonuses, overtime payments and commissions; and shall exclude deferred compensation, stock options and other distributions which receive special tax benefits under the Internal Revenue Code.

(e) Notwithstanding the preceding paragraphs of this Section, in no event shall a Member's annual retirement allowance or vested benefit payable under this Plan be less than the allowance or benefit which the Member had accrued under the Plan as of the end of the plan year beginning in 1982; provided, however, that in determining that benefit no changes in the terms and conditions of the Plan on or after July 1, 1982 shall be taken into account.

4.07 No Duplication

There shall be deducted from any retirement allowance or vested benefit payable under this Plan the part of any pension or comparable benefit, including any lump sum payment,

provided by employer contributions which the Company, or an Affiliate is obligated to pay or has paid to or under any pension plan or other agreement (except for any pension plan or other agreement which provides for the payment of that portion of any benefits accrued under the Plan but not payable from the Plan on account of Section 4.06) with respect to any service which is included in Years of Benefit Service for purposes of computation of benefits under this Plan.

4.08 Payment of Benefits

Unless otherwise provided under an optional benefit elected pursuant to Section 4.04 or under the survivor's benefits available under Section 4.05, all retirement allowances, vested benefits or other benefits payable under the Plan viII be paid in monthly installments as of the beginning of each month beginning with (i) the month in which a Member has reached his Normal Retirement Date and has retired from active service or (ii) the month in which a Member has reached his Deferred Retirement Date and has retired from active service or (iii) the month in which a Member upon proper application has requested commencement of his vested benefit or early retirement allowance or (iv) the month in which benefits under an optional benefit under Section 4.04 or the survivor's benefits under Section 4.05 become payable; and such monthly installments shall cease with the payment for the month in which the recipient dies. In no event shall a retirement allowance or vested benefit be payable to a Member who continues in or resumes active service with the Company or an Affiliate for any period between his Normal Retirement Date and Deferred Retirement Date, except as provided in Section 4.09(c)(i).

In any case, upon direction of the Administrative Committee, a lump sum payment equal to the retirement allowance multiplied by the appropriate factor contained in Table 6 or 7 of Appendix A shall be made in lieu of any retirement allowance payable to a Member or his spouse or contingent annuitant, or any vested benefit payable to a former Member or his spouse, if the present value of such allowance or benefit amounts to $3,500 or less. In no event, however, shall that adjustment factor produce a lump sum that is less than the amount determined by using the interest rate assumption for immediate annuities used by the Pension Benefit Guaranty Corporation for valuing benefits for single employer plans that terminate on January 1 of the plan year in which the date of distribution occurs. The lump sum payment may be made at any time on or after the date the Member has terminated employment and prior to benefit commencement. Any lump sum distribution shall be paid in accordance with Section 4.11.

In the event that the Administrative Committee shall find that a person to whom benefits are payable is unable to care for his affairs because of illness or accident or is a minor or has died, then, unless claim shall have been made therefor by a legal representative, duly appointed by a court of competent jurisdiction, the Administrative Committee may direct that any benefit payment due him be paid to his spouse, a child, a parent or other blood relative, or to a person with whom he resides, and any such payment made shall be a complete discharge of the liabilities of the Plan therefor.

Before any benefit shall be payable to a Member, a former Member, or other person who is or may become entitled to a benefit hereunder, such Member, former Member, or other person shall file with the Administrative Committee such information as it shall require to establish his rights and benefits under the Plan.

Notwithstanding anything contained in the Plan to the contrary, the Plan retirement allowance or vested benefit of a Member shall commence not later than the April 1 following the calendar year in which he attains age 70-1/2 even if he continues to be a Member after such date.

4.09 Reemployment of Former Member or Retired Member

(a) Cessation of benefit payments. If a former Member or a retired Member entitled to or in receipt of a vested benefit or retirement allowance is reemployed by the Company or an Affiliate as an Employee, any benefit

payments he is receiving shall cease. Notwithstanding the preceding sentence, if a retired Member is reemployed on a part-time basis, his benefit payments shall not be discontinued until he has completed a Year of Eligibility Service, measured from his date of reemployment.

(b) Optional forms of retirement allowances

(i) If the Member is reemployed after his Normal Retirement Date and his benefit payments are discontinued, any previous election of an optional benefit in effect shall continue in effect and, in the event of the Member's death during reemployment, any payments under such effective optional benefit election shall commence.

(ii) If the Member is reemployed prior to his Normal Retirement Date and his benefit payments are discontinued, any previous election of an optional benefit under Section 4.04 or the survivor's benefits under Section 4.05 shall be revoked and the terms and conditions of subparagraph (iii) of this Section 4.09(b) shall apply.

(iii) Any Member described in subparagraph (ii) above who is at least age 55 with 10 or more Years of Vesting Service when he is reemployed prior to Normal Retirement Date shall, with respect to the vested benefit or retirement allowance earned prior to his reemployment and with respect to any additional benefits earned during reemployment, be covered by the provisions of Section 4.05(c). Coverage under Section 4.05(c) shall be effective on the first day of the calendar month coincident with or next following the date of his reemployment and any previous election shall remain in effect until such date. If, within 30 days after reemployment, the Member elects coverage under Section 4.05(c)(ii), in lieu of coverage under Section 4.05(c)(i), such coverage shall be effective as of the first day of the calendar month coincident with or next following the date of his reemployment. If the Member does not make an election under Section 4.05(c)(ii) within 30 days after his reemployment prior to Normal Retirement Date or he waives such coverage, any later election shall become effective one year after the first day of the calendar month coincident with or next following the date notice is received by the Administrative Committee or on the date specified in such notice, if later.

Any former Member described in subparagraph (ii) above who is less than age 55, but who has completed 10 or more Years of Vesting Service at such reemployment, shall be covered by the provisions of Section 4.05(b) until he attains age 55, and such coverage shall be effective on the first day of the calendar month coincident with or next following the date of his reemployment; any previous election shall remain in effect until such date. Such former Member shall be covered by the provisions of Section 4.05(b) and shall be eligible for coverage under Section 4.05(c) upon attaining age 55, and such coverage shall be in accordance with the provisions of such Sections and shall apply with respect to his vested benefit earned prior to his reemployment, as well as any additional benefits earned during reemployment.

(c) Benefit payments at subsequent termination or retirement

(i) If the Member is reemployed after his Normal Retirement Date and his benefit payments are discontinued pursuant to Section 4.09(a), payment of the same vested benefit or retirement allowance he was receiving or to which he was entitled at reemployment shall be resumed or shall begin at his subsequent termination of employment or retirement occurring not later than his Deferred Retirement Date. However, in accordance with the

procedure established by the Administrative Committee on a basis uniformly applicable to all Employees similarly situated, his monthly benefit payments shall be adjusted, if necessary, in compliance with Title 29 of the Code of Federal Regulations Section 2530.203-3, to reflect the amount of the monthly benefits that would have been payable, had he not returned to service, with respect to each month during the reemployment period in which he is not credited with at least eight days of service.

(ii) If the Member is reemployed prior to his Normal Retirement Date and his benefit payments are discontinued, either immediately or upon completion of one Year of Eligibility Service, the Administrative Committee shall, in accordance with rules uniformly applicable to all persons similarly situated, determine the amount of vested benefit or retirement allowance which shall be payable to such Member upon his subsequent termination of employment or retirement. Such vested benefit or retirement allowance shall not be less than the original amount of vested benefit or retirement allowance previously earned by such Member in accordance with the terms of the Plan in effect during such previous employment plus any additional vested benefit or retirement allowance earned during his period of reemployment, adjusted in accordance with the provisions of Section 4.05(b)(ii), Section 4.05(c) or Section 4.05(d), if applicable. Notwithstanding anything to the contrary contained in this Plan, the vested benefit or retirement allowance for Years of Benefit Service credited prior to the date of reemployment shall not be re-calculated or increased unless and until the Member has completed a Year of Eligibility Service and, in such event, the re-calculated vested benefit or retirement allowance shall be reduced by an amount determined by dividing the sum of any payments previously received by the former Member or retired Member by the appropriate factor contained in Table 6 of Appendix A.

(d) Questions relating to reemployment of former Members or retired Members. If, at subsequent termination of employment or retirement, any question shall arise under this Section 4.09 as to the calculation or re-calculation of a reemployed former Member's or retired Member's vested benefit or retirement allowance or election of an optional form of benefit under the Plan, such question shall be resolved by the Administrative Committee on a basis uniformly applicable to all Members similarly situated.

4.10Top-Heavy Provisions

(a) For purposes of this Section 4.10, the Plan shall be "top-heavy" with respect to any plan year beginning on or after January 1, 1984 if, as of the last day of the preceding plan year, the present value of the cumulative accrued benefits under the Plan for "key employees" exceeds 60 per cent of the present value of the cumulative accrued benefits under the Plan for all Employees or former Employees, determined as of the applicable "valuation date". For purposes of this Section 4.10, "valuation date" shall mean the date as of which annual plan costs are or would be computed for minimum funding purposes with respect to such preceding plan year. The determination as to whether an Employee or former Employee will be considered a "key employee" shall be made in accordance with the provisions of Section 416(i)(1) and (5) of the Internal Revenue Code and any regulations thereunder, and, where applicable, on the basis of the Employee's or former Employee's remuneration from the Company or Associated Company as reported on Form W-2 for the applicable Plan Year. The present value of accrued benefits shall be computed in accordance with Section 416(g)(3) and (4)(B) of the Internal Revenue Code on the basis of the same mortality and interest rate assumptions used to value the Plan. For purposes of determining whether the Plan is top-heavy, the present value of accrued benefits under the Plan will be combined with the present value of accrued benefits or account balances under any other qualified plan of the Company or an Associated Company in which there are participants who are key employees or which enables this Plan to meet the requirements of Section 401(a)(4) or 410 of the Internal Revenue Code, and, in the Company's discretion, may be combined with the present value of accrued benefits or account balances under any other qualified plan of the Company or an Associated Company in which all participants in that plan are non-key employees, provided that the resulting aggregation group will continue to qualify under Section 401(a)(4) or 410 of said Code.

(b) The following provisions shall be applicable to Members for any plan year with respect to which the Plan is top-heavy:

(i) In lieu of the vesting requirements specified in Section 4.03, the following vesting schedule shall apply:

| Years of Vesting Service | Percentage Vested |
|---|---|
| Less than 2 years | 0% |
| 2 years | 20 |
| 3 years | 40 |
| 4 years | 60 |
| 5 or more years | 100 |

(ii) The accrued benefit of a Member who is a non-key employee shall not be less than two per cent of his "average remuneration" multiplied by the number of Years of Vesting Service, not in excess of 10, during the plan years for which the Plan is top heavy. Such minimum benefit shall be payable at a Member's Normal Retirement Date. If payments commence at a time other than the Member's Normal Retirement Date, the minimum accrued benefit shall be of equivalent actuarial value to such minimum benefit, as determined on the basis of the actuarial assumptions stated in Section 4.10(a) above. For purposes of this Section 4.10(b), "average remuneration" shall mean the average annual remuneration of a Member, based on amounts reported on Form W-2, for the five consecutive Years of Vesting Service after December 31, 1983 during which he received the greatest aggregate remuneration from the Company or an Associated Company, excluding any remunera-tion for service after the last plan year with respect to which the Plan is top-heavy.

(iii) The multiplier "1.25" in Subsections (c)(iii) and (d)(i)(D) of Section 4.06 shall be reduced to "1.0", and the dollar amount "$51,875" in Sub-section (d)(i)(F) of Section 4.06 shall be reduced to "$41, 500."

(c) If the Plan is top-heavy with respect to a plan year and ceases to be top-heavy for a subsequent plan year, the following provisions shall be applicable:

(i) The accrued benefit in any such subsequent plan year shall not be less than the minimum accrued benefit provided in Section 4.10(b)(ii) above, computed as of the end of the most recent plan year for which the Plan was top-heavy.

(ii) If a Member has completed less three Years of Vesting Service on or before the last day of the most recent plan year for which the Plan is top-heavy, the vesting provisions of Section 4.03 shall again be applicable; provided, however, that in no event shall the vested percentage of a member's accrued benefit be less than the percentage determined under Section 4.10(b)(i) above as of the last day of the most recent plan year for which the Plan was top-heavy. Any Member with three or more Years of Vesting Service at the time the Plan ceases to be top- heavy may elect to have the vesting schedule contained in the Section remain applicable.

4.11 Elective Rollovers

Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under the Plan, a distributee may elect, at the time and in the manner prescribed by the Administrative Committee, to have all or any portion of an lump sum distribution (except to the extent such distribution is required under Section 401(a)(9) of the Code) made on or after January 1, 1993 paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

The following definitions will apply for purposes of this section:

(a) Eligible retirement plan: An eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a) or a qualified trust described in Code Section 401(a) that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the Surviving Spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(b) Distributee: A distributee includes an Employee or former Employee. In addition, the Spouse or Surviving Spouse of an Employee or former Employee is a distributee with regard to the interest of the Spouse or Surviving Spouse.

(c) Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

## ARTICLE 5 - ADMINISTRATION OF PLAN

5.01 The responsibility for carrying out all phases of the administration of the Plan, except those phases connected with the management of assets, shall be placed in a Administrative Committee appointed from time to time by the Board of Directors to serve at the pleasure of the Board of Directors. The Board of Directors may also designate alternate members to act in the absence of the regular members. The Board of Directors shall designate a Chairman of the Administrative Committee from among the regular members and a Secretary who may be, but need not be, one of its members. Any member of the Administrative Committee may resign by delivering his written resignation to the Board of Directors and the Secretary of the Administrative Committee.

5.02 The Administrative Committee is designated as a named fiduciary within the meaning of Section 402(a) of the Employee Retirement Income Security Act of 1974.

5.03 The Administrative Committee shall hold meetings upon such notice, at such place or places, and at such time or times as it may determine. The action of at least a majority of the members, or alternate members, of such Committee expressed from time to time by a vote at a meeting or in writing without a meeting shall constitute the action of the Committee and shall have the same effect for all purposes as if assented to by all members of such Committee at the time in office. No member of the Committee shall receive any compensation for his service as such.

5.04 The Administrative Committee may authorize one or more of its number or any agent to execute or deliver any instrument or make any payment on its behalf; may retain counsel, employ agents and such clerical, accounting and actuarial services as it may require in carrying out the provisions of the Plan for which it has responsibility; may allocate among its members or to other persons all or such portion of its duties hereunder as it, in its sole discretion, shall decide.

5.05 Subject to the limitations of the Plan, the Administrative Committee from time to time shall establish rules or regulations for the administration of the Plan and the transaction of its business. The Administrative Committee shall have the exclusive right, except as to matters which the Board of Directors from time to time may reserve to itself, to interpret the Plan and to decide any and all matters arising hereunder, including the right to remedy possible ambiguities, inequities, inconsistencies or omissions. The Administrative Committee shall also have the right to exercise powers otherwise exercisable by the Board of Directors hereunder to the extent that the exercise of such powers does not involve the management of Plan assets nor, in the judgment of the Administrative Committee, a substantial number of persons. In addition, where the number of persons is deemed to be substantial, the Administrative Committee shall have the further right to exercise such powers as may be delegated to the Administrative Committee by the Board of

Directors.

Subject to applicable Federal and State Law, all interpretations, determinations and decisions of the Administrative Committee or the Board of Directors in respect of any matter hereunder shall be final, conclusive and binding on all parties affected thereby.

5.06 The Investment Committee appointed from time to time by the Board of Directors shall be responsible for managing the assets under the Plan. Said Committee is designated a named fiduciary of the Plan within the meaning of Section 402(a) of the Employee Retirement Income Security Act of 1974, and, shall have the authority, powers and responsibilities delegated and allocated to it by resolutions of Board of Directors, including, but not by way of limitation, the authority to establish one or more trust for the Plan pursuant to trust instrument(s) approved or authorized by the Committee -- subject to the provisions of such trust instrument(s) -- to

(i) provide direction to the trustee(s) thereunder, including, but not by way of limitation, the direction of investment of all or part of the Plan assets and the establishment of investment criteria, and

(ii) appoint and provide for use of investment advisors and investment managers.

In discharging its responsibility, the Committee shall evaluate and monitor the investment performance of the trustee(s) and investment manager, if any.

5.07 The members of the Committees shall use that degree of care, skill, prudence and diligence in carrying out their duties that a prudent man, acting in a like capacity and familiar with such matters, would use in his conduct of a similar situation. A member of either Committee shall not be liable for the breach of fiduciary responsibility of another fiduciary unless:

(i) he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach; or

(ii) by his failure to discharge his duties solely in the interest of the Members and other persons entitled to benefits under the Plan, for the exclusive purpose of providing benefits and defraying reasonable expenses of administering the Plan not met by the Company, he has enabled such other fiduciary to commit a breach; or

(iii) he has knowledge of a breach by such other fiduciary and does not make reasonable efforts to remedy the breach; or

(iv) if the Committee of which he is a member improperly allocates responsibilities among its members or to others and he fails to review prudently such allocation.

5.08 Actions by the Company

Any action which may be taken and any decision which may be made by the Company under the Plan (including authorization of Plan amendments or termination) may be made by: (a) the Board of Directors; or (b) any committee to which the Board of Directors delegates discretionary authority with respect to the Plan.

## ARTICLE 6 - CONTRIBUTIONS

6.01 It is the intention of the Company to continue the Plan and make regular contributions to the Trustee each year in such amounts as are necessary to maintain the Plan on a sound actuarial basis and to meet minimum funding standards as prescribed by any applicable law. However, subject to the provisions of Article 8, the Company may reduce or suspend

its contributions for any reason at any time. Any forfeitures shall be used to reduce the Company contributions otherwise payable, and will not be applied to increase the benefits any Member or other person would otherwise receive under the Plan.

6.02 In the event that the Commissioner of Internal Revenue, on timely application made after the Effective Date of the Plan determines that the implementing trust does not constitute an exempt trust, or refuses, in writing, to issue a determination as to whether the trust is an exempt trust, the Company's contributions made on or after the date for which such determination or refusal is applicable shall be returned to the Company without interest. In the event that all or part of the Company's deductions under Section 404 of the Internal Revenue for contributions to the Plan are disallowed by the Internal Revenue Service, the portion of the contributions to which such disallowance applies may be returned to the Company without interest at its request. Either such return shall be made within one year after either the denial of qualification or disallowance of deductions, as the case may be.

## ARTICLE 7 - MANAGEMENT OF FUNDS

7.01 All the funds of the Plan shall be held by a Trustee or Trustees including any member(s) of the Investment Committee, appointed from time to time by said Committee in one or more trusts under a trust instrument or instruments approved or authorized by said Committee for use in providing the benefits of the Plan and paying any expenses of the Plan not paid directly by the Company; provided, however, that the Investment Committee may, in its discretion, also enter into any type of contract with any insurance company or companies selected by it for providing benefits under the Plan.

7.02 Prior to the satisfaction of all liabilities with respect to persons entitled to benefits, except for the payment of expenses, no part of the corpus or income of the funds shall be used for, or diverted to, purposes other than for the exclusive benefit of Members and other persons who are or may become entitled to benefits hereunder, or under any trust instrument or under any insurance contract made pursuant to this Plan.

7.03 Subject to applicable Federal and State law, no person shall have any interest in or right to any part of the corpus or income of the funds, except as and to the extent expressly provided in the Plan and in any trust instrument or under any insurance contract made pursuant to this Plan.

7.04 Subject to applicable Federal and State law, the Company shall have no liability for the payment of benefits under the Plan nor for the administration of the funds paid over to the Trustee(s) or insurer(s) except as expressly provided under this Plan.

7.05 Except to the extent permitted by applicable Federal law, no part of the corpus or income of the trust shall be invested in securities of the Company or of any Associated Company or in real property and related personal property which is leased to the Company or any Associated Company or in the securities of the Trust or Trustees or their subsidiary companies, if any.

7.06 Notwithstanding the foregoing, the Company may recover without interest the amount of its contributions to the Plan made on account of a mistake in fact, provided that such recovery is made within one year after the date of such contribution.

## ARTICLE 8 - CERTAIN RIGHTS AND LIMITATIONS

The following provisions shall apply in all cases whenever a Member or any other person is affected thereby.

8.01 The Company may terminate the Plan for any reason at any time. Upon termination or partial termination of the Plan, the rights of affected Members or other persons to benefits accrued to date of such termination or partial termination, to the extent then funded, shall be non-forfeitable. In the event of termination or partial termination, the funds of the

Plan shall be used for the exclusive benefit of Members or other persons who are or may become entitled to benefits hereunder as of the date of such termination or partial termination, except that any funds not required to satisfy all liabilities of the Plan for benefits because of erroneous actuarial calculations shall be returned to the Company only upon termination of the trust. In the event of such termination or partial termination, the funds of the Plan shall be applied in the following manner:

First,

(i) each Member or other person in receipt of a benefit on the date three years prior to the date of Plan termination,

(ii) each Member who would have been in receipt of a benefit on the date three years prior to such date of Plan termination and if he had retired prior to that date, and

(iii) each spouse, contingent annuitant or beneficiary of a deceased Member who was in receipt of a benefit on the date three years prior to the date of Plan termination or would have been in receipt of a benefit had he retired prior to such date, shall be entitled to a share equal to the reserve determined to be required for the benefit accrued under the Plan to the date three years prior to the date of such Plan termination, or, if earlier, to the date of a Member's retirement or termination of service, and based on the provisions of the Plan as in effect during the five year period ending on such date of Plan termination when the said benefit was or would have been the lowest, and

Second, each Member or other person in receipt of a benefit and each Member who is eligible to retire on the date of Plan termination shall be entitled to a share equal to the reserve determined to be required for his "priority benefits", as hereinafter defined, reduced by his shares under paragraph First above; and

Third, each Member or former Member not eligible to retire on the date of Plan termination but who has then met the eligibility requirements for, or is then entitled to receive, a vested benefit shall be entitled to 2 share equal to the reserve determined to be required for his "priority benefits", as hereinafter defined; and

Fourth, each Member or other person in receipt of a benefit and each Member who is eligible to retire on the date of Plan termination shall be entitled to a share equal to the reserve determined to be required for his total retirement allowance, reduced by his shares under paragraphs First and Second above; and

Fifth, each Member or former Member not eligible to retire on the date of Plan termination but who has then met the eligibility requirements for, or is then entitled to receive, a vested benefit shall be entitled to a share equal to the reserve determined to be required for his total vested benefit, reduced by his shares under paragraph Third above; and

Sixth, each other Member not included in the above paragraphs on the date of Plan termination shall be entitled to a share equal to the reserve determined ;Lo be required for his benefit accrued under the Plan.

Each spouse of a deceased Member, who is entitled to receive a surviving spouse's benefit but who has not yet elected (or who is not yet eligible to elect) to begin receiving it, shall be entitled to a share equal to the reserve computed to be required for such surviving spouse's benefit, and such share shall be attributed to the appropriate priority category described above in accordance with such rules and regulations as the Pension Benefit Guaranty Corporation shall prescribe.

If the funds are insufficient to provide in full for the

shares under paragraph First, Second or Third, each share under each such paragraph First, Second or Third shall be reduced pro rata.

If the funds are insufficient to provide in full for the shares under paragraph Fourth, Fifth or Sixth after provision for all shares under previous paragraphs, the funds available for allocation under each such paragraph Fourth, Fifth or Sixth shall be allocated first to provide the shares under each such paragraph without regard to any benefits resulting from any amendments to the Plan which became effective within the 60 months preceding the date of Plan termination and, if the funds are insufficient to provide such shares in full, each such share shall be reduced pro rata. If the funds are sufficient to provide such shares in full, any remaining assets shall be allocated to provide the shares under such paragraph based on the benefits resulting from each successive amendment until the first such amendment as to which the funds are insufficient, and the shares with respect to such amendment shall be reduced pro rata.

The Administrative Committee may require that any such shares be withdrawn in cash, or in immediate or deferred annuities or other periodic payments as the Administrative Committee may determine.

"Priority benefit" for purposes of paragraphs Second and Third of this Section 8.01 shall mean

(a) the amount of a Member's retirement allowance or vested benefit accrued under the Plan which has not resulted from an amendment which was made, or became effective, whichever is later, within the 60 month period ending on the date of Plan termination, plus

(b) 20 per cent of the amount of his accrued retirement allowance or vested benefit resulting from each amendment made within the 60 month period prior to the date of Plan termination, multiplied by the number of full years that the Plan or such amendment has been in effect, or, ii greater, an allowance of $20 per month multiplied by such number of full years, but not in excess of

(c) the total accrued retirement allowance or vested benefit under the Plan as of the said date of Plan termination, or

(d) the value of the monthly retirement allowance or vested benefit payable to the Member for life equal to the lesser of:

(i) his average monthly Compensation during the five consecutive Years of Vesting Service affording the highest such average, or

(ii) $750 multiplied by a fraction, the numerator of which is the Social Security taxable wage base in effect on the date of Plan termination had the Social Security Act as in effect prior to the Social Security Amendments of 1977 continued in effect without amendment, and the denominator of which is $13,200.

The Plan may not be merged or consolidated with, nor may its assets or liabilities be transferred to, any other plan unless each Member or other person entitled to a benefit under the Plan would, if the resulting plan were then terminated, receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer, if the Plan had then terminated.

8.02 (a) Subject to the provisions of Section 8.02(b), notwithstanding any provision of the Plan which may be to the contrary:

(i) in the event of Plan termination, the benefit of any highly-compensated active employee or any highly-compensated former employee (as those terms are defined under Section 414(q) of the

Code) will be limited to one that is nondiscriminatory under Section 401(a)(4) of the Code; and

(ii) in any Plan Year beginning on or after January 1, 1994, the payment of benefits to, or on behalf of, a Restricted Employee shall not exceed an amount equal to the payments that would be made to, or on behalf of, the Restricted Employee in that Plan Year under:

(A) a straight life annuity that is the actuarial equivalent of the Accrued Benefit and other benefits to which the Restricted Employee is entitled under the Plan (other than a Social Security supplement); and

(B) the amount of the payments that the Restricted Employee is entitled to receive under a Social Security supplement, if any.

(b) The restrictions contained in Section 8.02(a) will not apply if any one of the following requirements is satisfied:

(i) after payment to, or on behalf of, a Restricted Employee of all benefits payable to, or on behalf of, such Restricted Employee under the Plan, the value of Plan assets equals or exceeds 110% of the value of current liabilities (as defined in Section 412(l)(7) of the Code);

(ii) the value of the benefits payable to, or on behalf of, the Restricted Employee is less than 1% of the value of current liabilities (as defined in Section 412(l)(7) of the Code); or

(iii) the value of the benefits payable to, or on behalf of, the Restricted Employee does not exceed the amount described in Section 411(a)(11)(A) of the Code.

(c) As used in this Section:

(i) "Restricted Employee" means any highly-compensated active employee or highly-compensated former employee; provided, however, that a highly-compensated active employee or highly-compensated former employee need not be treated as a Restricted Employee in the current Plan Year if he is not one of the 25 nonexcludable Employees or former Employees with the largest amount of compensation in the current or any prior Plan Year; and

(2) "benefit" includes, among other benefits, loans in excess of amounts set forth in Code Section 72(p)(2)(A), any periodic income, any withdrawal values payable to a living Employee or former Employee and any death benefits not provided for by insurance on the Employee's or former Employee's life.

8.03 The establishment of the Plan shall not be construed as conferring any legal rights upon any Employee or other person for a continuation of employment, nor shall it interfere with the rights of the Company to discharge any Employee or other person and to treat him without regard to the effect which such treatment might have upon him under the Plan.

Unless the Company otherwise provides under rules uniformly applicable to all Employees similarly situated, the Administrative Committee shall deduct from the amount of any retirement allowance or vested benefit under the Plan, any amount paid or payable to or on account of any Member under the provisions of any present or future law, pension or benefit scheme of any sovereign government, or any political subdivision thereof or any fund or organization or government agency or department on account of which contributions have been made or premiums or taxes paid by the Company or

Affiliate with respect to any service which is included in Years of Benefit Service for purposes of computation of benefits under the Plan; provided, however, that pensions payable for government service or benefits under Title II of the Social Security Act are not to be used to reduce the benefits otherwise provided under this Plan except as specifically provided herein.

## ARTICLE 9 - NONALIENATION OF BENEFITS

(a) Subject to any applicable Federal and State law, no benefit under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt so to do shall be void, except as specifically provided in the Plan, nor shall any such benefit be in any manner liable for or subject to garnishment, attachment, execution or levy or liable for or subject to the debts, contracts, liabilities, engagements or torts of the person entitled to such benefit.

(b) Subject to applicable Federal and State law, in the event that the Administrative Committee shall find that any Member or other person who is or may become entitled to benefits hereunder has become bankrupt or that any attempt has been made to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge any of his benefits under the Plan, except as specifically provided in the Plan, or if any garnishment, attachment, execution, levy or court order for payment of money has been issued against any of his benefits under the Plan, then such benefit shall cease and terminate. In such event the Administrative Committee shall hold or apply the payments to or for the benefit of such Member or other person who is or may become entitled to benefits hereunder, his spouse, children, parents or other blood relatives, or any of them.

(c) Notwithstanding the foregoing provisions of this Article 9, payment shall be made in accordance with the provisions of any judgment, decree, or order which:

(i) creates for, or assigns to, a spouse, former spouse, child or other dependent of a Member the right to receive all or a portion of the Member's benefits under the Plan for the purpose of providing child support, alimony payments of marital property rights to that spouse, child or dependent,

(ii) is made pursuant to the domestic relations law of any State (as such term is defined in Section 3(10) of the Employee Retirement Income Security Act of 1974, (ERISA)),

(iii) does not require the Plan to provide any type of benefit, or any option, not otherwise provided under the Plan, and

(iv) otherwise meets the requirements of Section 206(d) of ERISA, as amended.

(d) The Administrative Committee shall resolve any questions arising under this Article 9 on a basis uniformly applicable to all Employees similarly situated.

## ARTICLE 10 - AMENDMENTS

### 10.01 Company's Right to Amend Plan

The Company reserves the right at any time and from time to time and retroactively if deemed necessary or appropriate to conform with governmental regulations or other policies, to modify or amend in whole or in part any or all of the provisions of the Plan or any Former Pension Plan or Prior Plan; provided that no such modification or amendment shall make it possible for any part of the funds of the Plan to be used for, or diverted to, purposes other than for the exclusive benefit of Members, spouses, or contingent

annuitants or other persons who are or may become entitled to benefits hereunder prior to the satisfaction of all liabilities with respect to them; and that no modification or amendment shall be made which has the effect of decreasing the accrued benefit of any Member or of reducing the nonforfeitable percentage of the accrued benefit of a Member attributable to Company contributions below that nonforfeitable percentage thereof computed under the Plan as in effect on the later of the date on which the amendment is adopted or becomes effective.

10.02 Amendments to Vesting Schedule

If an amendment changes the vesting schedule provided in Section 4.03, each Member with three or more Years of Vesting Service may elect, during the period beginning when the amendment is adopted and ending no earlier than the latest of: (a) 60 days after the amendment's adoption; (b) 60 days after the amendment's effective date; or (c) 60 days after the Member is issued a written notice of the amendment, to have his nonforfeitable rights computed without regard to the amendment.

IN WITNESS WHEREOF, the Company has caused this Plan to be executed as of the _____ day of December, 1994.

THE SCOTTS COMPANY

By: /s/ Robert A. Stern
Robert A. Stern, Vice President - Human Resources

Exhibit 10(c)

Second Restatement of The Scotts Company Profit Sharing and Savings Plan

# SECOND RESTATEMENT OF

# THE SCOTTS COMPANY

# PROFIT SHARING AND SAVINGS PLAN

TABLE OF CONTENTS

# FIRST RESTATEMENT OF
# THE SCOTTS COMPANY
# PROFIT SHARING AND SAVINGS PLAN

WHEREAS, The O.M. Scott & Sons Company established and maintained The O.M. Scott & Sons Company Profit Sharing and Savings Plan (the "Plan") in recognition of the contribution made to its successful operation by its employees and for the exclusive benefit of its eligible employees and their beneficiaries; and

WHEREAS, The O.M. Scott & Sons Company has been merged into The Scotts Company, an Ohio corporation (the "Company"), which assumes sponsorship of the Plan; and

WHEREAS, the Plan was previously amended and restated effective January 1, 1987 and effective April 1, 1992; and

WHEREAS, under the terms of the Plan, the Company has the power to amend the Plan, provided the Trustee consents to such amendment if the provisions of the Plan affecting the Trustee are amended; and

WHEREAS, the Company wishes to amend, restate and rename the Plan to reflect the change in sponsorship and comply with changes in the law;

NOW, THEREFORE, the Company hereby amends, restates and renames the Plan as of the Effective Amendment Date to provide as follows:

## SECTION 1
## DEFINITIONS

"Account" means the account maintained for a Participant, which shall be the entire interest of the Participant in the Trust Fund. Unless otherwise specified, the value of an Account shall be determined as of the Valuation Date coincident with or next following the occurrence of the event to which reference is made. A Participant's Account shall consist of the Participant's Non-Elective Profit Sharing Account, Elective Profit Sharing Account, Savings Account and Rollover Account. A Participant shall always be fully vested in his or her Account.

"Administrator" means the Company which is the administrator of the Plan within the meaning of Section 3(16) of ERISA. The Company may appoint Employees to perform ministerial acts with respect to the administration of the Plan in their capacity as Employees of the Company.

"Advisory Committee" means the person or committee appointed as such by the Board of Directors under the provisions of the Plan or, in the absence of such appointment, the Company.

"Affiliate" means any entity which, with the Employer, constitutes either (a) a controlled group of corporations (within the meaning of Section 414(b) of the Code), (b) a group of trades or businesses under common control (within the meaning of Section 414(c) of the Code), (c) an affiliated service group (within the meaning of Section 414(m) of the Code), or (d) a group of entities required to be aggregated pursuant to Section 414(o) of the Code and the regulations thereunder.

"Aggregation Group" means (a) the Plan, (b) any plan of the Employer or any Affiliate in which a Key Employee or any of a Key Employee's beneficiaries is a participant, (c) any plan which enables any plan described in (a) or (b) to meet the requirements of Sections 401(a)(4) or 410 of the Code, (d) any plan maintained by the Employer or an Affiliate within the last five years ending on the last day of the immediately preceding Plan Year and would, but for the fact it was terminated, be part of the Aggregation Group, and (e) any plan of the Employer or any Affiliate designated by the Employer, the inclusion of which in the Aggregation Group would not cause the Aggregation Group to fail to meet the requirements of Sections 401(a)(4) and 410 of the Code.

"Beneficiary" means the beneficiary under the Plan of a deceased Participant.

"Board of Directors" means the board of directors of the Company.

"Break in Service" means failure by an Employee to complete more than 500 Hours of Service during any Plan Year. Any Break in Service shall be deemed to have commenced on the first day of the Plan Year in which it occurs. In the case of an absence from work which begins in any Plan Year beginning after December 31, 1984, if an Employee is absent from work for any period by reason of pregnancy, the birth or placement for adoption of a child, or for caring for a child for a period immediately following the birth or placement, then for purposes of determining whether a Break in Service has occurred (and not for purposes of determining Years of Eligibility Service) such Employee shall be credited with the Hours of Service which otherwise normally would have been credited to such Employee, or, if the Administrator is unable to determine the number of such Hours of Service, eight Hours of Service for each day of absence, in any case not to exceed 501 Hours of Service. The Hours of Service credited to an Employee under this definition shall be treated as Hours of Service in the Plan Year in which the absence from work begins, if the Employee would be prevented from incurring a Break in Service in such year solely because of such Hours of Service or, in any other case, in the immediately following year. The Administrator may require that the Employee certify and/or supply documentation that his or her absence is for one of the permitted reasons and the number of days for which there was such an absence.

"Code" means the Internal Revenue Code of 1986, as now or hereafter amended, construed, interpreted and applied by regulations, rulings or cases.

"Company" means The O.M. Scott & Sons Company, a Delaware corporation, until the merger of The O.M. Scott & Sons Company into The Scotts Company, an Ohio corporation, and The Scotts Company thereafter, and any successor thereto.

"Company Stock Fund" means the Investment Fund consisting of Employer Securities and cash or cash equivalents needed to meet the obligations of such fund or for the purchase of Employer Securities.

"Compensation" means an Employee's wages, salaries, fees for professional service and other amounts received for personal services actually rendered in the course of employment with the Employer (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses), but shall not include distributions from a plan of deferred compensation (other than an unfunded non-qualified plan), amounts realized from the exercise of a non-qualified stock option or from the sale, exchange or other disposition of stock acquired under a qualified stock option plan, and other amounts which receive special tax benefits. For purposes of identifying Highly Compensated Employees and computing the Compensation Deferral Limit only, a Participant's Compensation includes amounts which would have been includable in the Participant's income but for the Participant's election to make Savings Contributions, Elective Profit Sharing Contributions, and contributions to a cafeteria plan maintained by the Employer, determined in accordance with Section 414(s) of the Code. Notwithstanding the foregoing, (i) effective for Plan Years beginning after December 31, 1988, Compensation paid by the Employer during any Plan Year in excess of $200,000 as adjusted at the same time and in the same manner as under Section 415(d) of the Code shall be excluded; and (ii) effective for Plan Years beginning after December 31, 1993, Compensation paid by the Employer during any Plan Year in excess of $150,000, adjusted under Section 401(a)(17) of the Code shall be excluded. In determining the Compensation of a Participant for purposes of the $200,000 or $150,000 limit, the family aggregation rules of Section 414(q)(6) of the Code shall apply, except in applying such rules, the term "family" shall include only the spouse of the Participant and any lineal descendants of the Participant who have not attained age 19 before the close of the year. If, as a result of the application of such rules, Compensation would exceed the adjusted $200,000 or $150,000 limitation, then the limitation shall be prorated among the affected persons in proportion to each such person's Compensation as determined under this paragraph prior to the application of this limitation.

"Compensation Deferral Limit" means the greater of (a) the average actual contribution deferral percentage of Non-Highly

Compensated Employees multiplied by 1.25, or (b) the lesser of (i) the average actual contribution deferral percentage of Non-Highly Compensated Employees multiplied by two, or (ii) the average actual contribution deferral percentage of Non-Highly Compensated Employees plus 2%, as determined under Section 401(k)(3) of the Code and the regulations thereunder. A Participant's actual contribution deferral percentage is the Savings Contributions and Elective Profit Sharing Contributions made for the Participant which may be taken into account for the Plan Year for purposes of Section 401(k)(3) of the Code, divided by the Participant's Compensation while a Participant during the Plan Year. All or any portion of the Non-Elective Profit Sharing Contributions for the Plan Year may be included in the calculation of the Compensation Deferral Limit for the Plan Year at the option of the Employer.

"Effective Amendment Date" means: (a) in the case of any change in the Plan required by a change in the Code or ERISA, the date on which such change in the Plan is required to be effective; (b) in the case of any change in the Plan for which an effective date is specifically stated elsewhere in the Plan, such date; and (c) in the case of any other change in the Plan, April 1, 1992.

"Elective Profit Sharing Account" means the portion of the Account of a Participant consisting of Elective Profit Sharing Contributions, as adjusted under the Plan.

"Elective Profit Sharing Contribution" means the portion of the Profit Sharing Pool which is allocated to the Participant and which is contributed to the Plan under Section 3.1 on behalf of the Participant, as a result of an absence of an election by the Participant to receive such amount in cash.

"Eligible Compensation" means, for the period during a Plan Year that an Employee is a Participant, amounts paid by the Employer plus amounts which would have been includable in a Participant's income but for a Participant's election to make Savings Contributions and contributions to a cafeteria plan maintained by the Employer, which are or would have been (a) wages, (b) salaries and executive, management and sales incentives, not in excess of the maximum of an Employee's salary band, (c) overtime, and (d) commissions. Notwithstanding the foregoing, a Participant's Eligible Compensation shall not include amounts paid in lieu of Elective Profit Sharing Contributions and shall not exceed the lesser of (i) the maximum of Zone 2 in Band F as defined in The Scotts Company Salaried, Exempt and Office Technical Salaried Non-Exempt Compensation Policy and The Scotts Company Job Evaluation Plan, or (ii) effective for Plan Years starting before January 1, 1994 $200,000 as adjusted at the same time and in the same manner as under Section 415(d) of the Code and effective for Plan Years starting on or after January 1, 1994, $150,000 as adjusted under Section 401(a)(17) of the Code. In determining the Eligible Compensation of a Participant for purposes of this limitation, the family aggregation rules of Section 414(q)(6) of the Code shall apply, except in applying such rules, the term "family" shall include only the spouse of the Participant and any lineal descendants of the Participant who have not attained age 19 before the close of the year. If, as a result of the application of such rules, Compensation would exceed the adjusted $200,000 or $150,000 limitation, then the limitation shall be prorated among the affected persons in proportion to each such person's Eligible Compensation as determined under this paragraph prior to the application of this limitation.

"Eligibility Computation Period" means (a) the initial Eligibility Computation Period of 12 consecutive months commencing on an Employee's most recent date of employment commencement, and (b) each and every full Plan Year, commencing with the Plan Year in which falls the last day of an Employee's initial Eligibility Computation Period, during which the Employee is in the service of the Employer.

"Eligible Rollover Distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: (a) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (b) any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and (c) the portion of any distribution that is not includible in

gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

"Employee" means any person employed by the Employer or an Affiliate working with the Scotts product line or with corporate management and administration, other than persons (a) whose terms and conditions of employment are determined by collective bargaining with a third party, with respect to whom inclusion in this Plan has not been provided for in the collective bargaining agreement setting forth those terms and conditions of employment, (b) who are nonresident aliens described in Section 410(b)(3)(C) of the Code, and (c) who are Leased Employees.

"Employer" means the Company and any Affiliate which, with the consent of the Board of Directors, adopts this Plan and joins in the corresponding Trust Agreement.

"Employer Securities" means stock or other securities of the Employer or an Affiliate permitted to be held by the Plan under ERISA and the Code.

"Employer Securities Contribution Fund" means a fund consisting of Employer Securities contributed by the Employer and held by the Trustee in accordance with the Plan.

"Enrollment Date" means the date on which an Employee first becomes a Participant and the first day of each quarter of the Plan Year and any additional dates designated by the Administrator as dates on which Participants may enter into or modify elections to make Savings Contributions and/or change their investment directions.

"ERISA" means the Employee Retirement Income Security Act of 1974 (P.L. No. 93-406), as now existing or hereafter amended, and as now or hereafter construed, interpreted and applied by regulations, rulings or cases.

"Highly Compensated Employee" means any Employee who performs service for the Employer during the Plan Year of determination and who, during the prior Plan Year (a) received Compensation in excess of $75,000 (as adjusted pursuant to Section 415(d) of the Code), (b) received Compensation in excess of $50,000 (as adjusted pursuant to Section 415(d) of the Code) and was a member of the top-paid group of the Employer and its Affiliates for such year, or (c) was an officer of the Employer and received Compensation during such year that is greater than 50 percent of the dollar limitation in effect under Section 415(b)(1)(A) of the Code (not to exceed 50 officers). The term Highly Compensated Employee also includes (i) an Employee who would have been a Highly Compensated Employee under the preceding sentence if the determination was made based on the current Plan Year and if he or she is one of the 100 people who received the most Compensation from the Employer and its Affiliates during the current Plan Year, and (ii) an Employee who is a 5% owner at any time during the current Plan Year or the prior Plan Year. The number and identities of Employees in the top-paid group will be determined without regard to minimum service requirements. If an Employee is, during the current Plan Year or prior Plan Year, a family member of either a 5% owner or a Highly Compensated Employee who is one of the 10 most Highly Compensated Employees ranked on the basis of Compensation paid by the Employer and its Affiliates during such year, then the family member and the 5% owner or top-ten Highly Compensated Employee shall be aggregated. In such case, the family member and 5% owner or top-ten Highly Compensated Employee shall be treated as a single Employee receiving Compensation and Plan contributions equal to the sum of such Compensation and contributions of the family member and 5% owner or top-ten Highly Compensated Employee. For purposes of this definition, family member includes the spouse, lineal ascendants and descendants of the Employee and the spouses of such lineal ascendants and descendants. The determination of who is a Highly Compensated Employee shall be made in accordance with Section 414(q) of the Code and the regulations thereunder.

"Hour of Service" means (a) each hour for which an Employee is paid or entitled to payment for the performance of duties for the Employer or an Affiliate during the applicable computation period, (b) each hour for which an Employee is paid or entitled to payment by the Employer or an Affiliate on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability),

layoff, jury or military duty, or leave of absence, and (c) each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer or an Affiliate. In computing Hours of Service on a weekly or monthly basis when a record of hours of employment is not available, the Employee shall be assumed to have worked 40 hours for each full week of employment and eight hours for each day in less than a full week of employment, regardless of whether the Employee has actually worked fewer hours. Notwithstanding the foregoing, (i) not more than 501 Hours of Service shall be credited to an Employee on account of any single continuous period during which the Employee performs no duties, (ii) no credit shall be granted for any period with respect to which an Employee receives payment or is entitled to payment under a plan maintained solely for the purpose of complying with applicable workers' compensation or disability insurance laws, and (iii) no credit shall be granted for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee. In the case of a person who was a Leased Employee and who subsequently becomes an Employee, hours of service as a Leased Employee shall count as Hours of Service as an Employee. Determination and crediting of Hours of Service shall be made under Department of Labor Regulations Sections 2530.200b-2 and 3.

"Investment Committee" means the person or committee appointed as such by the Board of Directors under the provisions of the Plan or, in the absence of such appointment, the Company.

"Investment Funds" means the funds described in Section 4.2.

"Key Employee" has the meaning set forth in Section 416(i) of the Code and the regulations thereunder.

"Leased Employee" means any person (other than an Employee) who pursuant to an agreement between the Employer and any other person ("leasing organization") has performed services for the Employer (or for the Employer and related persons determined in accordance with Section 414(n)(6) of the Code) on a substantially full time basis for a period of at least one year, and such services are of a type historically performed by Employees in the business field of the Employer. Contributions or benefits provided a Leased Employee by the leasing organization which are attributable to services performed for the Employer shall be treated as provided by the Employer. A person who would otherwise be considered a Leased Employee shall not be considered a Leased Employee if (a) such person is covered by a money purchase pension plan providing (i) a nonintegrated employer contribution rate of at least 10% of compensation, as defined in Section 415(c)(3) of the Code, but including amounts contributed pursuant to a salary reduction agreement which are excludable from the person's gross income under Section 125, Section 402(a)(8), Section 402(h) or Section 403(b) of the Code, (ii) immediate participation, and (iii) full and immediate vesting; and (b) Leased Employees do not constitute more than 20 percent of the Employer's Non-Highly Compensated Employees.

"Non-Elective Profit Sharing Account" means the portion of the Account of a Participant consisting of Non-Elective Profit Sharing Contributions plus the amount in the Account of the Participant prior to January 1, 1987 (excluding any portion as to which the Participant had a distribution election in effect on January 1, 1987), as adjusted under the Plan.

"Non-Elective Profit Sharing Contribution" means the portion of the Profit Sharing Pool which the Participant does not have the opportunity to elect to receive in cash and which is automatically contributed to the Plan on behalf of the Participant.

"Non-Highly Compensated Employee" means any Employee other than a Highly Compensated Employee.

"Non-Key Employee" means any Employee other than a Key Employee.

"Participant" means any person who has been admitted to participation in the Plan and has not ceased participation in the Plan.

"Plan" means the Second Restatement of The Scotts Company Profit Sharing and Savings Plan as set forth herein and as from time to time amended. The Plan is a profit sharing and stock bonus

plan.

"Plan Year" means the calendar year.

"Profit Sharing Contribution" means a Non-Elective Profit Sharing Contribution or an Elective Profit Sharing Contribution.

"Profit Sharing Pool" means for a Plan Year the dollar amount which the Company determines is available for Non-Elective Profit Sharing Contributions and, at the option of Participants, Elective Profit Sharing Contributions or cash compensation.

"Rollover Account" means the portion of the Account of a Participant consisting of Rollover Contributions, as adjusted under the Plan.

"Rollover Contribution" means the amount contributed by an Employee as a rollover contribution in accordance with Section 402 of the Code.

"Savings Contribution" means an Employer contribution to the Plan in an amount equal to the reduction in the Participant's Compensation pursuant to the Participant's election under the Plan.

"Savings Account" means the portion of the Account of a Participant consisting of Savings Contributions, as adjusted under the Plan.

"Section 16 Person" means (a) any member of the board of directors of The Scotts Company, (b) The Scotts Company's president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president in charge of a principal business unit, division or function, or any other officer or other person who performs a significant policy making function, or (c) any person who is the beneficial owner of more than 10% of the outstanding common stock of The Scotts Company. The principal financial officer of The Scotts Company shall designate those persons who are Section 16 Persons and deliver a list of the Section 16 Persons eligible to participate in the Plan to the Administrator from time to time or at the request of the Administrator. Such list of Section 16 Persons will be conclusive on the Administrator and the sole source for determining who is a Section 16 Person, and the Administrator shall not be required to further investigate whether a person is a Section 16 Person.

"Termination Date" means the date on which an Employee quits, is discharged, retires, dies or otherwise terminates employment. For purposes of this Plan, a Participant who has ceased to perform services for the Employer shall be deemed to incur a Termination Date on the date he or she is found by the Company to be permanently and totally disabled under The Scotts Company Long Term Disability Plan.

"Top-Heavy Plan" has the meaning set forth in Section 416 of the Code and the regulations thereunder. For purposes of determining whether the Plan is a Top-Heavy Plan, the determination date is, for the first Plan Year, the last day of the Plan Year and for each succeeding Plan Year, the last day of the preceding Plan Year.

"Trust" means the trust created by the Trust Agreement.

"Trust Agreement" means The O.M. Scott & Sons Company Profit Sharing Plan Trust Agreement as the same presently exists and as it may from time to time hereafter be amended.

"Trust Fund" means all of the assets of the Plan held by the Trustee under the Trust Agreement.

"Trustee" means the party or parties acting as such under the Trust Agreement.

"Valuation Date" means the last day of each quarter of the Plan Year and each interim date as of which the Administrator directs the allocation of distributions, contributions and earnings of the Trust Fund.

"Year of Eligibility Service" means an Eligibility Computation Period in which a person has 1,000 or more Hours of Service.

## SECTION 2
## PARTICIPATION

2.1. Eligibility. An Employee shall become a Participant on the first day of the month coincident with or next following the date on which the Employee completes one Year of Eligibility Service; provided, that no person shall become a Participant if such person is no longer an Employee on the date as of which such person's admission to participation would otherwise have become effective. Each Employee who becomes eligible for admission to participation in this Plan shall complete such forms and provide such data as are reasonably required by the Administrator. Participation shall cease on a Participant's Termination Date.

2.2. Breaks in Service. If an Employee had no Account attributable to Profit Sharing Contributions before any period of consecutive Breaks in Service, and if the number of consecutive Breaks in Service within such period equals or exceeds five, the Employee shall upon reemployment be required to satisfy the requirements for participation in the Plan as though such Employee had not previously been an Employee. If any Years of Eligibility Service are not required to be taken into account because of a period of Breaks in Service to which this Section applies, such Years of Eligibility Service shall not be taken into account in applying this Section to any subsequent Breaks in Service.

2.3. Change in Status. If a person who has been in the employ of the Employer or an Affiliate in a category of employment not eligible for participation in this Plan subsequently becomes an Employee by reason of a change in status to a category of employment eligible for participation, such person shall become a Participant as of the date on which the change in status occurs, if, on such date, such person has otherwise satisfied the requirements for participation in the Plan.

2.4. Erroneous Omission or Inclusion of Employee. If, in any Plan Year, any Employee who should have been included as a Participant in the Plan is erroneously omitted and discovery of such omission is not made until after a Profit Sharing Contribution for the Plan Year has been made and allocated, the Employer shall make a contribution with respect to the omitted Employee equal to the amount which the Employee would have received as an allocation had the Participant not been omitted. If, in any Plan Year, any person who should not have been included as a Participant in the Plan is erroneously included and discovery of such incorrect inclusion is not made until after a contribution for the Plan Year has been made and allocated, the Employer shall not be entitled to recover the contribution made with respect to the ineligible person, and any earnings thereon, unless no deduction is allowable with respect to such contribution. The amount contributed with respect to the ineligible person, together with any earnings thereon, shall be applied to reduce Profit Sharing Contributions for the Plan Year in which the discovery is made.

2.5. Waiver of Participation. The Administrator shall have the right to permit an Employee to waive participation in the Plan on a year-to-year, nondiscriminatory basis.

## SECTION 3
## CONTRIBUTIONS

3.1. Profit Sharing Contributions.

3.1.1. The Employer intends to create a Profit Sharing Pool for each Plan Year during which the Plan is in effect in such amount as the Employer in its absolute discretion shall timely determine. This provision shall not be construed as requiring the Employer to create a Profit Sharing Pool for any specific Plan Year. The Profit Sharing Pool shall be allocated as of the last day of the Plan Year among all Participants who are Employees on the last day of the Plan Year, in proportion to the Eligible Compensation of each such Participant to the Eligible Compensation of all such Participants for the Plan Year. In the Plan Year of his or her Termination Date, a Participant who retires under The Scotts Company Employees' Pension Plan, dies or incurs a permanent and total disability under The Scotts Long Term Disability Plan shall share in the Profit Sharing Pool as if he or she were an Employee on the last day of the Plan Year.

3.1.2. One-half of the amount of the Profit Sharing Pool allocated to a Participant shall be contributed by the Employer to the Plan as a Non-Elective Profit Sharing Contribution and allocated to the Participant's Non-Elective Profit Sharing Account. The remainder of the Profit Sharing Pool allocated to the Participant shall be paid to the Participant as a bonus or contributed by the Employer to the Plan as an Elective Profit Sharing contribution and allocated to the Participant's Elective Profit Sharing Account, in accordance with the Participant's profit sharing election.

3.1.3. Each Participant shall have the opportunity to make a profit sharing election to have one-half of his or her share in the Profit Sharing Pool, if any, (a) if the Participant so elects, paid to the Participant as a bonus, or (b) if the Participant so elects or fails to make an election, contributed to the Plan and allocated to the Participant's Elective Profit Sharing Account. A Participant may enter into or modify his or her profit sharing election effective as to the current Plan Year by submitting a new profit sharing election to the Administrator at least 30 days prior to the last day of the Plan Year (or such other date as the Administrator may establish for purposes of administrative convenience). A profit sharing election for a prior Plan Year may not be modified and a profit sharing election for the current Plan Year shall not be effective for future Plan Years. The Administrator may limit the Elective Profit Sharing Contributions of some or all Highly Compensated Employees, in such manner as the Administrator determines, so as to comply with a projected Compensation Deferral Limit as provided in Section 401(k) of the Code and the regulations thereunder.

3.2. Savings Contributions. Each Participant shall be entitled to make a Savings Contribution enrollment election, which shall be in the form prescribed by the Administrator. The enrollment election shall provide for a reduction of the Participant's Compensation, in whole percentage points up to 15% of Compensation, and a corresponding contribution to the Participant's Savings Account as a Savings Contribution. A Participant may enter into or modify his or her enrollment election as of any Enrollment Date by submitting a new enrollment election to the Administrator at least 30 days prior to the Enrollment Date (or such greater or lesser period prior to the Enrollment Date as the Administrator may establish for purposes of administrative convenience). A Participant may terminate his or her enrollment election at any time upon 30 days prior written notice (or such greater or lesser period as the Administrator may establish for purposes of administrative convenience).

3.3. Limits on Elective Profit Sharing and Savings Contributions.

3.3.1. A Participant's Savings Contributions for a calendar year, plus the Elective Profit Sharing Contributions actually made for the Participant during the calendar year, shall not exceed the limit in Section 402(g) of the Code. Any Savings Contribution which, when combined with the Participant's Elective Profit Sharing Contribution and deferrals under any other plans sponsored by an Affiliate, exceeds the limit in Section 402(g) of the Code shall be returned together with earnings for the Plan Year to the Participant not later than the April 15 following the close of the calendar year for which the contribution was made. If a Participant's Savings Contribution, Elective Profit Sharing Contribution and deferrals under plans not sponsored by Affiliates exceed the limit in Section 402(g) of the Code, the Participant may assign to the Plan any portion of the excess by notifying the Administrator in writing of such excess by March 31 of the following year. Any excess and income allocatable to such excess for the Plan Year shall be distributed to the Participant no later than the April 15 of the following year.

3.3.2. In the case of a Highly Compensated Employee, the Savings Contributions, Elective Profit Sharing Contributions and, to the extent they are taken into account in calculating the Compensation Deferral Limit, Non-Elective Profit Sharing Contributions made for the Participant which may be taken into account for the Plan Year for purposes of Section 401(k)(3) of the Code, shall not exceed the Compensation Deferral Limit. The Administrator may limit the Savings Contributions of some or all Highly Compensated Employees, in such manner as the Administrator determines, so as to comply with a projected Compensation Deferral Limit as provided in Section 401(k) of the Code and the regulations thereunder. Any Savings Contribution and/or Elective Profit Sharing Contribution which exceeds the Compensation Deferral Limit shall be returned together with earnings for the Plan Year to the Participant within two and one-half (2-1/2) months after the close of the Plan Year for which the contribution was made.

3.3.3. The amount of excess contributions for a Highly Compensated Employee shall be determined in the following manner: first, the actual deferral ratio of the Highly Compensated Employee(s) with the highest actual deferral ratio is reduced to the extent necessary to meet the Compensation Deferral Limit or cause such ratio to be equal to the actual deferral ratio of the Highly Compensated Employee with the next highest ratio. Second, the process is repeated until the Compensation Deferral Limit is met. The amount of excess contributions for a Highly Compensated Employee is then equal to the total of elective and other contributions taken into account in computing the Compensation Deferral Limit, minus the product of the Highly Compensated Employee's contribution ratio as determined above and the Highly Compensated Employee's Compensation.

3.3.4. If the Highly Compensated Employee's actual deferral ratio is determined by combining the contributions and compensation of all family members, then the actual deferral ratio is reduced in accordance with the "leveling" method described in Section 1.401(k)-1(f)(2) of the regulations under the Code and the excess contributions for the family unit are allocated among the family members in proportion to the contributions of each family member that have been combined. If the Highly Compensated Employee's actual deferral ratio is determined by combining the contributions and compensation of only those family members who are Highly Compensated Employees without regard to family aggregation, then the actual deferral ratio is reduced in accordance with the leveling method but not below the actual deferral ratio of eligible family members who are Non-Highly Compensated Employees. Excess contributions are determined by taking into account the contributions of the eligible family members who are Highly Compensated Employees without regard to family aggregation and are allocated among such family members in proportion to their contributions. If further reduction of the actual deferral ratio is required, excess contributions resulting from this reduction are determined by taking into account the contributions of all eligible family members and are allocated among such family members in proportion to their contributions.

3.3.5. The amount of excess contributions to be

distributed shall be reduced by excess deferrals previously distributed for the taxable year ending in the same Plan Year and excess deferrals to be distributed for a taxable year will be reduced by excess contributions previously distributed for the Plan Year beginning in such taxable year.

3.4. Timing of Contributions. All Savings Contributions shall be made no later than the earlier of (a) the earliest date after the reduction of Participants' Compensation on which the Savings Contributions can reasonably be segregated from the Employer's general assets, or (b) 90 days after the reduction of Participants' Compensation. Non-Elective Profit Sharing Contributions and Elective Profit Sharing Contributions shall be made no later than the due date (including extensions) of the income tax return of the Company for the fiscal year of the Company including the last day of the Plan Year for which such contribution is made. All contributions shall be paid over to the Trustee and shall be invested by the Trustee in accordance with the Plan and the Trust Agreement.

3.5. Rollover Contributions.

3.5.1. An Employee may roll over a cash distribution from a qualified plan or conduit individual retirement account to this Plan, provided that (a) the distribution is (i) received from a qualified plan as an Eligible Rollover Distribution, and (ii) rolled over directly from the qualified plan or within the 60 days following the date the Employee received the distribution, or (b) the distribution is (i) received from a conduit individual retirement account which has no assets other than assets attributable to an Eligible Rollover Distribution or a "qualified total distribution" within the meaning of Section 402 of the Code as in effect prior to January 1, 1993, which was deposited in the conduit individual retirement account within 60 days of the date the Employee received the distribution, plus earnings, (ii) eligible for tax free rollover to a qualified plan, and (iii) rolled over within the 60 days following the date the Employee received the distribution. The Employee shall present a written certification to the foregoing requirements to the Administrative Committee. The Administrative Committee may also require the Employee to provide an opinion of counsel that the amount rolled over meets the requirements of this Section.

3.5.2. The foregoing contributions, which shall be Rollover Contributions, shall be accounted for separately and shall be credited to an Employee's Rollover Account. An Employee shall not be permitted to withdraw any portion of his or her Rollover Account until the earlier of the date the Employee attains age 59-1/2 or such time as the Employee is otherwise eligible to make a withdrawal from or receive a distribution of his or her Account. An Employee who has made a Rollover Contribution shall be deemed to be a Participant with respect to his or her Rollover Account even if he or she is not otherwise a Participant.

3.6. Exclusive Benefit; Refund of Contributions.

3.6.1. All contributions made by the Employer are made for the exclusive benefit of the Participants and their Beneficiaries, and such contributions shall not be used for or diverted to purposes other than for the exclusive benefit of the Participants and their Beneficiaries, including the costs of maintaining and administering the Plan and Trust.

3.6.2. Notwithstanding any other provision of this Section, amounts contributed to the Trust by the Employer may be refunded to the Employer, to the extent that such refunds do not, in themselves, deprive the Plan of its qualified status, under the following circumstances and subject to the following limitations: (a) to the extent that a federal income tax deduction is disallowed for any contribution made by the Employer, the Trustee shall refund to the Employer the amount so disallowed within one year of the date of such disallowance; (b) if a contribution is made, in whole or in part, by reason of a mistake of fact, there shall be returned to the Employer so much of such contribution as is attributable to the mistake of fact within one year after the payment of the contribution to which the mistake applies; and (c) except as provided in the event of an erroneous allocation to an ineligible person, if the Plan initially or as a result of an amendment fails to satisfy the qualification requirements of Section 401(a) of the Code, and if the Employer declines to amend the Plan to satisfy such qualification requirements, contributions made prior to the determination that the Plan has failed to qualify shall be returned

to the Employer within one year of denial of qualification.

3.6.3. Notwithstanding any other provision of this Section, no refund shall be made to the Employer which is specifically chargeable to the Account of any Participant in excess of 100% of the amount in such Account nor shall a refund be made by the Trustee of any funds, otherwise subject to refund hereunder, which have been distributed to any Participant or Beneficiary. If any such distributions become refundable, the Employer shall have a claim directly against the distributees to the extent of the refund to which it is entitled.

3.6.4. All refunds under this Section shall be limited in amount, circumstance and timing by the provisions of Section 403 of ERISA, and no such refund shall be made if, solely because of such refund, the Plan would cease to be a qualified plan under Section 401(a) of the Code.

3.7. Annual Additions and Limitations.

3.7.1. Notwithstanding any other provisions of this Plan, in no event shall the annual addition to a Participant's Account for any Plan Year exceed the lesser of $30,000 (or such other limit as may be the maximum permitted under Section 415 of the Code and regulations issued thereunder) or 25% of such Participant's Compensation. All amounts contributed to any defined contribution plan maintained by the Employer or any Affiliate shall be aggregated with contributions under this Plan in computing any Employee's annual additions limitation. In no event shall the amount allocated to the Account of any Participant be greater than the maximum amount allowed under Section 415 of the Code with respect to any combination of plans without disqualification of any such plan. Any adjustment to the dollar limitation set forth in this Section shall be effective only for the Plan Years ending on or after January 1 of the year for which the adjustment is made. For purposes of this Section, the term "annual addition" shall mean the sum of Non-Elective Profit Sharing Contributions, Elective Profit Sharing Contributions and Savings Contributions allocable to the Participant's Account for the Plan Year.

3.7.2. In the event a Participant is a participant in any other defined contribution plan and/or defined benefit plan sponsored by the Employer or any Affiliate, and the sum of the "defined benefit plan fraction" and the "defined contribution plan fraction" would exceed 1.0 but for the operation of this Section, the "defined contribution fraction" shall be reduced so that the sum of the fractions shall not exceed 1.0. For purposes of this subsection, the "defined benefit plan fraction" is the ratio that (a) the Participant's projected annual retirement benefit as of the end of the Plan Year under the defined benefit plans bears to (b) the lesser of (i) the product of 1.25 multiplied by the dollar limitation in effect under Section 415(b)(1)(A) of the Code for such Plan Year, or (ii) the product of 1.4 multiplied by the maximum amount permitted under Section 415(b)(1)(B) of the Code for such Plan Year. The "defined contribution plan fraction" is the ratio of (a) the Participant's annual additions for the Plan Year to the defined contribution plans bears to (b) the lesser of the following amounts determined for such Plan Year and for each prior Year of Service with the Employer: (i) the product of 1.25 multiplied by the dollar limitation in effect under Section 415(c)(1)(A) of the Code for such year, or (ii) the product of 1.4 multiplied by the maximum amount permitted under Section 415(c)(1)(B) of the Code for such year.

3.7.3. If the annual addition to a Participant's Account exceeds the amount permitted under this Section due to a reasonable error in estimating a Participant's Compensation or in determining the amount of Savings Contributions and Elective Profit Sharing Contributions which may be made under the limits of Section 415 of the Code, such excess shall be disposed of as follows:

(a) At the discretion of the Administrator, Savings Contributions and Elective Profit Sharing Contributions will be returned to the Participant;

(b) If the Participant is a Participant on the last day of the Plan Year, such excess shall be applied to reduce Non-Elective Profit Sharing Contributions for such Participant in subsequent Plan Years, and no Profit Sharing Contribution shall be made to such Participant's Account until such excess annual addition is eliminated;

(c) If at any time while an excess annual addition is being applied or would be applied to reduce future Non-Elective Profit Sharing Contributions for a Participant, such Participant ceases to be a Participant, then such excess annual addition shall be held unallocated in a suspense account for the Plan Year and shall be allocated in the next Plan Year as an Employer contribution, and no contribution which would constitute an annual addition shall be made until any such suspense account is completely allocated; and

(d) No suspense account maintained under this Section shall participate in allocations of gains and losses of the Investment Funds unless otherwise directed by the Administrator.

3.8. Fail-Safe Allocations of Profit Sharing Contributions. Notwithstanding anything in the Plan to the contrary, for Plan Years beginning after December 31, 1989, if the Plan would otherwise fail to meet the requirements of Section 401(a)(4) or Section 410(b) of the Code and the regulations thereunder because Non-Elective Profit Sharing Contributions have not been allocated to a sufficient number or percentage of Participants for a Plan Year, then the group of Participants eligible to share in the Non-Elective Profit Sharing Contribution for the Plan Year shall be expanded to include the minimum number of former Participants (who are not employed on the last day of the Plan Year and so would not otherwise be eligible to share in the Non-Elective Profit Sharing Contribution) as are necessary to satisfy the applicable test. The specific former Participants who shall become eligible under the terms of this paragraph shall be those former Participants who are Non-Highly Compensated Employees who, when compared to similarly situated former Participants, have completed the greatest number of Hours of Service in the Plan Year before terminating employment. Nothing in this Section shall permit the reduction of a Participant's benefit. Therefore any amounts that have previously been allocated to Participants may not be reallocated to satisfy these requirements. In the event additional allocations are required, the Employer shall make an additional contribution equal to the additional allocations, even if it exceeds the amount which would be deductible under Section 404 of the Code. Any adjustment to the allocations pursuant to this Section shall be made by the October 15 after the Plan Year and shall be considered to be made as of the last day of the Plan Year.

## SECTION 4
## INVESTMENT

4.1. Investment Direction.

4.1.1. Each Participant shall have the right to direct, in multiples of five percentage points, that (a) future contributions to and the existing balance in the Participant's Non-Elective and Elective Profit Sharing Accounts be invested in one or more of the Investment Funds, (b) future contributions to and the existing balance in the Participant's Savings Account be invested in one or more Investment Funds, and (c) future contributions to and the existing balance in the Participant's Rollover Account be invested in one or more Investment Funds.

4.1.2. A Participant may change his or her investment direction as of any Enrollment Date by submitting a form prescribed by the Administrator to the Administrator at least 30 days prior to the Enrollment Date (or such greater or lesser period prior to the Enrollment Date as the Administrator may establish for purposes of administrative convenience) along with payment of a reasonable charge established by the Administrator to defray the administrative expense of processing the investment direction.

4.2. Investment Funds. One of the Investment Funds shall be the Company Stock Fund, consisting of Employer Securities and cash or cash equivalents needed to meet obligations of such fund or for the purchase of Employer Securities. The Investment Committee shall direct the Trustee to create and maintain three or more additional Investment Funds according to investment criteria established by the Investment Committee. The Investment Committee shall have the right to direct the Trustee to merge or modify any existing Investment Funds, other than the Company Stock Fund.

4.3. Investment in Employer Securities. One of the purposes of the Plan is to provide Participants with ownership interests in the Employer, and to the extent practicable, all available assets of the Company Stock Fund shall be used to purchase Employer

Securities, which shall be held by the Trustee until distribution or sale for distribution of cash to Participants or Beneficiaries or until disposition is required to implement changes in investment designations. In addition, all or any portion of any other Investment Fund may consist of Employer Securities. Such percentage of the Trust Fund, up to 100%, shall be invested in Employer Securities as results from the operation of this Section.

4.4. Voting Employer Securities. The Investment Committee shall have the power to direct the Trustee in the voting of all Employer Securities held by the Trustee. All voting of Employer Securities shall be in compliance with all applicable rules and regulations of the Securities and Exchange Commission and all applicable rules of or any agreement with any stock exchange on which the Employer Securities being voted are traded. The Trustee shall vote all Employer Securities as directed by the Investment Committee and in the absence of such directions shall vote or not vote Employer Securities in such manner as the Trustee shall, in its sole discretion, determine. Notwithstanding the foregoing, the Investment Committee may, in its sole discretion and at any time or from time to time, permit Participants and Beneficiaries to direct the manner in which any Employer Securities allocated to their Accounts shall be voted on such matter as the Investment Committee permits.

4.5. Tender Offers. Each Participant and Beneficiary shall have the sole right to direct the Trustee as to the manner in which to respond to a tender or exchange offer for Employer Securities allocated to such person's Account. The Investment Committee shall use its best efforts to notify or cause to be notified each Participant and Beneficiary of any tender or exchange offer and to distribute or cause to be distributed to each Participant and Beneficiary such information as is distributed in connection with any tender or exchange offer to holders generally of Employer Securities, together with the appropriate forms for directing the Trustee as to the manner in which to respond to such tender or exchange offer. Upon timely receipt of directions under this Section from the Participant or Beneficiary, the Trustee shall respond to the tender or exchange offer in accordance with, and only in accordance with, such directions. If the Trustee does not receive timely directions from a Participant or Beneficiary under this Section, the Trustee shall not tender, sell, convey or transfer any Employer Securities allocated to such person's Account in response to any tender or exchange offer.

4.6. Investment Managers. The Investment Committee may appoint one or more investment managers to manage all or any portion of all or any of the Investment Funds, and one or more custodians for all or any portion of any Investment Fund. The Investment Committee may also establish investment guidelines for the Trustee or any one or more investment managers and may direct that all or any portion of the assets in an Investment Fund be invested in one or more guaranteed investment contracts having such terms and conditions as the Investment Committee deems appropriate. The Investment Committee or the Trustee, at the direction of the Investment Committee, may enter into such agreements as the Investment Committee deems advisable to carry out the purposes of this Section.

4.7. Section 16 Persons. Notwithstanding anything in the Plan to the contrary, Section 16 Persons may not direct the investment of their Accounts into the Company Stock Fund unless the Investment Committee determines otherwise.

## SECTION 5
## VALUATIONS AND CREDITING

5.1. Valuations. The Trust Fund shall be valued by the Trustee at fair market value as of the close of business on each Valuation Date. In determining the fair market value of assets other than securities for which trading or bid prices can be obtained, the Trustee shall rely on valuations provided by the Investment Committee, which may appraise such assets itself or employ one or more appraisers, including the Trustee or an affiliate of the Trustee, for that purpose. The portions of all Accounts held in the Company Stock Fund shall be maintained on a share basis.

5.2. Credits to and Charges Against Accounts. All crediting to and charging against Accounts shall be made as follows:

5.2.1. First, there shall be determined the net adjusted Account by (a) charging all distributions and withdrawals made during the period from the prior Valuation Date to the current Valuation Date, and (b) crediting Savings Contributions and Rollover Contributions on such time weighted basis as the Administrator determines.

5.2.2. Second, all earnings of the Trust Fund shall then be allocated to and among the Participants' Accounts according to their net adjusted Accounts and the relative investment results of the Investment Funds in which their Accounts were invested.

5.2.3. Third, at the option of the Administrator, all administrative expenses relating to the maintenance of Accounts of former Participants shall be charged against such Accounts.

5.2.4. Last, there shall be credited to each Participant's Account, (a) Non-Elective Profit Sharing Contributions and Elective Profit Sharing Contributions allocated to such Account, and (b) Savings Contributions and Rollover Contributions to such Account not previously credited under this Section.

5.3. Expenses. All brokerage fees, transfer taxes, and other expenses incurred in connection with the investment of the Trust Fund shall be added to the cost of such investments or deducted from the proceeds thereof, as the case may be. All other costs and expenses of administering the Plan shall be paid from the Trust Fund unless the Employer elects to pay such costs and expenses.

## SECTION 6
## BENEFITS

6.1. Forms of Benefit Payments. A Participant or Beneficiary shall receive any benefit to which he or she is entitled in the form of:

6.1.1. A lump sum distribution to the Participant or Beneficiary consisting of cash for amounts not invested in the Company Stock Fund and, for amounts invested in the Company Stock Fund, (i) the greatest number of whole shares of Employer Securities which can be distributed on the basis of the portion of his or her Account balance invested in the Company Stock Fund plus cash for any fractional share, if the number of whole shares is 20 or more and the Participant or Beneficiary elects to receive shares, or (ii) cash if the number of whole shares is less than 20 or if the Participant or Beneficiary elects to receive cash; or

6.1.2. Effective for distributions made after December 31, 1993, at the election of the Participant or Beneficiary who is the Participant's surviving or former spouse, if the benefit is an Eligible Rollover Distribution, a lump sum payment of the benefit directly to an Eligible Retirement Plan specified by the Participant or Beneficiary in the form of cash for amounts not invested in the Company Stock Fund and, for amounts invested in the Company Stock Fund, (i) the greatest number of whole shares of Employer Securities which can be distributed on the basis of the portion of his or her Account balance invested in the Company Stock Fund plus cash for any fractional share, if the number of whole shares is 20 or more and the Participant or Beneficiary elects to receive shares, or (ii) cash if the number of whole shares is less than 20 or if the Participant or Beneficiary elects to receive cash; or

6.1.3. Effective for distributions made after December 31, 1993, at the election of the Participant or Beneficiary who is the Participant's surviving or former spouse, if the benefit is an Eligible Rollover Distribution, distribution to both the Participant or Beneficiary and an Eligible Retirement Plan as follows:

(a) for amounts not invested in the Company Stock Fund, a lump sum cash payment to:

(i) the Participant or Beneficiary; or

(ii) an Eligible Retirement Plan specified by the Participant or Beneficiary; or

(iii) the Participant or Beneficiary of a portion of the benefit specified by the Participant or

Beneficiary, with the remainder paid to an Eligible Retirement Plan, and

(b) for amounts invested in the Company Stock Fund:

(i) a lump sum cash payment to the Participant or Beneficiary; or

(ii) a distribution to the Participant or Beneficiary of the greatest number of whole shares of Employer Securities which can be distributed on the basis of the portion of his or her Account balance invested in the Company Stock Fund plus cash for any fractional share, if the number of whole shares is 20 or more: or

(iii) a lump sum cash payment to an Eligible Retirement Plan specified by the Participant or Beneficiary; or

(iv) a distribution to an Eligible Retirement Plan of the greatest number of whole shares of Employer Securities which can be distributed on the basis of the portion of the Participant's Account balance invested in the Company Stock Fund plus cash for any fractional share, if the number of whole shares is 20 or more.

6.2. Retirement Benefit. Effective January 1, 1993, any Participant who has incurred a Termination Date shall receive his or her retirement benefit as soon as administratively practicable after:

(a) if the Participant's benefit is $3,500 or less, the Valuation Date coincident with or following the Participant's Termination Date; or

(b) if the Participant's benefit is more than $3,500:

(i) the Valuation Date coincident with or following the later of the Participant's Termination Date and the date the Participant attains age 62, or

(ii) at the election of the Participant (made during the time period, before and after the applicable Valuation Date, that the Administrative Committee establishes for purposes of administrative convenience), the Valuation Date following the Participant's Separation Date; or

(iii) at the election of the Participant (made in the time period, before the applicable Valuation Date, that the Administrative Committee establishes for the purposes of administrative convenience), any Valuation Date, starting with the third Valuation Date after the Participant's Separation Date and ending with the Valuation Date in (i).

The amount of the retirement benefit shall be equal to the undistributed balance in the Participant's Account determined as of the applicable Valuation Date. Such distribution shall be made as soon as practicable after the applicable Valuation Date.

6.3. Death Benefit.

6.3.1. If a Participant dies before receiving a distribution of his or her retirement benefit, the Participant's Beneficiary shall receive a death benefit, in lieu of the retirement benefit, as soon as administratively practicable after the Valuation Date coincident with or next following the Participant's death. The amount of the death benefit shall be equal to the undistributed balance in the Participant's Account determined as of the applicable Valuation Date.

6.3.2. A married Participant may, with the consent of his or her spouse, designate and from time to time change the designation of one or more Beneficiaries or contingent Beneficiaries to receive any death benefit. The designation and consent shall be on a form supplied by the Administrator, which form shall describe the effect of the designation on the Participant's spouse, and shall be signed by the Participant and the Participant's spouse. The spouse's signature shall be witnessed by a Plan representative or a notary public. Notwithstanding the foregoing, a Beneficiary designation made by

a married Participant who has no Hours of Service and no paid leave of absence on or after August 23, 1984, shall be effective without the consent of such Participant's spouse. An unmarried Participant or a married Participant whose spouse has abandoned him or her or cannot be located may designate a Beneficiary or Beneficiaries without the consent of any other person, after having first established to the satisfaction of the Administrator either that he or she has no spouse or that his or her spouse cannot be located. All records of Beneficiary designations shall be maintained by the Administrator.

6.3.3. In the event that the Participant fails to designate a Beneficiary to receive a benefit that becomes payable under the provisions of this Section, or in the event that the Participant is predeceased by all designated primary and contingent Beneficiaries, (a) if the Participant is survived by a spouse, the death benefit shall be payable to the Participant's surviving spouse who shall be deemed to be the Participant's designated Beneficiary for all purposes under this Plan, or (b) if the Participant is not survived by a spouse, the death benefit shall be payable to the Participant's estate.

6.4. In-Service Distributions. Any Participant who has completed more than five years of participation in the Plan and who has attained age 59-1/2 may withdraw from the Trust as of any Valuation Date all of his or her Savings Account, or any portion of his or her Savings Account which would not reduce the amount in his or her Savings Account to less than $500. Upon receipt of a request for withdrawal of a portion of a Participant's Savings Account which would reduce it to less than $500, the Trustee shall distribute the entire amount of the Participant's Savings Account.

6.5. Advance Distribution for Hardship.

6.5.1. If a Participant has an immediate and heavy financial need and has obtained all distributions, other than hardship distributions, currently available under the Plan and any other plans maintained by the Employer or an Affiliate, he or she may obtain a hardship distribution of his or her Savings Contributions. The amount of the hardship distribution shall be the lesser of the Participant's Savings Contributions or the amount necessary to satisfy the immediate and heavy financial need (including amounts necessary to pay reasonably anticipated taxes and penalties on the hardship distribution). Hardship distributions of other amounts shall not be allowed.

6.5.2. An amount shall not be treated as necessary to satisfy the immediate and heavy financial need if the need can be reasonably relieved by (a) reimbursement or compensation from insurance or otherwise, (b) reasonable liquidation of the Participant's assets, to the extent such liquidation would not itself cause an immediate and heavy financial need, (c) cessation of Savings Contributions and Elective Profit Sharing Contributions, (d) other distributions from the Plan or any other plan, (e) loans from the Plan or any other plans, or (f) loans from commercial sources on reasonable terms. A need cannot reasonably be relieved by one of the listed actions if the effect would be to increase the amount of the need. The Administrator shall be entitled to rely on the Participant's certification of the foregoing except that the Administrator may require further documentation as to the amount necessary to satisfy the immediate and heavy financial need, or deny the hardship distribution, if under the circumstances the Administrator's reliance on the certification is not reasonable.

6.5.3. For purposes of this Plan, an immediate and heavy financial need is the need for money for:

(a) expenses for or necessary to obtain medical care described in Section 213(d) of the Code for the Participant or the Participant's spouse or dependents;

(b) costs directly related to the purchase (excluding mortgage payments) of a principal residence of the Participant;

(c) the payment of tuition and related educational fees for the next 12 months of post-secondary education for the Participant or the Participant's spouse, children or dependents;

(d) the prevention of the eviction of the Participant from his or her principal residence or the foreclosure on the mortgage of the Participant's principal residence; or

(e) any other reason added to the list of deemed immediate and heavy financial needs by the Commissioner of the Internal Revenue Service.

6.5.4. A Participant who has obtained a hardship distribution shall not be eligible to make any Savings Contributions or Elective Profit Sharing Contributions for the 12 months after the hardship distribution.

6.6. Loans to Participants.

6.6.1. Loans to a Participant from his or her Savings Account and, effective July 1, 1994, from his or her Rollover Account shall be allowed, subject to such uniform and nondiscriminatory rules as may from time to time be adopted by the Administrator. Loans from other Accounts shall not be allowed. The Trustee may make a loan to a Participant who has applied for a loan, in accordance with rules adopted by the Administrator, on forms provided by the Administrator.

6.6.2. A Participant shall be permitted to borrow no more than the lesser of (a) $50,000 reduced by the excess (if any) of (i) the highest outstanding balance of Plan loans during the previous 12 months over (ii) the current outstanding balance of Plan loans, or (b) 50% of the value of the Participant's Account as of the Valuation Date coincident with or next preceding the date on which the loan is made.

6.6.3. Loans shall be available to all Participants on a reasonably equivalent basis; provided, however, that the Trustee may make reasonable distinctions among prospective borrowers on the basis of creditworthiness and available security. Any amount withdrawn by or payable to a Participant from his or her Account while a loan is outstanding shall be immediately applied to reduce such loan.

6.6.4. (a) All loans to Participants made by the Trustee shall be secured by the pledge of the Participant's Account.

(b) Interest shall be charged at an interest rate which the Administrator finds to be reasonable on the date of the loan.

(c) Loans shall be for a term of five years or for such lesser term as the Administrator and the Trustee agree is appropriate, with substantially level amortization over the term of the loan.

(d) If not paid as and when due, any such outstanding loan or loans may be deducted from any benefit which is or becomes payable to such Participant or the Participant's Beneficiary. The Participant shall remain liable for any deficiency, and any surplus remaining shall be paid to the Participant.

(e) Any loan made to a Participant shall be (i) treated as an investment of the Participant's Account with interest payments credited and expenses deducted from the Participant's Account, and (ii) excluded from the Participant's Account for purposes of implementing the Participant's investment directions and allocation of the investment results of the Investment Funds.

6.7. Latest Commencement of Benefits. Payment of benefits shall commence in accordance with this Section, provided, however, in no event shall payment of benefits commence later than the April 1 of the calendar year following the calendar year in which the Participant attains age 70-1/2.

6.8. Post-Distribution Credits. If, after the distribution of retirement or death benefits under this Plan, there remain in a Participant's Account any funds, or any funds shall be subsequently credited thereto, such funds shall be distributed to the Participant or his or her Beneficiary as promptly as practicable.

6.9. Prevention of Escheat. If the Administrator cannot ascertain the whereabouts of any person to whom a payment is due under the Plan, the Administrator may place the amount of the payment in a segregated account. If a segregated account is an interest bearing account, the interest, which may be net of expenses, shall be credited to the segregated account. If a segregated account holds Employer Securities, any dividends may be treated as earnings of the Trust Fund or of the segregated account,

at the option of the Administrator. After two years from the date such payment is due, the Administrator may mail a notice of the payment to the last known address of such person as shown on the records of the Plan, the Employer and all Affiliates. If such person has not made claim for the payment within three months after the date of the mailing of the notice or if the notice is returned as undeliverable, then the payment and all remaining payments which would otherwise be due to such person shall be cancelled and the amount thereof shall be applied to reduce Profit Sharing Contributions. If any person subsequently has a claim allowed for such benefits, such person shall be treated as an omitted eligible Employee.

## SECTION 7
## TOP-HEAVY PLAN PROVISIONS

7.1. Minimum Benefits. For any Plan Year that this Plan is a Top-Heavy Plan, the Employer shall contribute, for and on behalf of each Non-Key Employee who is a Participant on the last day of the Plan Year, an amount which is not less than the lesser of (a) 3% of such Participant's Compensation, or (b) such Participant's Compensation multiplied by a fraction, determined with respect to the Key Employee for whom the fraction is greatest, the numerator of which is the contributions allocated to such Key Employee's Account for the Plan Year and the denominator of which is the Key Employee's Compensation for the Plan Year. In determining the minimum benefit, all contributions, including Savings Contributions, for any Participant to any plan included in the Aggregation Group shall be taken into account. If a Participant participates in this Plan and a defined benefit plan in the Aggregation Group, the Participant shall receive minimum benefits under such defined benefit plan.

7.2. Adjustment in Benefit Limitations. In applying the limits of Section 415 of the Code where a Participant participates in both one or more defined benefit plans and one or more defined contribution plans of the Employer, paragraphs (2)(B) and (3)(B) of Section 415(e) of the Code shall be applied by substituting "1.0" for "1.25", unless (a) the sum of the account balances and the present value of the accrued benefits of Key Employees do not exceed 90% of the account balances and the present value of the accrued benefits of all participants and their beneficiaries, as determined under Section 416(h) of the Code, and (b) the Employer elects to have the minimum benefit under Section 416 of the Code applied by substituting "4%" for "3%" therein.

## SECTION 8
## CLAIMS PROCEDURES

8.1. Application for Benefits. Each Participant or Beneficiary believing himself or herself eligible for benefits under this Plan may apply for such benefits by completing and filing with the Administrator an application for benefits on a form supplied by the Administrator. Before the date on which benefit payments commence, each such application must be supported by such information and data as the Administrator deems relevant and appropriate. Evidence of age, marital status (and, in the appropriate instances, death), and location of residence shall be required of all applicants for benefits.

8.2. Appeal of Denial of Claim for Benefits. In the event that any claim for benefits is denied in whole or in part, the Participant or Beneficiary whose claim has been so denied shall be notified of such denial in writing by the Administrator within 90 days after the Administrator receives the claim. The notice advising of the denial shall specify the reasons for denial, make specific reference to pertinent Plan provisions, describe any additional material or information necessary for the claimant to perfect the claim (explaining why such material or information is needed), and shall advise the Participant or Beneficiary, as the case may be, of the procedure for the appeal of such denial. If a claimant wishes to appeal the denial of the claim, the claimant shall submit a written appeal to the Advisory Committee within 60 days after the Administrator notifies the claimant of the denial. The appeal shall set forth all of the facts upon which the appeal is based. Appeals which are not timely filed shall be barred. The Advisory Committee shall consider the merits of the claimant's appeal, the merits of any facts or evidence in support of the denial of benefits, and such other facts and circumstances as the Advisory Committee deems relevant. The Advisory Committee shall

give the Administrator a written statement as to its recommendation on the appeal within 30 days after the Advisory Committee receives the appeal, unless special circumstances or the need to hold a hearing require an extension of up to 30 additional days. The Administrator shall then consider the recommendation of the Advisory Committee and give the claimant a written statement as to the Administrator's determination on the appeal within 60 days after the Advisory Committee receives the appeal, unless special circumstances or the need to hold a hearing require an extension of up to 60 additional days.

8.3. Effect of Administrator Decision. Any decision or action of the Administrator on appeal shall be final and binding on all persons absent fraud or arbitrary abuse of the wide discretion granted to the Administrator. No appeal or contest of any decision or action may be brought other than after following the procedures for claims and appeals as set forth herein by a legal proceeding in a court of competent jurisdiction brought within one year after such decision or action.

## SECTION 9
## ALLOCATION OF AUTHORITY AND RESPONSIBILITY

9.1. Authority and Responsibilities of the Administrator. The Administrator shall have the following duties and responsibilities: (a) to maintain and retain records relating to the Participants and Beneficiaries; (b) to prepare and furnish to Participants all information required under federal law or provisions of this Plan to be furnished to them; (c) to prepare and furnish to the Trustee sufficient Employee data and the amount of contributions received from all sources so that the Trustee may maintain separate Accounts for Participants and make required payments of benefits; (d) to provide directions to the Trustee with respect to payments of benefits and all other matters where called for in the Plan or requested by the Trustee; (e) to prepare and file or publish with the Secretary of Labor, the Secretary of the Treasury, their delegates and all other appropriate governmental officials, all reports and other information required under law to be so filed or published; (f) to arrange for bonding; (g) to consult with the Advisory Committee and the Investment Committee with respect to matters determined under Sections 9.2 and 9.3, respectively; (h) to recommend and facilitate approval of Plan changes; and (i) to coordinate implementation of changes to and administration of the Plan. The Administrator shall have the right to hire such professional assistants and consultants as it deems necessary or advisable, including, but not limited to: (i) accountants; (ii) actuaries; (iii) attorneys; (iv) consultants; and (v) clerical and office personnel. The costs for such assistants and advisers shall be paid from the Trust Fund as an expense of the Trust Fund unless the Employer elects to pay such costs.

9.2. Authority and Responsibilities of the Advisory Committee. The Advisory Committee shall have the following duties and responsibilities: (a) to provide assistance and consultation to the Administrator with respect to Plan changes and administrative procedures; (b) to develop recommendations for Plan changes, as deemed appropriate by the Advisory Committee; (c) to consult with the Administrator with respect to other matters at the discretion of the Administrator; and (d) to review appeals of denial of claims and make recommendations for action to the Administrator.

9.3. Authority and Responsibilities of the Investment Committee. The Investment Committee shall have the following duties and responsibilities: (a) to appoint the Trustee, to monitor the performance of the Trustee, and to terminate such appointment; (b) to provide direction to the Trustee including direction of investment of all or part of the Trust Fund and the establishment of investment criteria and Investment Funds; and (c) to appoint investment advisors and investment managers, to monitor their performances, and to terminate such appointments.

9.4. Appointment and Tenure. The Advisory Committee and the Investment Committee shall each consist of a committee of one or more members who shall serve at the pleasure of the Board of Directors. Any committee member may be dismissed at any time, with or without cause, upon notice from the Board of Directors. Any committee member may resign by delivering his or her written resignation to the Board of Directors. Vacancies arising by the death, resignation or removal of a committee member shall be filled by the Board of Directors. If the Board of Directors fails to act,

and in any event, until the Board of Directors so acts, the remaining members of a committee may appoint an interim member to fill any vacancy occurring on the committee. If no person has been appointed to the Advisory Committee or the Investment Committee, or if no person remains on one of the committees, the Company shall be deemed to be such committee.

9.5. Meetings; Majority Rule. Any and all acts of the Advisory Committee or the Investment Committee taken at a meeting shall be by a majority of all members of such committee. A committee may act by vote taken in a meeting (at which a majority of members shall constitute a quorum) if all members of the committee have received at least 10 days' written notice of such meeting or have waived notice. A committee may also act by majority consent in writing without the formality of convening a meeting. Each committee shall elect one of its members to serve as chairman. The chairman shall preside at all meetings of the committee or shall delegate such responsibility to another committee member.

9.6. Compensation. The Advisory Committee, the Investment Committee and the Administrator shall serve without compensation for services as such, but all expenses of such persons shall be paid or reimbursed by the Employer, and if not so paid or reimbursed, shall be paid from the Trust Fund.

9.7. Indemnification. Each member of the Advisory Committee, each member of the Investment Committee, and Employees carrying out the duties of the Administrator shall be indemnified by the Employer against costs, expenses and liabilities (other than amounts paid in settlement to which the Employer does not consent) reasonably incurred by the person in connection with any action to which the person may be a party by reason of his or her service as a member of the committee or for the Administrator, except in relation to matters as to which he or she shall be adjudged in such action to be personally guilty of negligence or willful misconduct in the performance of his or her duties. The foregoing right to indemnification shall be in addition to such other rights as the person may enjoy as a matter of law or by reason of insurance coverage of any kind, but shall not extend to costs, expenses and/or liabilities otherwise covered by insurance or that would be so covered by any insurance then in force if such insurance contained a waiver of subrogation. Rights granted hereunder shall be in addition to and not in lieu of any rights to indemnification to which the person may be entitled under the bylaws of the Company. Service on the Advisory Committee or the Investment Committee or for the Administrator shall be deemed in partial fulfillment of the person's function as an Employee, officer and/or director of the Employer, if the person serves in such capacity as well.

9.8. Authority and Responsibilities of the Company. The Company, as Plan sponsor, shall have the following (and only the following) authority and responsibilities: (a) to act as Administrator, (b) to appoint the Advisory Committee and the Investment Committee and to monitor each of their performances; (c) to communicate such information to the Advisory Committee, the Investment Committee, and the Trustee as each needs for the proper performance of its duties; (d) to provide channels and mechanisms through which the Advisory Committee, the Investment Committee, the Administrator and/or the Trustee can communicate with Participants and Beneficiaries; and (e) to perform such duties as are imposed by law or by regulation and to serve as Advisory Committee or the Investment Committee in the absence of an appointed committee or person. Any action which may be taken and any decision which may be made by the Company under the Plan (including authorization of Plan amendments or termination) may be made by: (a) the Board of Directors; or (b) any committee to which the Board of Directors delegates discretionary authority with respect to the Plan.

9.9. Obligations of Named Fiduciaries. The Investment Committee, the Administrator and the Trustee are named fiduciaries within the meaning of Section 402(a) of ERISA. A named fiduciary shall have only those particular powers, duties, responsibilities and obligations specifically given to it under this Plan or the Trust Agreement. No named fiduciary shall have authority or responsibility to deal with matters other than as delegated to it under this Plan, under the Trust Agreement or by operation of law. Notwithstanding the foregoing, named fiduciaries may perform in more than one fiduciary capacity if so appointed and may reallocate duties between themselves by mutual agreement. A named fiduciary

shall not in any event be liable for breach of fiduciary responsibility or obligation by another fiduciary (including named fiduciaries) if the responsibility or authority of the act or omission deemed to be a breach was not within the scope of such named fiduciary's authority or responsibility.

## SECTION 10
## AMENDMENT, TERMINATION, MERGERS AND CONSOLIDATIONS OF THE PLAN

10.1. Amendment. The Company (by its Board of Directors, an executive committee of its Board of Directors or other committee to which the Board of Directors delegates discretionary authority with respect to the Plan) may amend the provisions of this Plan at any time and from time to time, after consultation with the Advisory Committee; provided, however, that:

10.1.1. No amendment shall increase the duties or liabilities of the Trustee without the consent of such party.

10.1.2. No amendment shall deprive any Participant or Beneficiary of a deceased Participant of any of the benefits to which such person is entitled under the Plan with respect to contributions previously made or decrease the balance in any Participant's Account, except as permitted by Section 412(c)(8) of the Code and Section 302(c)(8) of ERISA.

10.1.3. No amendment changing the vesting schedule shall decrease the vested percentage of any Participant.

10.1.4. No amendment shall eliminate an optional form of benefit in violation of Section 411(d)(6).

10.1.5. No amendment shall provide for the use of funds or assets held to provide benefits under the Plan other than for the benefit of Employees and Beneficiaries, except as may be specifically authorized by statute or regulation.

10.1.6. Any amendment necessary to maintain the qualification of the Plan under Section 401(a) of the Code may be made without the further approval of the Board of Directors or any committee if signed by an officer of the Company.

10.2. Plan Termination. The Company reserves the right to terminate the Plan in whole or in part, after consultation with the Advisory Committee. Plan termination shall be effective as of the date specified by resolution of the Board of Directors. The Company shall instruct the Trustee to either (a) continue to manage and administer the assets of the Trust for the benefit of Participants and Beneficiaries under the terms and provisions of the Trust Agreement, or (b) pay over to each Participant the value of his or her interest, and thereupon dissolve the Trust.

10.3. Permanent Discontinuance of Profit Sharing Contributions. While it is the Company's intention to make substantial and recurring contributions to the Trust Fund under the provisions of the Plan, the right is, nevertheless, reserved to permanently discontinue Profit Sharing Contributions at any time. Such permanent discontinuance shall have the effect of a termination of the Plan, except that the Trustee shall not have the authority to dissolve the Trust Fund except upon adoption of a further resolution by the Board of Directors to the effect that the Plan is terminated and upon receipt from the Company of instructions to dissolve the Trust Fund. Failure to make a contribution solely because of a lack of net income shall not be deemed to be a permanent discontinuance of Profit Sharing Contributions.

10.4. Suspension of Profit Sharing Contributions. The Company shall have the right, at any time and from time to time, to suspend Profit Sharing Contributions to the Trust Fund under the Plan. Such suspension shall have no effect on the operation of the Plan except as set forth below:

10.4.1. If the Board of Directors determines by resolution that such suspension shall be permanent, a permanent discontinuance of contributions shall be deemed to have occurred as of the date of such resolution or such earlier date as is therein specified.

10.4.2. If a temporary suspension becomes a permanent discontinuance or a Plan termination, the discontinuance or termination shall be deemed to have occurred on the earlier of: (a) the date specified by resolution of the Board of Directors, or (b) the last day of the Plan Year next following the first Plan Year during the period of suspension in which there occurred a failure of the Employer to make contributions in a year in which there was net income out of which such contributions could have been made.

10.5. Mergers and Consolidations of Plans. In the event of any merger or consolidation of the Plan with, or transfer of assets or liabilities to, any other plan, each Participant and Beneficiary shall have a benefit in the surviving or transferee plan (determined as if such plan were then terminated immediately after such merger, etc.) that is equal to or greater than the benefit he or she would have been entitled to receive immediately before such merger, etc., in this Plan (had this Plan been terminated at that time).

10.6. Transfers of Assets to or from this Plan. A transfer of all or any portion of the assets or liabilities of the Plan to any other plan, or the transfer of all or any portion of the assets or liabilities of another plan to this Plan, shall be in accordance with directions of the Company. The Plan shall not accept a direct or indirect transfer of assets which would make the Plan subject to Sections 401(a)(11) and 417 of the Code with respect to any Participant.

10.7. Effect of Amendment and Restatement. Notwithstanding anything herein to the contrary, the identities, Account balances, Hours of Service, and Years of Eligibility Service of Participants and Employees as of the Effective Amendment Date, and the rights of persons terminating their employment with the Employer and all Affiliates prior to the Effective Amendment Date, shall be determined under the Plan as in effect prior to the Effective Amendment Date.

## SECTION 11
## PARTICIPATING EMPLOYERS

11.1. Adoption by Affiliates. With the consent of the Company, any Affiliate may adopt the Plan as a participating Employer. Each participating Employer shall be required to use the same Trustee and Trust Agreement as provided in this Plan, and the Trustee shall commingle, hold and invest as one Trust Fund all contributions made by participating Employers, as well as all increments thereof. With respect to all relations with the Trustee, the Advisory Committee, the Administrator and the Investment Committee, each participating Employer shall be deemed to have irrevocably designated the Company as its agent. The Company shall have authority to make any and all necessary rules

or regulations, binding upon all participating Employers and all Participants, to effectuate the purposes of the Plan.

11.2. Employee Transfers. If an Employee is transferred between Employers, the Employee involved shall carry with him or her the Employee's accumulated service and eligibility, no such transfer shall effect a termination of employment hereunder, and the participating Employer to which the Employee is transferred shall thereupon become obligated with respect to such Employee in the same manner as was the participating Employer from whom the Employee was transferred.

11.3. Discontinuance of Participation. Any participating Employer may discontinue or revoke its participation in the Plan. At the time of any such discontinuance or revocation, satisfactory evidence thereof and of any applicable conditions imposed shall be delivered to the Trustee. The Trustee shall retain assets for the Employees of the participating Employer under the Plan.

## SECTION 12
## MISCELLANEOUS PROVISIONS

12.1. Nonalienation of Benefits.

12.1.1. None of the payments, benefits or rights of any Participant or Beneficiary shall be subject to any claim of any creditor, and, in particular, to the fullest extent permitted by law, all such payments, benefits and rights shall be free from attachment, garnishment, trustee's process or any other legal or equitable process available to any creditor of such Participant or Beneficiary. No Participant or Beneficiary shall have the right to alienate, anticipate, commute, pledge, encumber, or assign any of the benefits or payments which he or she may expect to receive, contingently or otherwise, under this Plan, except the right to designate a Beneficiary or Beneficiaries as hereinbefore provided. Notwithstanding the foregoing, assignments permitted under the Code shall be permitted under the Plan, including (a) assignments pursuant to a qualified domestic relations order, and (b) any loans made by the Trustee to a Participant that are secured by a pledge of the borrower's Account, which shall give the Trustee a first lien on such interest to the extent of the entire outstanding amount of such loan, unpaid interest thereon, and all costs of collection.

12.1.2. If a domestic relations order is received by the Administrator, the Administrator shall make a determination as to whether the domestic relations order is a qualified domestic relations order as defined in Section 414(p) of the Code, treating the domestic relations order as a claim for benefits under the Plan and all alternate payees and the Participant as claimants. Within 30 days after the Administrator's receipt of the domestic relations order and at least 30 days prior to its determination, the Administrator shall notify the Participant and any alternate payees other than the one who is the subject of the domestic relations order of the receipt of the domestic relations order and the procedures that the Administrator will follow in determining the qualified status of the domestic relations order. During any period in which the issue of whether the domestic relations order is a qualified domestic relations order is pending, the Administrator shall segregate in a separate account under the Plan the amounts which would have been payable to the alternate payee during such period if the domestic relations order had been determined to be a qualified domestic relations order. If, within 18 months, it is finally determined that the domestic relations order is a qualified domestic relations order, the Administrator shall direct the Trustee to pay the segregated amount to the person entitled thereto. If, within 18 months, it is finally determined that the domestic relations order is not a qualified domestic relations order, or the issue has not yet been resolved, the Administrator shall direct the Trustee to pay the segregated amount without regard to the terms of the domestic relations order. Any determination that a domestic relations order is a qualified domestic relations order which is made after the close of the 18 month period shall be applied prospectively only.

12.1.3. The Trustee may make a lump sum distribution to an alternate payee pursuant to a qualified domestic relations order as soon as administratively practical after the Valuation Date following the earlier of the date a Participant attains age 50 or the date a Participant terminates employment. The Trustee may make a lump sum distribution pursuant to a qualified domestic relations order before such date provided no more than one distribution is made to each alternate payee.

12.2. No Contract of Employment. Neither the establishment of the Plan, nor any modification thereof, nor the creation of any fund, trust or Account, nor the payment of any benefits, shall be construed as giving any Participant or Employee, or any person whomsoever, the right to be retained in the service of the Employer, and all Participants and other Employees shall remain subject to discharge to the same extent as if the Plan had never been adopted.

12.3. Title to Assets. No Participant or Beneficiary shall have any right to, or interest in, any assets of the Trust Fund upon termination of his or her employment or otherwise, except to the extent of the benefits payable under the Plan to such Participant or Beneficiary out of the assets of the Trust Fund. All payments of benefits as provided for in this Plan shall be made

from the assets of the Trust Fund, and neither the Employer nor any other person shall be liable therefor in any manner.

12.4. Effect of Admission. By becoming a Participant, each Employee shall be conclusively deemed to have assented to the provisions of the Plan and the corresponding Trust Agreement and to all amendments to such instruments.

12.5. Payments to Minors, Etc. Any benefit payable to or for the benefit of a minor, an incompetent person or other person incapable of receipting therefor shall be deemed paid when paid to such person's guardian or to the party providing, or reasonably appearing to provide, for the care of such person, and such payment shall fully discharge the Trustee, the Administrator, the Employer and all other parties with respect thereto.

12.6. Approval of Restatement by Internal Revenue Service. Notwithstanding anything herein to the contrary, if the Commissioner of the Internal Revenue Service or his delegate should determine that the Plan, as amended and restated, does not qualify as a tax-exempt plan and trust under Sections 401 and 501 of the Code, and such determination is not contested, or if contested, is finally upheld, then the Plan shall operate as if it had not been amended and restated.

12.7. Other Miscellaneous. If any provision of this Plan is held invalid or unenforceable, such holding will not affect any other provisions hereof, and the Plan shall be construed and enforced as if such provisions were not been included. The Plan shall be binding upon the heirs, executors, administrators, personal representatives, successors, and assigns of the parties, including each Participant and Beneficiary, present and future. The headings and captions herein are provided for convenience only, shall not be considered a part of the Plan, and shall not be employed in the construction of the Plan. Except where otherwise clearly indicated by context, the masculine and the neuter shall include the feminine and the neuter, the singular shall include the plural, and vice-versa. The Plan shall be construed and enforced according to the laws of the State of Ohio to the extent not preempted by federal law, which shall otherwise control.

IN WITNESS WHEREOF, the Company has caused this Plan to be executed as of the _____ day of December, 1994.

THE SCOTTS COMPANY

By: /s/ Robert A. Stern
Robert A. Stern, Vice President
- Human Resources

Exhibit 10(i)

O.M. Scott & Sons Company
1994 Executive Annual Incentive Plan

O.M. SCOTT & SONS COMPANY

1994 Executive Annual Incentive Plan

1.Objectives

Provide strong financial incentive for achievement of business results.

Contribute toward a competitively attractive compensation program for executives.

Provide a mechanism to relate compensation to contribution and results.

Encourage team effort toward achievement of corporate goals.

2.Participation

Eligibility and level of participation is based on Executive Team membership.

Participants must be actively employed in an eligible position for at least 13 consecutive weeks during the plan year. Participants must be employed on the last day of the fiscal year to be eligible for a payout. Participants who terminate their employment during the Plan Year, except in cases of retirement, will not be eligible for an incentive payment, prorated or otherwise.

Participants in this Plan will also be considered for inclusion in the Executive Long Term Incentive Plan and The O.M. Scott & Sons Company Profit Sharing Plans. The Executives covered by the aforementioned Plan will not be eligible for any other cash incentive of the company.

Participants shall not have any right with respect to any award until an award shall, in fact, be paid to them.

The Plan confers no rights upon any associate to participate in the Plan or remain in the employ of the company. Neither the adoption of the Plan nor its operation shall in any way affect the right of the associate or the company to terminate the employment relationship at any time.

3.Payouts

The Executive Annual (EAIP) Incentive Plan is designed to recognize and reward the achievement of both corporate goals, business group goals and individual participant objectives.

If corporate performance is below 80% of budget, any bonus paid will be at the discretion of the Incentive Review Committee and Board of Directors.

A target bonus percentage will be determined for each group of participants. Payouts will be based on the applicable percentage of each participant's year end salary. See Exhibit A for target bonus.

Bonus at a corporate performance level between 80% of budget and target shall be calculated on a straight line basis. Similarly, bonus at a corporate performance between budget and 122.5% of budget will also be calculated on a straight line basis.

Executive may elect to be paid in part or in whole in company stock at FMV on day bonuses are paid.

EAIP Payout Distribution Formula

Company Performance (75% - 100%) Individual Performance (0-25%)

Corporate Goal Performance

Corporate goal performance will be measured by performance against goals for Earnings Before Interest, Taxes and Amortization (EBITA) at 60% and Average Working Capital plus Capital Expenditures (AWC + CE) at 40% as recorded in

corporate financials.

Individual Performance

When established, each individual goal will be assigned a relative weighting (total weighting of all goals must be 100%). Full accomplishment of an individual goal will be recognized by 100% achievement multiplied by the goal weighting factor. Credit may be judgmentally provided for partial achievement of a goal.

The goal achievement multiplied by the weighting factor will be additive for all goals resulting in a total achievement factor which will be utilized as the individual performance measure for bonus calculation.

The weighting of individual goals may not exceed 25% of the total of Corporate, Division and Individual performance. Each year individual goals will be reviewed to determine their weighting to total. In the event that an individual's goals are weighted less than 25%, the weighting of corporate goals will be correspondingly raised.

Special Pool

A pool for special awards will be generated to provide recognition to managers whose individual performance was exceptional but did not qualify for a bonus under the EAIP or Management Team Incentive Plan. At budget, this pool would not exceed $50,000. Its size at any given EBITA and AWC + CE level will be determined by where EBITA and AWC + CE fall within the established EAIP or MIP bonus range, using the same approach as for calculating other bonuses. The number of participants will vary from year to year.

4.Administration

The plan is to be administered by the Vice President, Human Resources, who will be responsible for:

Recommending changes in the payout targets and ranges;

Recommending additions or deletions to the lists of eligible associates;

Providing a consistent format for measuring goal achievement;

Recommending changes in the plan concept as appropriate.

The Incentive Review Committee, comprised of the Chief Executive Officer, Chief Operating Officer, Vice President, Human Resources and Chief Financial Officer, is responsible for:

Adjudicating changes and adjustments.

Ensuring the sum of all individual quantifiable goals is equal to or greater than the corporate budget.

Recommending plan payouts, including adjustments up to +/- 10%.

The Compensation Committee of the Board approves the administrative changes in the Plan, to include:

Changes in the payout targets and ranges;

Additions or deletions of eligible associates;

Approval of plan payouts.

Determination of the relevant earnings measure and the incentive Payout Range used to determine the Chairman's and President's bonuses.

Evaluation of performance of the Chief Executive Officer and Chief Operating Officer.

The Compensation Committee shall review the operation of the Plan and, if at any time the continuation of the Plan, or any of its provisions becomes inappropriate or inadvisable, the

Compensation Committee shall revise or modify Plan provisions or recommended to the Board that the Plan be suspended or withdrawn. In addition, the Compensation Committee reserves the right to modify incentive formulas to reflect unusual circumstances.

The Board of Directors reserves to itself the right to suspend the Plan, and to make substantial alterations in Plan concept.

Exhibit 10(f)

Stock Option Plan and Agreement, dated as of January 9, 1992, between Scotts Delaware and Theodore J. Host

STOCK OPTION PLAN AND AGREEMENT

STOCK OPTION PLAN AND AGREEMENT, dated as of January 9, 1992, among The Scotts Company, a Delaware corporation (the "Company"), and Theodore J. Host (the "Grantee").

W I T N E S S E T H:

WHEREAS, the Board of Directors of The O.M. Scott & Sons Company, a wholly-owed subsidiary of the Company ("Scott"), has appointed the Grantee to be the President and Chief Operating Officer of Scott;

WHEREAS, Scott and the Grantee have entered into an Employment Agreement, dated as of October 21, 1991 (the "Employment Agreement"), governing the terms and conditions of the Grantee's employment with Scott;

WHEREAS, the Employment Agreement provides that Grantee shall be granted an option to purchase 300,000 shares (the "Shares") of Class A Common Stock, par value $.01 per share (the "Common Stock"), of the Company at an option price of $4.50 per Share;

WHEREAS, the Board of Directors of the Company (the "Board") has approved the adoption of this Stock Option Plan granting of such stock option to the Grantee;

NOW, THEREFORE, to evidence the adoption of such Plan and stock option so granted, and to set forth its terms and conditions, the Company and the Grantee hereby agree as follows:

1. Confirmation of Grant; Option Price; Incentive Stock Option. The Company hereby evidences and confirms its grant to the Grantee, effective as of the date hereof, of an option (the "Option") to purchase 300,000 Shares at an option price of $4.50 per Share (the "Option Price"). The portion of such Option with respect to 66,666 Shares is intended to be an incentive stock option (the "Incentive Stock Option") under Section 422 of the Internal Revenue Code of 1986, as amended. The portion of such Option with respect to the remaining 233,334 Shares is not intended to be an Incentive Stock Option.

2. Exercisability. Except as otherwise provided in this Agreement, the Option (including the Incentive Stock Option) shall become available for exercise, subject to the provisions hereof, in 33 1/3% installments, with the first installment becoming exercisable on the date of this Agreement and with an additional 33 1/3% becoming exercisable on each of October 21, 1992 and October 21, 1993; provided that 100% of the Option shall become available for exercise in the event (a) that there is a Change of Control (as defined in Section 4(d)) of the Company or (b) that the Grantee's employment with each of the Company and its direct and indirect subsidiaries that employ the Grantee terminates by reason of the Grantee's death, Permanent Disability (as defined in Section 4(d)) or Retirement at Normal Retirement Age (as defined in Section 4(d)), or (c) that Grantee's employment with Scott is terminated by Scott without "Cause" as defined in the Employment Agreement. Shares eligible for purchase may thereafter be purchased, subject to the provisions hereof, and pursuant to and subject to the provisions contained in the Management Stock Subscription Agreement (as defined in Section 5) related to such Shares, at any time and from time to time on or after such anniversary until the date one day prior to the date on which the Option terminates.

3. Termination of Option.

(a) Normal Termination Date. Unless an earlier termination date is specified in Section 3(b), the Option shall terminate on the tenth anniversary of the date hereof (the "Normal Termination Date").

(b) Early Termination. If the Grantee's active employment with the Company and its direct and indirect subsidiaries that employ the Grantee is voluntarily or involuntarily terminated for any reason whatsoever prior to the Normal Termination Date, (i) any portion of the Option that has not become exercisable on or before the effective date of such termination of employment and is not

accelerated pursuant to Section 2 shall terminate on such effective date and (ii) if the Grantee's active employment is terminated by the Company for Cause, the Option (including any portion of the Option that shall have become exercisable prior to such termination) shall no longer be exercisable on or after the effective date of such termination of employment. Nothing in this Agreement shall be deemed to confer on the Grantee any right to continue in the employ of the Company or any of its direct or indirect subsidiaries, or to interfere with or limit in any way the right of the Company or any of its direct or indirect subsidiaries to terminate such employment at any time.

4. Restrictions on Exercise; Non-Transferability of Option; Repurchase of Option.

(a) Restrictions on Exercise. The Option may be exercised only with respect to full shares of Common Stock. No fractional shares of Common Stock shall be issued. Notwithstanding any other provision of this Agreement, the Option may not be exercised in whole or in part, and no certificates representing Shares shall be delivered, (i) unless all requisite approvals and consents of any governmental authority of any kind having jurisdiction over the exercise of options shall have been secured, (ii) unless the purchase of the Shares upon the exercise of the Option shall be exempt from registration under applicable U.S. federal and state securities laws, and applicable non-U.S. securities laws, or the Shares shall have been registered under such laws, (iii) unless all applicable U.S. federal, state and local and non-U.S. tax withholding requirements shall have been satisfied and (iv) if such exercise would result in a material violation of the terms or provisions of or a default or an event of default under any of the Financing Agreements (as such term is defined in Section 8). The Company shall use commercially reasonable efforts to obtain the consents and approvals referred to in clause (i) of the preceding sentence, to satisfy the withholding requirements referred to in clause (iii) of the preceding sentence and to obtain any required consent of the parties to the Financing Agreements referred to in clause (iv) of the preceding sentence so as to permit the Option to be exercised.

(b) Non-Transferability of Option. The Option may be exercised only by the Grantee or by his estate. The Option is not assignable or transferable, in whole or in part, and it may not, directly or indirectly, be offered, transferred, sold, pledged, assigned, alienated, hypothecated or otherwise disposed of or encumbered (including without limitation by gift, operation of law or otherwise) other than by will or by the laws of descent and distribution to the estate of the Grantee upon his death, provided that the deceased Grantee's beneficiary or the representative of his estate shall acknowledge and agree in writing, in a form reasonably acceptable to the Company, to be bound by the provisions of this Agreement as if such beneficiary or the estate were the Grantee.

(c) Repurchase of Option on Termination of Employment. If the Grantee's active employment with the Company and any direct and indirect subsidiaries of the Company that employ the Grantee is terminated for any reason whatsoever, the Company shall have an option to purchase all (but not less than all) of the portion of the Option that is exercisable on the effective date of termination of employment (the "Covered Option"), and shall have 30 days from the date of the Grantee's termination (the "First Purchase Period") during which to give notice in writing to the Grantee (or if his employment was terminated by his death, his estate) of its election to exercise or not to exercise such right to purchase the Covered Option. If the Company does not give notice that it intends to exercise its right to purchase the Covered Option within the First Purchase Period, The Clayton & Dubilier Private Equity Fund II Limited Partnership ("Fund II") shall have the right to purchase the Covered Option and shall have 30 days following the end of the First Purchase Period, or 30 days from the date of receipt by Fund II of written notice that the Company does not intend to exercise such right, whichever is earlier (the "Second Purchase Period"), to give notice in writing to the Grantee (or his estate) of the Fund II's exercise of its right to purchase the Covered Option. If the rights to purchase the Covered Option of the Company and Fund II granted in this subsection are not exercised as provided herein, the Grantee (or his estate) shall be entitled to retain the Covered Option, subject to all of the provisions of this Agreement. If the Company and Fund II have failed to exercise their respective rights to purchase the Covered Option pursuant to this Section 4(c) within the time periods specified herein, and if

the Grantee's active employment with each of the Company and any direct and indirect subsidiaries of the Company that employ the Grantee is terminated (A) by such employer or employers without Cause or (B) by the Grantee by Retirement at Normal Retirement Age or (C) by reason of Permanent Disability or death, on notice from the Grantee (or his estate) in writing and delivered to the Company within 30 days following the end of the Second Purchase Period, the Company shall purchase the Covered Option.

All purchases pursuant to this Section 4(c) by the Company or Fund II shall be for a purchase price and in the manner prescribed by Sections 4(g), (h) and (i).

(d) Certain Definitions. As used in this Agreement the following terms shall have the following meanings:

(i) "Cause" shall mean (A) the willful failure by the Grantee to perform substantially his employment duties (other than any such failure due to physical or mental illness) and continuance of such failure for more than 20 days after written notice of such failure by the Company, (B) the engaging by the Grantee in serious misconduct that is injurious to the Company or any subsidiary of the Company, (C) the conviction of the Grantee of, or the entering by the Grantee of a plea of nolo contendere to, a crime that constitutes a felony or (D) the willful and material breach by the Grantee of any covenant not to disclose any information pertaining to the Company or any of its subsidiaries or not to compete or interfere with the Company or any of its subsidiaries.

(ii) "Change of Control" shall mean any transaction the result of which is that (A) any person (including a "group" as such term is used in Section 13(d)(3) of the Securities Exchange Act of 1934, as amended), other than Fund II and/or partners of Fund II as a group, shall, directly or indirectly, own or control 50% or more of the voting common equity of the Company or Scott or any successor thereto or (B) all or substantially all of the assets of the Company or Scott shall be transferred or leased to any person or group of persons.

(iii) "Permanent Disability" shall mean a physical or mental disability or infirmity that prevents the performance of such Grantee's employment-related duties lasting (or likely to last, based on competent medical evidence presented to the Board) for a continuous period of six months or longer. The Board's reasoned and good faith judgment of Permanent Disability shall be final and shall be based on such competent medical evidence as shall be presented to it by the Grantee or by any physician or group of physicians or other competent medical expert employed by the Grantee or the Company to advise the Board.

(iv) "Retirement at Normal Retirement Age" shall mean retirement at or after normal retirement age according to the Company's or its subsidiaries' normal company policies.

(e) Notice of Termination. The Company shall give written notice of any termination of the Grantee's active employment with each of the Company and any direct or indirect subsidiaries of the Company that employ the Grantee to Fund II, except that if such termination (if other than as a result of death) is by the Grantee, the Grantee shall give written notice of such termination to the Company and the Company shall give written notice of such termination to Fund II.

(f) Public Offering. In the event that an underwritten public offering in the United States of the Common Stock by an underwriter of nationally recognized standing (a "Public Offering") has been consummated, none of the Company, Fund II or the Grantee shall have any rights to purchase or sell the Covered Option, as the case may be, pursuant to this Section 4, and this Section 4 shall not apply to a sale as part of a Public Offering.

(g) Purchase Price. Subject to Section 8(c), the purchase price to be paid to the Grantee (or his estate) for the Covered Option (the "Purchase Price") shall be equal to the difference between (A) the fair market value of the Shares which may be purchased upon exercise of the Covered Option (the "Fair Market Value") and (B) the aggregate exercise price of the Covered Option. Whenever a determination of Fair Market Value is required by this Agreement, such Fair Market Value shall be determined as of the

effective date of the termination of employment that gives rise to the repurchase and shall be an amount determined in good faith by the Board. In making a determination of Fair Market Value, due consideration shall be given to such factors as the earnings and certain other financial and operating information of the Company in recent periods, the potential value of the Company as a whole, the future prospects of the Company and the industries in which it competes, the history and management of the Company, the general condition of the securities markets and the fair market value of securities of companies engaged in businesses similar to those of the Company. The Fair Market Value as determined in good faith by the Board shall, in the absence of fraud, be binding and conclusive upon all parties hereto. If the Company at any time subdivides (by any stock split, stock dividend or otherwise) the Common Stock into a greater number of shares, or combines (by reverse stock split or otherwise) the Common Stock into a smaller number of shares, the Purchase Price shall be appropriately adjusted to reflect such subdivision or combination.

(h) Payment. Subject to Section 8, the completion of a purchase pursuant to this Section 4 shall take place at the principal office of the Company on the tenth business day following (i) the receipt by the Grantee (or his estate) of Fund II's or the Company's notice of its exercise of the right to purchase the Covered Option pursuant to Section 4(c) or (ii) the Company's receipt of notice by the Grantee (or his estate) to sell the Covered Option pursuant to Section 4(c). The Purchase Price shall be paid by delivery to the Grantee (or his estate) of a certified or bank check for the Purchase Price payable to the order of the Grantee (or his estate), against delivery of such instruments as the Company may reasonably request signed by the Grantee (or his estate).

(i) Application of the Purchase Price to Certain Loans. The Grantee agrees that the Company and Fund II shall be entitled to apply any amounts to be paid by the Company or Fund II, as the case may be, to repurchase the Covered Option pursuant to this Section 4 to discharge any indebtedness of the Grantee to the Company or any of its direct or indirect subsidiaries, or indebtedness that is guaranteed by the Company or any of its subsidiaries, including, but not limited to, any indebtedness of the Grantee incurred to purchase any shares of Common Stock.

(j) Withholding. Whenever Shares are to be issued pursuant to the Option, the Company may require the recipient of the Shares to remit to the Company an amount sufficient to satisfy any applicable U.S. federal, state and local and non-U.S. tax withholding requirements. In the event any cash is paid to the Grantee or his estate or beneficiary pursuant to this Section 4, the Company shall have the right to withhold an amount from such payment sufficient to satisfy any applicable U.S. federal, state and local and non-U.S. tax withholding requirements. If shares of Common Stock are traded on a national securities exchange or bid and ask prices for shares of Common Stock are quoted on the "NASDAQ National Market System" operated by the National Association of Securities Dealers, Inc., the Company may, if requested by the Grantee, withhold shares to satisfy applicable withholding requirements, subject to any rules adopted by the Board regarding compliance with applicable law, including, but not limited to, Section 16(b) of the U.S. Securities Exchange Act of 1934, as amended (the "Exchange Act").

5. Manner of Exercise. To the extent that the Option shall have become and remains exercisable as provided in Section 2 and subject to such reasonable administrative regulations as the Board or the Committee may have adopted, the Option may be exercised, in whole or in part, by notice to the Secretary of the Company in writing given 15 business days prior to the date on which the Grantee will so exercise the Option (the "Exercise Date"), specifying the number of Shares with respect to which the Option is being exercised (the "Exercise Shares") and the Exercise Date, provided that if shares of Common Stock are traded on a U.S. national securities exchange or bid and ask prices for shares of Common Stock are quoted over the "NASDAQ National Market System" operated by the National Association of Securities Dealers, Inc., notice may be given five business days before the Exercise Date. On or before the Exercise Date, the Company and the Grantee shall enter into a Management Stock Subscription Agreement (the "Management Stock Subscription Agreement") substantially in the form attached hereto as Exhibit A, or in such other form as may be agreed upon by the Company and the Grantee. In accordance with the Management Stock Subscription Agreement, (a) on or before the

Exercise Date, the Grantee shall deliver to the Company full payment for the Exercise Shares in United States dollars in cash, or cash equivalent satisfactory to the Company, and in an amount equal to the aggregate purchase price for the Exercise Shares and (b) on the Exercise Date, the Company shall deliver to the Grantee a certificate or certificates representing the Exercise Shares, registered in the name of the Grantee. If shares of Common Stock are listed for trading on a national securities exchange or bid and ask prices for shares of Common Stock are quoted over the "NASDAQ National Market System" operated by the National Association of Securities Dealers, Inc., the Grantee may, in lieu of cash, tender shares of Common Stock having a Fair Market Value on the Exercise Date equal to the purchase price of the Exercise Shares or may deliver a combination of cash and shares of Common Stock having a Fair Market Value equal to the difference between the exercise price and the amount of such cash as payment for the purchase price of the Exercise Shares, subject to such rules and regulations as may be adopted by the Board or the Committee to provide for the compliance of such payment procedure with applicable law, including Section 16(b) of the Exchange Act. The Company may require the Grantee to furnish or execute such other documents as the Company shall reasonably deem necessary (i) to evidence such exercise, (ii) to determine whether registration is then required under the U.S. Securities Act of 1933, as amended (the "Securities Act"), and (iii) to comply with or satisfy the requirements of the Securities Act, applicable state or non-U.S. securities laws or any other law.

6. Grantee's Representations, Warranties and Covenants.

(a) Investment Intention. The Grantee represents and warrants that the Option has been, and any Exercise Shares will be, acquired by him solely for his own account for investment and not with a view to or for sale in connection with any distribution thereof. The Grantee agrees that he will not, directly or indirectly, offer, transfer, sell, pledge, hypothecate or otherwise dispose of all or any portion of the Option or any of the Exercise Shares (or solicit any offers to buy, purchase or otherwise acquire or take a pledge of all or any portion of the Option or any of the Exercise Shares), except in compliance with the Securities Act and the rules and regulations of the U.S. Securities and Exchange Commission (the "Commission") thereunder, and in compliance with applicable state securities or "blue sky" laws and any applicable non-U.S. securities laws. The Grantee further understands, acknowledges and agrees that none of the Shares may be transferred, sold, pledged, hypothecated or otherwise disposed of (i) unless the provisions of the related Management Stock Subscription Agreement shall have been complied with or have expired, (ii) unless (A) such disposition is pursuant to an effective registration statement under the Securities Act, (B) the Grantee shall have delivered to the Company an opinion of counsel, which opinion and counsel shall be reasonably satisfactory to the Company, to the effect that such disposition is exempt from the provisions of Section 5 of the Securities Act or (C) a no-action letter from the Commission, reasonably satisfactory to the Company, shall have been obtained with respect to such disposition and (iii) unless such disposition is pursuant to registration under any applicable state securities laws or an exemption therefrom. If the Grantee is a citizen or resident of any country other than the United States, or the Grantee desires to effect any transfer in any such country, in addition to the foregoing counsel for the Grantee (which counsel shall be reasonably satisfactory to the Company) shall have furnished the Company with an opinion or other advice reasonably satisfactory to the Company to the effect that such transfer will comply with the securities laws of such jurisdiction. Notwithstanding the foregoing, the Company acknowledges and agrees that no opinion of counsel shall be required in connection with a transfer to the Company or Fund II.

(b) Legend. The Grantee acknowledges that any certificate representing the Exercise Shares shall bear the following legend:

> THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED, OR QUALIFIED UNDER ANY STATE SECURITIES LAWS, AND MAY NOT BE TRANSFERRED, SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF UNLESS (A) SUCH DISPOSITION IS PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT, (B) THE HOLDER HEREOF SHALL HAVE DELIVERED TO AND IN COMPLIANCE WITH ANY APPLICABLE STATE SECURITIES LAWS THE COMPANY AN OPINION OF COUNSEL, WHICH OPINION AND COUNSEL SHALL BE SATISFACTORY TO THE COMPANY, TO THE

EFFECT THAT SUCH DISPOSITION IS EXEMPT FROM THE PROVISIONS OF SECTION 5 OF SUCH ACT AND FROM ANY APPLICABLE STATE SECURITIES LAWS OR (C) A NO-ACTION LETTER FROM THE U.S. SECURITIES AND EXCHANGE COMMISSION, AND A SIMILAR LETTER OR OPINION FROM ANY APPLICABLE STATE SECURITIES AUTHORITIES CONCERNED, IN EACH CASE SATISFACTORY TO COUNSEL FOR THE COMPANY, SHALL HAVE BEEN OBTAINED WITH RESPECT TO SUCH DISPOSITION.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE PROVISIONS OF A MANAGEMENT STOCK SUBSCRIPTION AGREEMENT, DATED AS OF _____, 199_, AND NEITHER THIS CERTIFICATE NOR THE SHARES REPRESENTED BY IT ARE ASSIGNABLE OR OTHERWISE TRANSFERABLE EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF SUCH MANAGEMENT STOCK SUBSCRIPTION AGREEMENT, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY. THE SHARES REPRESENTED BY THIS CERTIFICATE ARE ENTITLED TO THE BENEFITS OF AND ARE BOUND BY THE OBLIGATIONS SET FORTH IN A REGISTRATION AND PARTICIPATION AGREEMENT, DATED AS OF DECEMBER 30, 1986, AMONG THE COMPANY AND CERTAIN STOCKHOLDERS OF THE COMPANY, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.

(c) Securities Law Matters. The Grantee acknowledges receipt of advice from the Company that the Option has not been registered under the Securities Act or qualified under any state or non-U.S. securities laws and, upon exercise of the Option, (i) the Exercise Shares will not be registered under the Securities Act or qualified under any state or non-U.S. securities laws, (ii) the Exercise Shares must be held indefinitely and the Grantee must continue to bear the economic risk of the investment in the Exercise Shares unless such Exercise Shares are subsequently registered under the Securities Act and any applicable state securities laws, or under any applicable non-U.S. securities laws, or an exemption from such registration is available, (iii) it is not anticipated there will be any public market for the Exercise Shares, (iv) when and if the Exercise Shares may be disposed of without registration in reliance upon Rule 144 promulgated under the Securities Act, such disposition can be made only in limited amounts in accordance with the terms and conditions of such Rule, (v) sales of the Exercise Shares may be difficult to effect because of the absence of public information concerning the Company, (vi) a restrictive legend in the form heretofore set forth shall be placed on the certificates representing the Exercise Shares and (vii) a notation shall be made in the appropriate records of the Company indicating that the Exercise Shares are subject to restrictions on transfer and, if the Company should in the future engage the services of a stock transfer agent, appropriate stop transfer restrictions will be issued to such transfer agent with respect to the Exercise Shares.

(d) Compliance with Rule 144. If any of the Exercise Shares are to be disposed of in accordance with Rule 144 under the Securities Act, the Grantee shall transmit to the Company an executed copy of Form 144 (if required by Rule 144) no later than the time such form is required to be transmitted to the Commission for filing and such other documentation as the Company may reasonably require to assure compliance with Rule 144 in connection with such disposition.

(e) Ability to Bear Risk. The Grantee covenants that he will not exercise all or any portion of the Option unless (i) the financial situation of the Grantee is such that he can afford to bear the economic risk of holding the Exercise Shares for an indefinite period and (ii) he can afford to suffer the complete loss of his investment in the Exercise Shares.

(f) Access to Information. The Grantee represents and warrants that (i) he has been granted the opportunity to ask questions of, and receive answers from, representatives of the Company concerning the terms and conditions of the Options and the purchase of the Exercise Shares upon exercise of the Options, and to obtain any additional information that he deems necessary to verify the accuracy of the information contained in the Memorandum and such other material, (ii) his knowledge and experience in financial and business matters is such that he is capable of evaluating the risks of an investment in the Exercise Shares and (iii) he is an officer or key employee of the Company or a direct or indirect subsidiary of the Company on the date hereof.

(g) Registration; Restrictions on Sale upon Public Offering. In respect of any Shares purchased upon exercise of all or any

portion of the Option, the Grantee shall be entitled to the rights and subject to the obligations created under the Registration and Participation Agreement, dated as of December 30, 1986 (the "Registration Agreement"), among the Company and certain stockholders of the Company, to the extent set forth therein. The Grantee agrees that, in the event that the Company files a registration statement under the Securities Act with respect to an underwritten public offering of any shares of its capital stock, the Grantee will not effect any public sale or distribution of any shares of the Common Stock (other than as part of such underwritten public offering) during the 20 days prior to and the 90 days (or such longer period of days as may be set forth in Section 3.4(e) of the Registration Agreement, as it may be amended from time to time) after the effective date of such registration statement.

(h) Section 83(b) Election. The Grantee agrees that, within 20 days of any Exercise Date, he shall give notice to the Company as to whether or not he has made an election pursuant to Section 83(b) of the U.S. Internal Revenue Code of 1986, as amended, with respect to the Exercise Shares purchased on such date, and acknowledges that he will be solely responsible for any and all tax liabilities payable by him in connection with his receipt of the Exercise Shares or attributable to his making or failing to make such an election. The Grantee recognizes and agrees that he is solely responsible for all federal, state and local tax consequences associated with the granting and exercise of the Option including, without limitation, any failure or any part of the Option to qualify as an Incentive Stock Option.

7. Representations, Warranties and Covenants of the Company. The Company represents and warrants to the Grantee that (a) the Company has been duly incorporated and is an existing corporation in good standing under the laws of the State of Delaware, (b) this Agreement has been duly authorized, executed and delivered by the Company and constitutes a valid and legally binding obligation of the Company enforceable against the Company in accordance with its terms, (c) all material regulatory consents, authorizations, approvals and filings required to be obtained or made by the Company under the federal laws of the United States, the General Corporation Law of the State of Delaware and the laws of any applicable foreign jurisdictions for the grant of the Option pursuant to the terms hereof have been obtained or made, (d) the execution, delivery and performance of this Agreement, the grant of the Option contemplated hereby, and the issuance and sale of the Shares upon exercise of the Option, will not result in a breach or violation of any of the terms and provisions of, or constitute a default under, any agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any such subsidiary is bound, other than any such breach, violation or default as would not cause the grant of the Option pursuant to the terms hereof to be void or voidable, (e) the Option, when granted in accordance with the terms hereof, will be duly and validly issued, and (f) the Shares, when issued, delivered and paid for, upon exercise of the Option in accordance with the terms hereof and the Management Stock Subscription Agreement, will be duly and validly issued, fully paid and nonassessable, and free and clear of any liens or encumbrances other than those created pursuant to this Agreement or otherwise in connection with the transactions contemplated hereby. The Company covenants that it will seek the approval of the stockholders of the Company of the grant of the Options in a timely manner, and in any event within six months of the date hereof.

8. Certain Restrictions on Repurchases.

(a) Financing Agreements, etc. Notwithstanding any other provision of this Agreement, the Company shall not be obligated to repurchase all or any portion of the Option from the Grantee if (i) such purchase would result in a violation of the terms or provisions of, or result in a default or an event of default under, (A) the Second Amended and Restated Revolving Credit and Term Loan Agreement, dated as of November 1, 1988, as may from time to time be amended, among Scott, the banks party thereto, and Manufacturers Hanover Trust Company as agent for such banks, (B) the Indenture, dated as of December 30, 1986, among Scott, the Company, as guarantor, and The Connecticut National Bank, as trustee, with respect to Scott's 13% Senior Subordinated Notes due December 15, 1996, (C) the Indenture, dated as of December 30, 1986, among Scott, the Company, as guarantor, and The Connecticut National Bank, as trustee, with respect to Scott's 13-1/2% Subordinated Debentures due December 15, 1998, or (D) any other financing or security agreement or document to be entered into at any time in

connection with financing the continuing operations and expansion of the business of the Company after the date hereof (such agreements and documents, the "Financing Agreements"), (ii) such repurchase would violate any of the terms or provisions of the Certificate of Incorporation of the Company or (iii) the Company has no funds legally available therefor under the General Corporation Law of the State of Delaware.

(b) Delay of Repurchase. In the event that a repurchase by the Company otherwise required under Section 4(c) is prevented solely by the terms of Section 8(a), then the Covered Option shall be repurchased by the Company without the application of further conditions or impediments (other than as set forth in Section 4 or in this Section 8) at the first opportunity thereafter when such repurchase will not result in any default, event of default or violation under any of the Financing Agreements or in a violation of any term or provision of the Certificate of Incorporation of the Company, as the case may be, and when the Company, as the case may be, has funds legally available therefor.

(c) Purchase Price Adjustment. In the event that a repurchase of the Covered Option from the Grantee is delayed pursuant to this Section 8, the purchase price for such Option when the repurchase of such Option eventually takes place as contemplated by Section 8(b) shall be (i) the Purchase Price of such Covered Option determined in accordance with Section 4(g) at the time that the repurchase of such Option would have occurred but for the operation of this Section 8, plus (ii) an amount equal to interest on such Purchase Price at the rate publicly announced from time to time by Morgan Guaranty Trust Company of New York as its reference rate for the period from the date on which the completion of the repurchase would have taken place but for the operation of this Section 8 to the date on which such repurchase actually takes place.

(d) Determination. Notwithstanding any other provision of this Section 8, the Company agrees that if any repurchase otherwise required by Section 4(c) is delayed and the provisions of Section 8(a) and 8(b) are invoked, the Company shall provide the Grantee with a copy of a resolution duly adopted by the Board or the Executive Committee of the Board, finding that, in the good faith opinion of the Board or such Committee, such delay is required by this Section 8, and specifying the particulars of the violation, default, event of default or other condition that requires such delay.

9. No Rights as Stockholder. The Grantee shall have no voting or other rights as a stockholder of the Company with respect to any Shares covered by the Option until the exercise of the Option and the issuance of a certificate or certificates to him for such Shares. No adjustment shall be made for dividends or other rights for which the record date is prior to the issuance of such certificate or certificates.

10. Capital Adjustments. The number and price of the Shares covered by the Option shall be proportionately adjusted to reflect any stock dividend, stock split or share combination of the Common Stock or any recapitalization of the Company. Subject to any required action by the stockholders of the Company, in any merger, consolidation, reorganization, exchange of shares, liquidation or dissolution, the Option shall pertain to the securities and other property, if any, that a holder of the number of shares of Common Stock covered by the Option would have been entitled to receive in connection with such event.

11. Miscellaneous.

(a) Notices. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered personally or sent by certified or express mail, return receipt requested, postage prepaid, or by any recognized international equivalent of such delivery, to the Company, Fund II or the Grantee, as the case may be, at the following addresses or to such other address as the Company, Fund II or the Grantee, as the case may be, shall specify by notice to the others:

(i) if to the Company, to it at:

The Scotts Company
a/o The O.M. Scott & Sons Company
14111 Scottslawn Road

Marysville, OH 43041
Attention: General Counsel

(ii) if to the Grantee, to the Grantee at the address set forth on the signature page hereof.

(iii) if to Fund II, to:

The Clayton & Dubilier Private Equity Fund II Limited Partnership
270 Greenwich Avenue
Greenwich, Connecticut 06830
Attention: Clayton & Dubilier Associates II Limited Partnership, Joseph L. Rice, III

All such notices and communications shall be deemed to have been received on the date of delivery or on the third business day after the mailing thereof. Copies of any notice or other communication given under this Agreement shall also be given to:

Clayton & Dubilier, Inc.
126 East 56th Street
New York, New York 10022
Attention: Joseph L. Rice, III

and

Debevoise & Plimpton
875 Third Avenue
New York, New York 10022
Attention: Franci J. Blassberg, Esq.

Fund II also shall be given a copy of any notice or other communication between the Grantee and the Company under this Agreement at its address as set forth above.

(b) Binding Effect; Benefits. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and assigns. Except as provided in Section 4, nothing in this Agreement, express or implied, is intended or shall be construed to give any person other than the parties to this Agreement or their respective successors or assigns any legal or equitable right, remedy or claim under or in respect of any agreement or any provision contained herein.

(c) Waiver; Amendment.

(i) Waiver. Any party hereto may by written notice to the other parties (A) extend the time for the performance of any of the obligations or other actions of the other parties under this Agreement, (B) waive compliance with any of the conditions or covenants of the other parties contained in this Agreement and (C) waive or modify performance of any of the obligations of the other parties under this Agreement, provided that any waiver of the provisions of Section 4 must be consented to by Fund II. Expect as provided in the preceding sentence, no action taken pursuant to this Agreement, including, without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants or agreements contained herein. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any preceding or succeeding breach and no failure by a party to exercise any right or privilege hereunder shall be deemed a waiver of such party's rights or privileges hereunder or shall be deemed a waiver of such party's rights to exercise the same at any subsequent time or times hereunder.

(ii) Amendment. This Agreement may be amended, modified or supplemented only by a written instrument executed by the Grantee and the Company, provided that any amendment adversely affecting the rights of Fund II hereunder must be consented to by Fund II. The parties hereto acknowledge that the Company's consent to an amendment or modification of this Agreement is subject to the terms and provisions of the Financing Agreements.

(d) Assignability. Neither this Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof shall be assignable by the Company or the Grantee without the prior written consent of the other parties. Fund II may assign

from time to time all or any portion of its rights under Section 4 to one or more persons or other entities designated by it.

(e) Applicable Law. This Agreement shall be governed by and construed in accordance with the law of the State of Delaware, regardless of the law that might be applied under principles of conflict of laws.

(f) Section and Other Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

(g) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Company and the Grantee have executed this Agreement as of the date first above written.

THE SCOTTS COMPANY

By: /s/ Tadd C. Seitz
Name: Tadd C. Seitz
Title: Chairman and Chief Executive Officer

THE GRANTEE:

/s/ Theodore J. Host
Theodore J. Host

Address of the Grantee:

10019 Wellington Boulevard
Powell, Ohio 43065

EXHIBIT 23

CONSENT OF INDEPENDENT ACCOUNTANTS

We consent to the incorporation by reference in the Registration Statements of The Scotts Company on Form S-8 (File Nos. 33-47073 and 33-60056) and on Form S-3 (File No. 33-53941) of our report dated November 14, 1994 on our audits of the consolidated financial statements and our report dated November 14, 1994 on our audits of the financial statement schedules of The Scotts Company as of September 30, 1993 and 1994 and for the years ended September 30, 1992, 1993 and 1994, which reports are included in this Annual Report on Form 10-K.

Coopers & Lybrand L.L.P.
Columbus, Ohio
December 28, 1994

Exhibit 3(b)
Regulations of Registrant

REGULATIONS

OF

THE SCOTTS COMPANY

INDEX

# 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.

## ARTICLE TWO

## DIRECTORS

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 indemni-

fication 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 authorized 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.

Exhibit 11

Computation of Net Income Per Common Share

Exhibit 4(j)

Third Supplemental Indenture, dated as of September 30, 1994, among Registrant, OMS and Chemical Bank, as trustee

THIRD SUPPLEMENTAL INDENTURE, dated as of September 30, 1994, among THE O.M. SCOTT & SONS COMPANY, a corporation duly organized and existing under the laws of the State of Delaware, having its principal office at 14111 Scottslawn Road, Marysville, Ohio 43043 ("O.M. Scott"), THE SCOTTS COMPANY, a corporation duly organized and existing under the laws of the State of Ohio, having its principal office at 14111 Scottslawn Road, Marysville, Ohio 43043 ("Scotts"), and CHEMICAL BANK, a banking corporation duly organized and existing under the laws of the State of New York, as Trustee (the "Trustee").

R E C I T A L S

WHEREAS, O.M. Scott and The Scotts Company, a corporation formerly organized and existing under the laws of the State of Delaware ("Scotts-Delaware") have heretofore executed and delivered to the Trustee an Indenture, dated as of June 1, 1994 and a First Supplemental Indenture thereto dated June 12, 1994, and O.M. Scott, Scotts and Scotts-Delaware have heretofore executed a Second Supplemental Indenture thereto dated as of September 20, 1994 (pursuant to which Scotts assumed the due and punctual payment of the principal of and interest on all the Securities (as defined herein) and the performance of every covenant of the Indenture (as defined herein) on the part of Scotts-Delaware to be performed or observed) (as supplemented, the "Indenture"), providing for the issuance by Scotts of an unlimited amount of its unsecured debentures, notes or other evidences of indebtedness (the "Securities");

WHEREAS, pursuant to an Agreement and Plan of Merger dated as of September 30, 1994 (the "Merger Agreement"), between O.M. Scott and Scotts, O.M. Scott is merging (the "Merger") with and into Scotts effective September 30, 1994 (the "Effective Date"), with Scotts being the survivor of the Merger;

WHEREAS, Section 801 of the Indenture provides that, in the event O.M. Scott shall consolidate with or merge into any other corporation, the successor corporation shall expressly assume, by an indenture supplemental to the Indenture, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of and interest on all the Securities and the performance of every covenant of the Indenture on the part of O.M. Scott to be performed or observed;

WHEREAS, Section 901(1) of the Indenture provides that each of Scotts and O.M. Scott, when authorized by a Board Resolution, and the Trustee may enter into a supplemental indenture without the consent of any Holders to evidence the succession of another corporation to O.M. Scott and the assumption by any such successor of the covenants of O.M. Scott in the Indenture and in the Securities;

WHEREAS, each of Scotts and O.M. Scott has delivered to the Trustee (i) an Officers' Certificate and an Opinion of Counsel, each to the effect that the Merger and this Third Supplemental Indenture comply with Articles Eight and Nine of the Indenture and that all conditions precedent in the Indenture relating to the Merger and the execution and delivery of this Third Supplemental Indenture have been complied with and (ii) a copy of the Board Resolution authorizing the execution and delivery of this Third Supplemental Indenture;

WHEREAS, immediately after giving effect to the Merger, no Event of Default with respect to any series of Securities issued pursuant to the Indenture, and no event which, after notice or lapse of time or both, would become an Event of Default, will have occurred and be continuing; and

WHEREAS, all things necessary to authorize the assumption by Scotts of O.M. Scott's obligations under the Indenture and to make this Third Supplemental Indenture, when executed by the parties hereto, a valid and binding supplement to the Indenture have been done and performed.

NOW, THEREFORE, for and in consideration of the premises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby mutually covenant and agree as follows:

SECTION 1. Assumption of Obligations. Scotts hereby expressly assumes, from and after the Effective Date, the due and punctual payment of the principal of and interest on all the Securities and the performance of every covenant of the Indenture on the part of O.M. Scott to be performed and observed.

SECTION 2. Succession and Substitution. Scotts, from and after the Effective Date, by virtue of the aforesaid assumption and the delivery of this Third Supplemental Indenture, shall succeed to and be substituted for and may exercise every right and power of O.M. Scott under the Indenture with the same effect as if Scotts had been named as O.M. Scott in the Indenture.

SECTION 3. Representations and Warranties. Scotts, as of the date of execution of this Third Supplemental Indenture, represents and warrants that: (i) it is a corporation organized and existing under the laws of the State of Ohio; (ii) it has full corporate power and authority to execute and deliver this Third Supplemental Indenture and to perform its obligations under this Third Supplemental Indenture in accordance with its terms; and that (iii) the execution, delivery and performance of this Third Supplemental Indenture will not violate, conflict with or constitute a breach of, or a default under, its Articles of Incorporation or any other material agreement or instrument to which it is a party or which is binding on it or its assets, and will not result in the creation of any lien on, or security interest in, any of its assets.

SECTION 4. Covenants. All covenants and agreements in this Third Supplemental Indenture by Scotts shall bind its respective successors and assigns, whether so expressed or not.

SECTION 5. Requests and Notices. Pursuant to Section 105 of the Indenture, any request, demand, authorization, direction, notice, consent, waiver or act of Holders or other document provided or permitted by the Indenture to be made upon, given or furnished to, or filed with, O.M. Scott shall, from and after the Effective Date, instead be made upon, given or furnished to, or filed with, Scotts and shall be addressed to Scotts at 14111 Scottslawn Road, Marysville, Ohio 43043 or at any other address previously furnished in writing to the Trustee by Scotts.

SECTION 6. Separability. In case any provision in this Third Supplemental Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 7. No Third Party Benefits. Nothing in this Third Supplemental Indenture, express or implied, shall give to any Person, other than the parties hereto and their successors under the Indenture, and the Holders of the Securities, any benefit or any legal or equitable right, remedy or claim under the Indenture.

SECTION 8. Continuance of Indenture. This Third Supplemental Indenture supplements the Indenture and shall be a part of and subject to all the terms thereof. The Indenture, as supplemented by this Third Supplemental Indenture, shall continue in full force and effect. This Third Supplemental Indenture shall become effective at the Effective Date.

SECTION 9. The Trustee. The Trustee shall not be responsible in any manner for or in respect of the validity or sufficiency of this Third Supplemental Indenture, or for or in respect of the recitals contained herein, all of which recitals are made by O.M. Scott and Scotts solely.

SECTION 10. Governing Law. This Third Supplemental Indenture shall be governed by and construed in accordance with the laws of the State of New York.

SECTION 11. Defined Terms. All capitalized terms used in this Third Supplemental Indenture which are defined in the Indenture but not otherwise defined herein shall have the same meanings assigned to them in the Indenture.

SECTION 12. Counterparts. This Third Supplemental Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Third Supplemental Indenture to be duly executed, and their respective corporate seals to be hereunto affixed and attested, all as of the date and year first above written.

THE O.M. SCOTT & SONS COMPANY,
a Delaware corporation

By: /s/ P.D. Yeager
Name: Paul D. Yeager
Title: Executive Vice President & CFO

Attest:

/s/ Craig D. Walley

THE SCOTTS COMPANY, an Ohio corporation

By: /s/ P.D. Yeager
Name: Paul D. Yeager
Title: Executive Vice President & CFO

Attest:

/s/ Craig D. Walley

CHEMICAL BANK, as Trustee

By: /s/ T. C. Knight
Name: T. C. Knight
Title: Asst. Vice President

Attest:

Second Restatement of The Scotts Company
Profit Sharing and Savings Plan

# SECOND RESTATEMENT OF

# THE SCOTTS COMPANY

# PROFIT SHARING AND SAVINGS PLAN

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# FIRST RESTATEMENT OF
# THE SCOTTS COMPANY
# PROFIT SHARING AND SAVINGS PLAN

WHEREAS, The O.M. Scott & Sons Company established and maintained The O.M. Scott & Sons Company Profit Sharing and Savings Plan (the "Plan") in recognition of the contribution made to its successful operation by its employees and for the exclusive benefit of its eligible employees and their beneficiaries; and

WHEREAS, The O.M. Scott & Sons Company has been merged into The Scotts Company, an Ohio corporation (the "Company"), which assumes sponsorship of the Plan; and

WHEREAS, the Plan was previously amended and restated effective January 1, 1987 and effective April 1, 1992; and

WHEREAS, under the terms of the Plan, the Company has the power to amend the Plan, provided the Trustee consents to such amendment if the provisions of the Plan affecting the Trustee are amended; and

WHEREAS, the Company wishes to amend, restate and rename the Plan to reflect the change in sponsorship and comply with changes in the law;

NOW, THEREFORE, the Company hereby amends, restates and renames the Plan as of the Effective Amendment Date to provide as follows:

## SECTION 1
## DEFINITIONS

"Account" means the account maintained for a Participant, which shall be the entire interest of the Participant in the Trust Fund. Unless otherwise specified, the value of an Account shall be determined as of the Valuation Date coincident with or next following the occurrence of the event to which reference is made. A Participant's Account shall consist of the Participant's Non-Elective Profit Sharing Account, Elective Profit Sharing Account, Savings Account and Rollover Account. A Participant shall always be fully vested in his or her Account.

"Administrator" means the Company which is the administrator of the Plan within the meaning of Section 3(16) of ERISA. The Company may appoint Employees to perform ministerial acts with respect to the administration of the Plan in their capacity as Employees of the Company.

"Advisory Committee" means the person or committee appointed as such by the Board of Directors under the provisions of the Plan or, in the absence of such appointment, the Company.

"Affiliate" means any entity which, with the Employer, constitutes either (a) a controlled group of corporations (within the meaning of Section 414(b) of the Code), (b) a group of trades or businesses under common control (within the meaning of Section 414(c) of the Code), (c) an affiliated service group (within the meaning of Section 414(m) of the Code), or (d) a group of entities required to be aggregated pursuant to Section 414(o) of the Code and the regulations thereunder.

"Aggregation Group" means (a) the Plan, (b) any plan of the Employer or any Affiliate in which a Key Employee or any of a Key Employee's beneficiaries is a participant, (c) any plan which enables any plan described in (a) or (b) to meet the requirements of Sections 401(a)(4) or 410 of the Code, (d) any plan maintained by the Employer or an Affiliate within the last five years ending on the last day of the immediately preceding Plan Year and would, but for the fact it was terminated, be part of the Aggregation Group, and (e) any plan of the Employer or any Affiliate designated by the Employer, the inclusion of which in the Aggregation Group would not cause the Aggregation Group to fail to meet the requirements of Sections 401(a)(4) and 410 of the Code.

"Beneficiary" means the beneficiary under the Plan of a deceased Participant.

"Board of Directors" means the board of directors of the Company.

"Break in Service" means failure by an Employee to complete more than 500 Hours of Service during any Plan Year. Any Break in Service shall be deemed to have commenced on the first day of the Plan Year in which it occurs. In the case of an absence from work which begins in any Plan Year beginning after December 31, 1984, if an Employee is absent from work for any period by reason of pregnancy, the birth or placement for adoption of a child, or for caring for a child for a period immediately following the birth or placement, then for purposes of determining whether a Break in Service has occurred (and not for purposes of determining Years of Eligibility Service) such Employee shall be credited with the Hours of Service which otherwise normally would have been credited to such Employee, or, if the Administrator is unable to determine the number of such Hours of Service, eight Hours of Service for each day of absence, in any case not to exceed 501 Hours of Service. The Hours of Service credited to an Employee under this definition shall be treated as Hours of Service in the Plan Year in which the absence from work begins, if the Employee would be prevented from incurring a Break in Service in such year solely because of such Hours of Service or, in any other case, in the immediately following year. The Administrator may require that the Employee certify and/or supply documentation that his or her absence is for one of the permitted reasons and the number of days for which there was such an absence.

"Code" means the Internal Revenue Code of 1986, as now or hereafter amended, construed, interpreted and applied by regulations, rulings or cases.

"Company" means The O.M. Scott & Sons Company, a Delaware corporation, until the merger of The O.M. Scott & Sons Company into The Scotts Company, an Ohio corporation, and The Scotts Company thereafter, and any successor thereto.

"Company Stock Fund" means the Investment Fund consisting of Employer Securities and cash or cash equivalents needed to meet the obligations of such fund or for the purchase of Employer Securities.

"Compensation" means an Employee's wages, salaries, fees for professional service and other amounts received for personal services actually rendered in the course of employment with the Employer (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses), but shall not include distributions from a plan of deferred compensation (other than an unfunded non-qualified plan), amounts realized from the exercise of a non-qualified stock option or from the sale, exchange or other disposition of stock acquired under a qualified stock option plan, and other amounts which receive special tax benefits. For purposes of identifying Highly Compensated Employees and computing the Compensation Deferral Limit only, a Participant's Compensation includes amounts which would have been includable in the Participant's income but for the Participant's election to make Savings Contributions, Elective Profit Sharing Contributions, and contributions to a cafeteria plan maintained by the Employer, determined in accordance with Section 414(s) of the Code. Notwithstanding the foregoing, (i) effective for Plan Years beginning after December 31, 1988, Compensation paid by the Employer during any Plan Year in excess of $200,000 as adjusted at the same time and in the same manner as under Section 415(d) of the Code shall be excluded; and (ii) effective for Plan Years beginning after December 31, 1993, Compensation paid by the Employer during any Plan Year in excess of $150,000, adjusted under Section 401(a)(17) of the Code shall be excluded. In determining the Compensation of a Participant for purposes of the $200,000 or $150,000 limit, the family aggregation rules of Section 414(q)(6) of the Code shall apply, except in applying such rules, the term "family" shall include only the spouse of the Participant and any lineal descendants of the Participant who have not attained age 19 before the close of the year. If, as a result of the application of such rules, Compensation would exceed the adjusted $200,000 or $150,000 limitation, then the limitation shall be prorated among the affected persons in proportion to each such person's Compensation as determined under this paragraph prior to the application of this limitation.

"Compensation Deferral Limit" means the greater of (a)

the average actual contribution deferral percentage of Non-Highly Compensated Employees multiplied by 1.25, or (b) the lesser of (i) the average actual contribution deferral percentage of Non-Highly Compensated Employees multiplied by two, or (ii) the average actual contribution deferral percentage of Non-Highly Compensated Employees plus 2%, as determined under Section 401(k)(3) of the Code and the regulations thereunder. A Participant's actual contribution deferral percentage is the Savings Contributions and Elective Profit Sharing Contributions made for the Participant which may be taken into account for the Plan Year for purposes of Section 401(k)(3) of the Code, divided by the Participant's Compensation while a Participant during the Plan Year. All or any portion of the Non-Elective Profit Sharing Contributions for the Plan Year may be included in the calculation of the Compensation Deferral Limit for the Plan Year at the option of the Employer.

"Effective Amendment Date" means: (a) in the case of any change in the Plan required by a change in the Code or ERISA, the date on which such change in the Plan is required to be effective; (b) in the case of any change in the Plan for which an effective date is specifically stated elsewhere in the Plan, such date; and (c) in the case of any other change in the Plan, April 1, 1992.

"Elective Profit Sharing Account" means the portion of the Account of a Participant consisting of Elective Profit Sharing Contributions, as adjusted under the Plan.

"Elective Profit Sharing Contribution" means the portion of the Profit Sharing Pool which is allocated to the Participant and which is contributed to the Plan under Section 3.1 on behalf of the Participant, as a result of an absence of an election by the Participant to receive such amount in cash.

"Eligible Compensation" means, for the period during a Plan Year that an Employee is a Participant, amounts paid by the Employer plus amounts which would have been includable in a Participant's income but for a Participant's election to make Savings Contributions and contributions to a cafeteria plan maintained by the Employer, which are or would have been (a) wages, (b) salaries and executive, management and sales incentives, not in excess of the maximum of an Employee's salary band, (c) overtime, and (d) commissions. Notwithstanding the foregoing, a Participant's Eligible Compensation shall not include amounts paid in lieu of Elective Profit Sharing Contributions and shall not exceed the lesser of (i) the maximum of Zone 2 in Band F as defined in The Scotts Company Salaried, Exempt and Office Technical Salaried Non-Exempt Compensation Policy and The Scotts Company Job Evaluation Plan, or (ii) effective for Plan Years starting before January 1, 1994 $200,000 as adjusted at the same time and in the same manner as under Section 415(d) of the Code and effective for Plan Years starting on or after January 1, 1994, $150,000 as adjusted under Section 401(a)(17) of the Code. In determining the Eligible Compensation of a Participant for purposes of this limitation, the family aggregation rules of Section 414(q)(6) of the Code shall apply, except in applying such rules, the term "family" shall include only the spouse of the Participant and any lineal descendants of the Participant who have not attained age 19 before the close of the year. If, as a result of the application of such rules, Compensation would exceed the adjusted $200,000 or $150,000 limitation, then the limitation shall be prorated among the affected persons in proportion to each such person's Eligible Compensation as determined under this paragraph prior to the application of this limitation.

"Eligibility Computation Period" means (a) the initial Eligibility Computation Period of 12 consecutive months commencing on an Employee's most recent date of employment commencement, and (b) each and every full Plan Year, commencing with the Plan Year in which falls the last day of an Employee's initial Eligibility Computation Period, during which the Employee is in the service of the Employer.

"Eligible Rollover Distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: (a) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (b) any distribution to the extent such distribution is required under section 401(a)(9)

of the Code; and (c) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

"Employee" means any person employed by the Employer or an Affiliate working with the Scotts product line or with corporate management and administration, other than persons (a) whose terms and conditions of employment are determined by collective bargaining with a third party, with respect to whom inclusion in this Plan has not been provided for in the collective bargaining agreement setting forth those terms and conditions of employment, (b) who are nonresident aliens described in Section 410(b)(3)(C) of the Code, and (c) who are Leased Employees.

"Employer" means the Company and any Affiliate which, with the consent of the Board of Directors, adopts this Plan and joins in the corresponding Trust Agreement.

"Employer Securities" means stock or other securities of the Employer or an Affiliate permitted to be held by the Plan under ERISA and the Code.

"Employer Securities Contribution Fund" means a fund consisting of Employer Securities contributed by the Employer and held by the Trustee in accordance with the Plan.

"Enrollment Date" means the date on which an Employee first becomes a Participant and the first day of each quarter of the Plan Year and any additional dates designated by the Administrator as dates on which Participants may enter into or modify elections to make Savings Contributions and/or change their investment directions.

"ERISA" means the Employee Retirement Income Security Act of 1974 (P.L. No. 93-406), as now existing or hereafter amended, and as now or hereafter construed, interpreted and applied by regulations, rulings or cases.

"Highly Compensated Employee" means any Employee who performs service for the Employer during the Plan Year of determination and who, during the prior Plan Year (a) received Compensation in excess of $75,000 (as adjusted pursuant to Section 415(d) of the Code), (b) received Compensation in excess of $50,000 (as adjusted pursuant to Section 415(d) of the Code) and was a member of the top-paid group of the Employer and its Affiliates for such year, or (c) was an officer of the Employer and received Compensation during such year that is greater than 50 percent of the dollar limitation in effect under Section 415(b)(1)(A) of the Code (not to exceed 50 officers). The term Highly Compensated Employee also includes (i) an Employee who would have been a Highly Compensated Employee under the preceding sentence if the determination was made based on the current Plan Year and if he or she is one of the 100 people who received the most Compensation from the Employer and its Affiliates during the current Plan Year, and (ii) an Employee who is a 5% owner at any time during the current Plan Year or the prior Plan Year. The number and identities of Employees in the top-paid group will be determined without regard to minimum service requirements. If an Employee is, during the current Plan Year or prior Plan Year, a family member of either a 5% owner or a Highly Compensated Employee who is one of the 10 most Highly Compensated Employees ranked on the basis of Compensation paid by the Employer and its Affiliates during such year, then the family member and the 5% owner or top-ten Highly Compensated Employee shall be aggregated. In such case, the family member and 5% owner or top-ten Highly Compensated Employee shall be treated as a single Employee receiving Compensation and Plan contributions equal to the sum of such Compensation and contributions of the family member and 5% owner or top-ten Highly Compensated Employee. For purposes of this definition, family member includes the spouse, lineal ascendants and descendants of the Employee and the spouses of such lineal ascendants and descendants. The determination of who is a Highly Compensated Employee shall be made in accordance with Section 414(q) of the Code and the regulations thereunder.

"Hour of Service" means (a) each hour for which an Employee is paid or entitled to payment for the performance of duties for the Employer or an Affiliate during the applicable computation period, (b) each hour for which an Employee is paid or entitled to payment by the Employer or an Affiliate on account of a period of time during which no duties are performed

(irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury or military duty, or leave of absence, and (c) each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer or an Affiliate. In computing Hours of Service on a weekly or monthly basis when a record of hours of employment is not available, the Employee shall be assumed to have worked 40 hours for each full week of employment and eight hours for each day in less than a full week of employment, regardless of whether the Employee has actually worked fewer hours. Notwithstanding the foregoing, (i) not more than 501 Hours of Service shall be credited to an Employee on account of any single continuous period during which the Employee performs no duties, (ii) no credit shall be granted for any period with respect to which an Employee receives payment or is entitled to payment under a plan maintained solely for the purpose of complying with applicable workers' compensation or disability insurance laws, and (iii) no credit shall be granted for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee. In the case of a person who was a Leased Employee and who subsequently becomes an Employee, hours of service as a Leased Employee shall count as Hours of Service as an Employee. Determination and crediting of Hours of Service shall be made under Department of Labor Regulations Sections 2530.200b-2 and 3.

"Investment Committee" means the person or committee appointed as such by the Board of Directors under the provisions of the Plan or, in the absence of such appointment, the Company.

"Investment Funds" means the funds described in Section 4.2.

"Key Employee" has the meaning set forth in Section 416(i) of the Code and the regulations thereunder.

"Leased Employee" means any person (other than an Employee) who pursuant to an agreement between the Employer and any other person ("leasing organization") has performed services for the Employer (or for the Employer and related persons determined in accordance with Section 414(n)(6) of the Code) on a substantially full time basis for a period of at least one year, and such services are of a type historically performed by Employees in the business field of the Employer. Contributions or benefits provided a Leased Employee by the leasing organization which are attributable to services performed for the Employer shall be treated as provided by the Employer. A person who would otherwise be considered a Leased Employee shall not be considered a Leased Employee if (a) such person is covered by a money purchase pension plan providing (i) a nonintegrated employer contribution rate of at least 10% of compensation, as defined in Section 415(c)(3) of the Code, but including amounts contributed pursuant to a salary reduction agreement which are excludable from the person's gross income under Section 125, Section 402(a)(8), Section 402(h) or Section 403(b) of the Code, (ii) immediate participation, and (iii) full and immediate vesting; and (b) Leased Employees do not constitute more than 20 percent of the Employer's Non-Highly Compensated Employees.

"Non-Elective Profit Sharing Account" means the portion of the Account of a Participant consisting of Non-Elective Profit Sharing Contributions plus the amount in the Account of the Participant prior to January 1, 1987 (excluding any portion as to which the Participant had a distribution election in effect on January 1, 1987), as adjusted under the Plan.

"Non-Elective Profit Sharing Contribution" means the portion of the Profit Sharing Pool which the Participant does not have the opportunity to elect to receive in cash and which is automatically contributed to the Plan on behalf of the Participant.

"Non-Highly Compensated Employee" means any Employee other than a Highly Compensated Employee.

"Non-Key Employee" means any Employee other than a Key Employee.

"Participant" means any person who has been admitted to participation in the Plan and has not ceased participation in the Plan.

"Plan" means the Second Restatement of The Scotts Company Profit Sharing and Savings Plan as set forth herein and as from time to time amended. The Plan is a profit sharing and stock bonus plan.

"Plan Year" means the calendar year.

"Profit Sharing Contribution" means a Non-Elective Profit Sharing Contribution or an Elective Profit Sharing Contribution.

"Profit Sharing Pool" means for a Plan Year the dollar amount which the Company determines is available for Non-Elective Profit Sharing Contributions and, at the option of Participants, Elective Profit Sharing Contributions or cash compensation.

"Rollover Account" means the portion of the Account of a Participant consisting of Rollover Contributions, as adjusted under the Plan.

"Rollover Contribution" means the amount contributed by an Employee as a rollover contribution in accordance with Section 402 of the Code.

"Savings Contribution" means an Employer contribution to the Plan in an amount equal to the reduction in the Participant's Compensation pursuant to the Participant's election under the Plan.

"Savings Account" means the portion of the Account of a Participant consisting of Savings Contributions, as adjusted under the Plan.

"Section 16 Person" means (a) any member of the board of directors of The Scotts Company, (b) The Scotts Company's president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president in charge of a principal business unit, division or function, or any other officer or other person who performs a significant policy making function, or (c) any person who is the beneficial owner of more than 10% of the outstanding common stock of The Scotts Company. The principal financial officer of The Scotts Company shall designate those persons who are Section 16 Persons and deliver a list of the Section 16 Persons eligible to participate in the Plan to the Administrator from time to time or at the request of the Administrator. Such list of Section 16 Persons will be conclusive on the Administrator and the sole source for determining who is a Section 16 Person, and the Administrator shall not be required to further investigate whether a person is a Section 16 Person.

"Termination Date" means the date on which an Employee quits, is discharged, retires, dies or otherwise terminates employment. For purposes of this Plan, a Participant who has ceased to perform services for the Employer shall be deemed to incur a Termination Date on the date he or she is found by the Company to be permanently and totally disabled under The Scotts Company Long Term Disability Plan.

"Top-Heavy Plan" has the meaning set forth in Section 416 of the Code and the regulations thereunder. For purposes of determining whether the Plan is a Top-Heavy Plan, the determination date is, for the first Plan Year, the last day of the Plan Year and for each succeeding Plan Year, the last day of the preceding Plan Year.

"Trust" means the trust created by the Trust Agreement.

"Trust Agreement" means The O.M. Scott & Sons Company Profit Sharing Plan Trust Agreement as the same presently exists and as it may from time to time hereafter be amended.

"Trust Fund" means all of the assets of the Plan held by the Trustee under the Trust Agreement.

"Trustee" means the party or parties acting as such under the Trust Agreement.

"Valuation Date" means the last day of each quarter of the Plan Year and each interim date as of which the Administrator directs the allocation of distributions, contributions and earnings of the Trust Fund.

"Year of Eligibility Service" means an Eligibility Computation Period in which a person has 1,000 or more Hours of Service.

## SECTION 2
## PARTICIPATION

2.1. Eligibility. An Employee shall become a Participant on the first day of the month coincident with or next following the date on which the Employee completes one Year of Eligibility Service; provided, that no person shall become a Participant if such person is no longer an Employee on the date as of which such person's admission to participation would otherwise have become effective. Each Employee who becomes eligible for admission to participation in this Plan shall complete such forms and provide such data as are reasonably required by the Administrator. Participation shall cease on a Participant's Termination Date.

2.2. Breaks in Service. If an Employee had no Account attributable to Profit Sharing Contributions before any period of consecutive Breaks in Service, and if the number of consecutive Breaks in Service within such period equals or exceeds five, the Employee shall upon reemployment be required to satisfy the requirements for participation in the Plan as though such Employee had not previously been an Employee. If any Years of Eligibility Service are not required to be taken into account because of a period of Breaks in Service to which this Section applies, such Years of Eligibility Service shall not be taken into account in applying this Section to any subsequent Breaks in Service.

2.3. Change in Status. If a person who has been in the employ of the Employer or an Affiliate in a category of employment not eligible for participation in this Plan subsequently becomes an Employee by reason of a change in status to a category of employment eligible for participation, such person shall become a Participant as of the date on which the change in status occurs, if, on such date, such person has otherwise satisfied the requirements for participation in the Plan.

2.4. Erroneous Omission or Inclusion of Employee. If, in any Plan Year, any Employee who should have been included as a Participant in the Plan is erroneously omitted and discovery of such omission is not made until after a Profit Sharing Contribution for the Plan Year has been made and allocated, the Employer shall make a contribution with respect to the omitted Employee equal to the amount which the Employee would have received as an allocation had the Participant not been omitted. If, in any Plan Year, any person who should not have been included as a Participant in the Plan is erroneously included and discovery of such incorrect inclusion is not made until after a contribution for the Plan Year has been made and allocated, the Employer shall not be entitled to recover the contribution made with respect to the ineligible person, and any earnings thereon, unless no deduction is allowable with respect to such contribution. The amount contributed with respect to the ineligible person, together with any earnings thereon, shall be applied to reduce Profit Sharing Contributions for the Plan Year in which the discovery is made.

2.5. Waiver of Participation. The Administrator shall have the right to permit an Employee to waive participation in the Plan on a year-to-year, nondiscriminatory basis.

## SECTION 3
## CONTRIBUTIONS

3.1. Profit Sharing Contributions.

3.1.1. The Employer intends to create a Profit Sharing Pool for each Plan Year during which the Plan is in effect in such amount as the Employer in its absolute discretion shall timely determine. This provision shall not be construed as requiring the Employer to create a Profit Sharing Pool for any specific Plan Year. The Profit Sharing Pool shall be allocated as of the last day of the Plan Year among all Participants who are Employees on the last day of the Plan Year, in proportion to the Eligible Compensation of each such Participant to the Eligible Compensation of all such Participants for the Plan Year. In the

Plan Year of his or her Termination Date, a Participant who retires under The Scotts Company Employees' Pension Plan, dies or incurs a permanent and total disability under The Scotts Long Term Disability Plan shall share in the Profit Sharing Pool as if he or she were an Employee on the last day of the Plan Year.

3.1.2. One-half of the amount of the Profit Sharing Pool allocated to a Participant shall be contributed by the Employer to the Plan as a Non-Elective Profit Sharing Contribution and allocated to the Participant's Non-Elective Profit Sharing Account. The remainder of the Profit Sharing Pool allocated to the Participant shall be paid to the Participant as a bonus or contributed by the Employer to the Plan as an Elective Profit Sharing contribution and allocated to the Participant's Elective Profit Sharing Account, in accordance with the Participant's profit sharing election.

3.1.3. Each Participant shall have the opportunity to make a profit sharing election to have one-half of his or her share in the Profit Sharing Pool, if any, (a) if the Participant so elects, paid to the Participant as a bonus, or (b) if the Participant so elects or fails to make an election, contributed to the Plan and allocated to the Participant's Elective Profit Sharing Account. A Participant may enter into or modify his or her profit sharing election effective as to the current Plan Year by submitting a new profit sharing election to the Administrator at least 30 days prior to the last day of the Plan Year (or such other date as the Administrator may establish for purposes of administrative convenience). A profit sharing election for a prior Plan Year may not be modified and a profit sharing election for the current Plan Year shall not be effective for future Plan Years. The Administrator may limit the Elective Profit Sharing Contributions of some or all Highly Compensated Employees, in such manner as the Administrator determines, so as to comply with a projected Compensation Deferral Limit as provided in Section 401(k) of the Code and the regulations thereunder.

3.2. Savings Contributions. Each Participant shall be entitled to make a Savings Contribution enrollment election, which shall be in the form prescribed by the Administrator. The enrollment election shall provide for a reduction of the Participant's Compensation, in whole percentage points up to 15% of Compensation, and a corresponding contribution to the Participant's Savings Account as a Savings Contribution. A Participant may enter into or modify his or her enrollment election as of any Enrollment Date by submitting a new enrollment election to the Administrator at least 30 days prior to the Enrollment Date (or such greater or lesser period prior to the Enrollment Date as the Administrator may establish for purposes of administrative convenience). A Participant may terminate his or her enrollment election at any time upon 30 days prior written notice (or such greater or lesser period as the Administrator may establish for purposes of administrative convenience).

3.3. Limits on Elective Profit Sharing and Savings Contributions.

3.3.1. A Participant's Savings Contributions for a calendar year, plus the Elective Profit Sharing Contributions actually made for the Participant during the calendar year, shall not exceed the limit in Section 402(g) of the Code. Any Savings Contribution which, when combined with the Participant's Elective Profit Sharing Contribution and deferrals under any other plans sponsored by an Affiliate, exceeds the limit in Section 402(g) of the Code shall be returned together with earnings for the Plan Year to the Participant not later than the April 15 following the close of the calendar year for which the contribution was made. If a Participant's Savings Contribution, Elective Profit Sharing Contribution and deferrals under plans not sponsored by Affiliates exceed the limit in Section 402(g) of the Code, the Participant may assign to the Plan any portion of the excess by notifying the Administrator in writing of such excess by March 31 of the following year. Any excess and income allocatable to such excess for the Plan Year shall be distributed to the Participant no later than the April 15 of the following year.

3.3.2. In the case of a Highly Compensated Employee, the Savings Contributions, Elective Profit Sharing Contributions and, to the extent they are taken into account in calculating the Compensation Deferral Limit, Non-Elective Profit Sharing Contributions made for the Participant which may be taken into account for the Plan Year for purposes of Section 401(k)(3) of the Code, shall not exceed the Compensation Deferral Limit. The Administrator may limit the Savings Contributions of some or all Highly Compensated Employees, in such manner as the Administrator determines, so as to comply with a projected Compensation Deferral Limit as provided in Section 401(k) of the Code and the regulations thereunder. Any Savings Contribution and/or Elective Profit Sharing Contribution which exceeds the Compensation Deferral Limit shall be returned together with earnings for the Plan Year to the Participant within two and one-half (2-1/2) months after the close of the Plan Year for which the contribution was made.

3.3.3. The amount of excess contributions for a Highly Compensated Employee shall be determined in the following manner: first, the actual deferral ratio of the Highly Compensated Employee(s) with the highest actual deferral ratio is reduced to the extent necessary to meet the Compensation Deferral Limit or cause such ratio to be equal to the actual deferral ratio of the Highly Compensated Employee with the next highest ratio. Second, the process is repeated until the Compensation Deferral Limit is met. The amount of excess contributions for a Highly Compensated Employee is then equal to the total of elective and other contributions taken into account in computing the Compensation Deferral Limit, minus the product of the Highly Compensated Employee's contribution ratio as determined above and the Highly Compensated Employee's Compensation.

3.3.4. If the Highly Compensated Employee's actual deferral ratio is determined by combining the contributions and compensation of all family members, then the actual deferral ratio is reduced in accordance with the "leveling" method described in Section 1.401(k)-1(f)(2) of the regulations under the Code and the excess contributions for the family unit are allocated among the family members in proportion to the contributions of each family member that have been combined. If the Highly Compensated Employee's actual deferral ratio is determined by combining the contributions and compensation of only those family members who are Highly Compensated Employees without regard to family aggregation, then the actual deferral ratio is reduced in accordance with the leveling method but not below the actual deferral ratio of eligible family members who are Non-Highly Compensated Employees. Excess contributions are determined by taking into account the contributions of the eligible family members who are Highly Compensated Employees without regard to family aggregation and are allocated among such family members in proportion to their contributions. If further reduction of the actual deferral ratio is required, excess contributions resulting from this reduction are determined by taking into account the contributions of all eligible family members and are allocated among such family members in proportion to their contributions.

3.3.5. The amount of excess contributions to be

distributed shall be reduced by excess deferrals previously distributed for the taxable year ending in the same Plan Year and excess deferrals to be distributed for a taxable year will be reduced by excess contributions previously distributed for the Plan Year beginning in such taxable year.

3.4. Timing of Contributions. All Savings Contributions shall be made no later than the earlier of (a) the earliest date after the reduction of Participants' Compensation on which the Savings Contributions can reasonably be segregated from the Employer's general assets, or (b) 90 days after the reduction of Participants' Compensation. Non-Elective Profit Sharing Contributions and Elective Profit Sharing Contributions shall be made no later than the due date (including extensions) of the income tax return of the Company for the fiscal year of the Company including the last day of the Plan Year for which such contribution is made. All contributions shall be paid over to the Trustee and shall be invested by the Trustee in accordance with the Plan and the Trust Agreement.

3.5. Rollover Contributions.

3.5.1. An Employee may roll over a cash distribution from a qualified plan or conduit individual retirement account to this Plan, provided that (a) the distribution is (i) received from a qualified plan as an Eligible Rollover Distribution, and (ii) rolled over directly from the qualified plan or within the 60 days following the date the Employee received the distribution, or (b) the distribution is (i) received from a conduit individual retirement account which has no assets other than assets attributable to an Eligible Rollover Distribution or a "qualified total distribution" within the meaning of Section 402 of the Code as in effect prior to January 1, 1993, which was deposited in the conduit individual retirement account within 60 days of the date the Employee received the distribution, plus earnings, (ii) eligible for tax free rollover to a qualified plan, and (iii) rolled over within the 60 days following the date the Employee received the distribution. The Employee shall present a written certification to the foregoing requirements to the Administrative Committee. The Administrative Committee may also require the Employee to provide an opinion of counsel that the amount rolled over meets the requirements of this Section.

3.5.2. The foregoing contributions, which shall be Rollover Contributions, shall be accounted for separately and shall be credited to an Employee's Rollover Account. An Employee shall not be permitted to withdraw any portion of his or her Rollover Account until the earlier of the date the Employee attains age 59-1/2 or such time as the Employee is otherwise eligible to make a withdrawal from or receive a distribution of his or her Account. An Employee who has made a Rollover Contribution shall be deemed to be a Participant with respect to his or her Rollover Account even if he or she is not otherwise a Participant.

3.6. Exclusive Benefit; Refund of Contributions.

3.6.1. All contributions made by the Employer are made for the exclusive benefit of the Participants and their Beneficiaries, and such contributions shall not be used for or diverted to purposes other than for the exclusive benefit of the Participants and their Beneficiaries, including the costs of maintaining and administering the Plan and Trust.

3.6.2. Notwithstanding any other provision of this Section, amounts contributed to the Trust by the Employer may be refunded to the Employer, to the extent that such refunds do not, in themselves, deprive the Plan of its qualified status, under the following circumstances and subject to the following limitations: (a) to the extent that a federal income tax deduction is disallowed for any contribution made by the Employer, the Trustee shall refund to the Employer the amount so disallowed within one year of the date of such disallowance; (b) if a contribution is made, in whole or in part, by reason of a mistake of fact, there shall be returned to the Employer so much of such contribution as is attributable to the mistake of fact within one year after the payment of the contribution to which the mistake applies; and (c) except as provided in the event of an erroneous allocation to an ineligible person, if the Plan initially or as a result of an amendment fails to satisfy the qualification requirements of Section 401(a) of the Code, and if the Employer declines to amend

the Plan to satisfy such qualification requirements, contributions made prior to the determination that the Plan has failed to qualify shall be returned to the Employer within one year of denial of qualification.

3.6.3. Notwithstanding any other provision of this Section, no refund shall be made to the Employer which is specifically chargeable to the Account of any Participant in excess of 100% of the amount in such Account nor shall a refund be made by the Trustee of any funds, otherwise subject to refund hereunder, which have been distributed to any Participant or Beneficiary. If any such distributions become refundable, the Employer shall have a claim directly against the distributees to the extent of the refund to which it is entitled.

3.6.4. All refunds under this Section shall be limited in amount, circumstance and timing by the provisions of Section 403 of ERISA, and no such refund shall be made if, solely because of such refund, the Plan would cease to be a qualified plan under Section 401(a) of the Code.

3.7. Annual Additions and Limitations.

3.7.1. Notwithstanding any other provisions of this Plan, in no event shall the annual addition to a Participant's Account for any Plan Year exceed the lesser of $30,000 (or such other limit as may be the maximum permitted under Section 415 of the Code and regulations issued thereunder) or 25% of such Participant's Compensation. All amounts contributed to any defined contribution plan maintained by the Employer or any Affiliate shall be aggregated with contributions under this Plan in computing any Employee's annual additions limitation. In no event shall the amount allocated to the Account of any Participant be greater than the maximum amount allowed under Section 415 of the Code with respect to any combination of plans without disqualification of any such plan. Any adjustment to the dollar limitation set forth in this Section shall be effective only for the Plan Years ending on or after January 1 of the year for which the adjustment is made. For purposes of this Section, the term "annual addition" shall mean the sum of Non-Elective Profit Sharing Contributions, Elective Profit Sharing Contributions and Savings Contributions allocable to the Participant's Account for the Plan Year.

3.7.2. In the event a Participant is a participant in any other defined contribution plan and/or defined benefit plan sponsored by the Employer or any Affiliate, and the sum of the "defined benefit plan fraction" and the "defined contribution plan fraction" would exceed 1.0 but for the operation of this Section, the "defined contribution fraction" shall be reduced so that the sum of the fractions shall not exceed 1.0. For purposes of this subsection, the "defined benefit plan fraction" is the ratio that (a) the Participant's projected annual retirement benefit as of the end of the Plan Year under the defined benefit plans bears to (b) the lesser of (i) the product of 1.25 multiplied by the dollar limitation in effect under Section 415(b)(1)(A) of the Code for such Plan Year, or (ii) the product of 1.4 multiplied by the maximum amount permitted under Section 415(b)(1)(B) of the Code for such Plan Year. The "defined contribution plan fraction" is the ratio of (a) the Participant's annual additions for the Plan Year to the defined contribution plans bears to (b) the lesser of the following amounts determined for such Plan Year and for each prior Year of Service with the Employer: (i) the product of 1.25 multiplied by the dollar limitation in effect under Section 415(c)(1)(A) of the Code for such year, or (ii) the product of 1.4 multiplied by the maximum amount permitted under Section 415(c)(1)(B) of the Code for such year.

3.7.3. If the annual addition to a Participant's Account exceeds the amount permitted under this Section due to a reasonable error in estimating a Participant's Compensation or in determining the amount of Savings Contributions and Elective Profit Sharing Contributions which may be made under the limits of Section 415 of the Code, such excess shall be disposed of as follows:

(a) At the discretion of the Administrator, Savings Contributions and Elective Profit Sharing Contributions will be returned to the Participant;

(b) If the Participant is a Participant on the last day of the Plan Year, such excess shall be applied to reduce

Non-Elective Profit Sharing Contributions for such Participant in subsequent Plan Years, and no Profit Sharing Contribution shall be made to such Participant's Account until such excess annual addition is eliminated;

(c) If at any time while an excess annual addition is being applied or would be applied to reduce future Non-Elective Profit Sharing Contributions for a Participant, such Participant ceases to be a Participant, then such excess annual addition shall be held unallocated in a suspense account for the Plan Year and shall be allocated in the next Plan Year as an Employer contribution, and no contribution which would constitute an annual addition shall be made until any such suspense account is completely allocated; and

(d) No suspense account maintained under this Section shall participate in allocations of gains and losses of the Investment Funds unless otherwise directed by the Administrator.

3.8. Fail-Safe Allocations of Profit Sharing Contributions. Notwithstanding anything in the Plan to the contrary, for Plan Years beginning after December 31, 1989, if the Plan would otherwise fail to meet the requirements of Section 401(a)(4) or Section 410(b) of the Code and the regulations thereunder because Non-Elective Profit Sharing Contributions have not been allocated to a sufficient number or percentage of Participants for a Plan Year, then the group of Participants eligible to share in the Non-Elective Profit Sharing Contribution for the Plan Year shall be expanded to include the minimum number of former Participants (who are not employed on the last day of the Plan Year and so would not otherwise be eligible to share in the Non-Elective Profit Sharing Contribution) as are necessary to satisfy the applicable test. The specific former Participants who shall become eligible under the terms of this paragraph shall be those former Participants who are Non-Highly Compensated Employees who, when compared to similarly situated former Participants, have completed the greatest number of Hours of Service in the Plan Year before terminating employment. Nothing in this Section shall permit the reduction of a Participant's benefit. Therefore any amounts that have previously been allocated to Participants may not be reallocated to satisfy these requirements. In the event additional allocations are required, the Employer shall make an additional contribution equal to the additional allocations, even if it exceeds the amount which would be deductible under Section 404 of the Code. Any adjustment to the allocations pursuant to this Section shall be made by the October 15 after the Plan Year and shall be considered to be made as of the last day of the Plan Year.

## SECTION 4
## INVESTMENT

4.1. Investment Direction.

4.1.1. Each Participant shall have the right to direct, in multiples of five percentage points, that (a) future contributions to and the existing balance in the Participant's Non-Elective and Elective Profit Sharing Accounts be invested in one or more of the Investment Funds, (b) future contributions to and the existing balance in the Participant's Savings Account be invested in one or more Investment Funds, and (c) future contributions to and the existing balance in the Participant's Rollover Account be invested in one or more Investment Funds.

4.1.2. A Participant may change his or her investment direction as of any Enrollment Date by submitting a form prescribed by the Administrator to the Administrator at least 30 days prior to the Enrollment Date (or such greater or lesser period prior to the Enrollment Date as the Administrator may establish for purposes of administrative convenience) along with payment of a reasonable charge established by the Administrator to defray the administrative expense of processing the investment direction.

4.2. Investment Funds. One of the Investment Funds shall be the Company Stock Fund, consisting of Employer Securities and cash or cash equivalents needed to meet obligations of such fund or for the purchase of Employer Securities. The Investment Committee shall direct the Trustee to create and maintain three or more additional Investment Funds according to investment criteria

established by the Investment Committee. The Investment Committee shall have the right to direct the Trustee to merge or modify any existing Investment Funds, other than the Company Stock Fund.

4.3. Investment in Employer Securities. One of the purposes of the Plan is to provide Participants with ownership interests in the Employer, and to the extent practicable, all available assets of the Company Stock Fund shall be used to purchase Employer Securities, which shall be held by the Trustee until distribution or sale for distribution of cash to Participants or Beneficiaries or until disposition is required to implement changes in investment designations. In addition, all or any portion of any other Investment Fund may consist of Employer Securities. Such percentage of the Trust Fund, up to 100%, shall be invested in Employer Securities as results from the operation of this Section.

4.4. Voting Employer Securities. The Investment Committee shall have the power to direct the Trustee in the voting of all Employer Securities held by the Trustee. All voting of Employer Securities shall be in compliance with all applicable rules and regulations of the Securities and Exchange Commission and all applicable rules of or any agreement with any stock exchange on which the Employer Securities being voted are traded. The Trustee shall vote all Employer Securities as directed by the Investment Committee and in the absence of such directions shall vote or not vote Employer Securities in such manner as the Trustee shall, in its sole discretion, determine. Notwithstanding the foregoing, the Investment Committee may, in its sole discretion and at any time or from time to time, permit Participants and Beneficiaries to direct the manner in which any Employer Securities allocated to their Accounts shall be voted on such matter as the Investment Committee permits.

4.5. Tender Offers. Each Participant and Beneficiary shall have the sole right to direct the Trustee as to the manner in which to respond to a tender or exchange offer for Employer Securities allocated to such person's Account. The Investment Committee shall use its best efforts to notify or cause to be notified each Participant and Beneficiary of any tender or exchange offer and to distribute or cause to be distributed to each Participant and Beneficiary such information as is distributed in connection with any tender or exchange offer to holders generally of Employer Securities, together with the appropriate forms for directing the Trustee as to the manner in which to respond to such tender or exchange offer. Upon timely receipt of directions under this Section from the Participant or Beneficiary, the Trustee shall respond to the tender or exchange offer in accordance with, and only in accordance with, such directions. If the Trustee does not receive timely directions from a Participant or Beneficiary under this Section, the Trustee shall not tender, sell, convey or transfer any Employer Securities allocated to such person's Account in response to any tender or exchange offer.

4.6. Investment Managers. The Investment Committee may appoint one or more investment managers to manage all or any portion of all or any of the Investment Funds, and one or more custodians for all or any portion of any Investment Fund. The Investment Committee may also establish investment guidelines for the Trustee or any one or more investment managers and may direct that all or any portion of the assets in an Investment Fund be invested in one or more guaranteed investment contracts having such terms and conditions as the Investment Committee deems appropriate. The Investment Committee or the Trustee, at the direction of the Investment Committee, may enter into such agreements as the Investment Committee deems advisable to carry out the purposes of this Section.

4.7. Section 16 Persons. Notwithstanding anything in the Plan to the contrary, Section 16 Persons may not direct the investment of their Accounts into the Company Stock Fund unless the Investment Committee determines otherwise.

## SECTION 5
## VALUATIONS AND CREDITING

5.1. Valuations. The Trust Fund shall be valued by the Trustee at fair market value as of the close of business on each Valuation Date. In determining the fair market value of assets other than securities for which trading or bid prices can be obtained, the Trustee shall rely on valuations provided by the

Investment Committee, which may appraise such assets itself or employ one or more appraisers, including the Trustee or an affiliate of the Trustee, for that purpose. The portions of all Accounts held in the Company Stock Fund shall be maintained on a share basis.

5.2. Credits to and Charges Against Accounts. All crediting to and charging against Accounts shall be made as follows:

5.2.1. First, there shall be determined the net adjusted Account by (a) charging all distributions and withdrawals made during the period from the prior Valuation Date to the current Valuation Date, and (b) crediting Savings Contributions and Rollover Contributions on such time weighted basis as the Administrator determines.

5.2.2. Second, all earnings of the Trust Fund shall then be allocated to and among the Participants' Accounts according to their net adjusted Accounts and the relative investment results of the Investment Funds in which their Accounts were invested.

5.2.3. Third, at the option of the Administrator, all administrative expenses relating to the maintenance of Accounts of former Participants shall be charged against such Accounts.

5.2.4. Last, there shall be credited to each Participant's Account, (a) Non-Elective Profit Sharing Contributions and Elective Profit Sharing Contributions allocated to such Account, and (b) Savings Contributions and Rollover Contributions to such Account not previously credited under this Section.

5.3. Expenses. All brokerage fees, transfer taxes, and other expenses incurred in connection with the investment of the Trust Fund shall be added to the cost of such investments or deducted from the proceeds thereof, as the case may be. All other costs and expenses of administering the Plan shall be paid from the Trust Fund unless the Employer elects to pay such costs and expenses.

## SECTION 6
## BENEFITS

6.1. Forms of Benefit Payments. A Participant or Beneficiary shall receive any benefit to which he or she is entitled in the form of:

6.1.1. A lump sum distribution to the Participant or Beneficiary consisting of cash for amounts not invested in the Company Stock Fund and, for amounts invested in the Company Stock Fund, (i) the greatest number of whole shares of Employer Securities which can be distributed on the basis of the portion of his or her Account balance invested in the Company Stock Fund plus cash for any fractional share, if the number of whole shares is 20 or more and the Participant or Beneficiary elects to receive shares, or (ii) cash if the number of whole shares is less than 20 or if the Participant or Beneficiary elects to receive cash; or

6.1.2. Effective for distributions made after December 31, 1993, at the election of the Participant or Beneficiary who is the Participant's surviving or former spouse, if the benefit is an Eligible Rollover Distribution, a lump sum payment of the benefit directly to an Eligible Retirement Plan specified by the Participant or Beneficiary in the form of cash for amounts not invested in the Company Stock Fund and, for amounts invested in the Company Stock Fund, (i) the greatest number of whole shares of Employer Securities which can be distributed on the basis of the portion of his or her Account balance invested in the Company Stock Fund plus cash for any fractional share, if the number of whole shares is 20 or more and the Participant or Beneficiary elects to receive shares, or (ii) cash if the number of whole shares is less than 20 or if the Participant or Beneficiary elects to receive cash; or

6.1.3. Effective for distributions made after December 31, 1993, at the election of the Participant or Beneficiary who is the Participant's surviving or former spouse, if the benefit is an Eligible Rollover Distribution, distribution to both the Participant or Beneficiary and an Eligible Retirement Plan as follows:

(a) for amounts not invested in the Company Stock Fund, a lump sum cash payment to:

(i) the Participant or Beneficiary; or

(ii) an Eligible Retirement Plan specified by the Participant or Beneficiary; or

(iii) the Participant or Beneficiary of a portion of the benefit specified by the Participant or Beneficiary, with the remainder paid to an Eligible Retirement Plan, and

(b) for amounts invested in the Company Stock Fund:

(i) a lump sum cash payment to the Participant or Beneficiary; or

(ii) a distribution to the Participant or Beneficiary of the greatest number of whole shares of Employer Securities which can be distributed on the basis of the portion of his or her Account balance invested in the Company Stock Fund plus cash for any fractional share, if the number of whole shares is 20 or more: or

(iii) a lump sum cash payment to an Eligible Retirement Plan specified by the Participant or Beneficiary; or

(iv) a distribution to an Eligible Retirement Plan of the greatest number of whole shares of Employer Securities which can be distributed on the basis of the portion of the Participant's Account balance invested in the Company Stock Fund plus cash for any fractional share, if the number of whole shares is 20 or more.

6.2. Retirement Benefit. Effective January 1, 1993, any Participant who has incurred a Termination Date shall receive his or her retirement benefit as soon as administratively practicable after:

(a) if the Participant's benefit is $3,500 or less, the Valuation Date coincident with or following the Participant's Termination Date; or

(b) if the Participant's benefit is more than $3,500:

(i) the Valuation Date coincident with or following the later of the Participant's Termination Date and the date the Participant attains age 62, or

(ii) at the election of the Participant (made during the time period, before and after the applicable Valuation Date, that the Administrative Committee establishes for purposes of administrative convenience), the Valuation Date following the Participant's Separation Date; or

(iii) at the election of the Participant (made in the time period, before the applicable Valuation Date, that the Administrative Committee establishes for the purposes of administrative convenience), any Valuation Date, starting with the third Valuation Date after the Participant's Separation Date and ending with the Valuation Date in (i).

The amount of the retirement benefit shall be equal to the undistributed balance in the Participant's Account determined as of the applicable Valuation Date. Such distribution shall be made as soon as practicable after the applicable Valuation Date.

6.3. Death Benefit.

6.3.1. If a Participant dies before receiving a distribution of his or her retirement benefit, the Participant's Beneficiary shall receive a death benefit, in lieu of the retirement benefit, as soon as administratively practicable after the Valuation Date coincident with or next following the Participant's death. The amount of the death benefit shall be equal to the undistributed balance in the Participant's Account determined as of the applicable Valuation Date.

6.3.2. A married Participant may, with the consent of his or her spouse, designate and from time to time change the designation of one or more Beneficiaries or contingent Beneficiaries to receive any death benefit. The designation and consent shall be on a form supplied by the Administrator, which form shall describe the effect of the designation on the Participant's spouse, and shall be signed by the Participant and the Participant's spouse. The spouse's signature shall be witnessed by a Plan representative or a notary public. Notwithstanding the foregoing, a Beneficiary designation made by a married Participant who has no Hours of Service and no paid leave of absence on or after August 23, 1984, shall be effective without the consent of such Participant's spouse. An unmarried Participant or a married Participant whose spouse has abandoned him or her or cannot be located may designate a Beneficiary or Beneficiaries without the consent of any other person, after having first established to the satisfaction of the Administrator either that he or she has no spouse or that his or her spouse cannot be located. All records of Beneficiary designations shall be maintained by the Administrator.

6.3.3. In the event that the Participant fails to designate a Beneficiary to receive a benefit that becomes payable under the provisions of this Section, or in the event that the Participant is predeceased by all designated primary and contingent Beneficiaries, (a) if the Participant is survived by a spouse, the death benefit shall be payable to the Participant's surviving spouse who shall be deemed to be the Participant's designated Beneficiary for all purposes under this Plan, or (b) if the Participant is not survived by a spouse, the death benefit shall be payable to the Participant's estate.

6.4. In-Service Distributions. Any Participant who has completed more than five years of participation in the Plan and who has attained age 59-1/2 may withdraw from the Trust as of any Valuation Date all of his or her Savings Account, or any portion of his or her Savings Account which would not reduce the amount in his or her Savings Account to less than $500. Upon receipt of a request for withdrawal of a portion of a Participant's Savings Account which would reduce it to less than $500, the Trustee shall distribute the entire amount of the Participant's Savings Account.

6.5. Advance Distribution for Hardship.

6.5.1. If a Participant has an immediate and heavy financial need and has obtained all distributions, other than hardship distributions, currently available under the Plan and any other plans maintained by the Employer or an Affiliate, he or she may obtain a hardship distribution of his or her Savings Contributions. The amount of the hardship distribution shall be the lesser of the Participant's Savings Contributions or the amount necessary to satisfy the immediate and heavy financial need (including amounts necessary to pay reasonably anticipated taxes and penalties on the hardship distribution). Hardship distributions of other amounts shall not be allowed.

6.5.2. An amount shall not be treated as necessary to satisfy the immediate and heavy financial need if the need can be reasonably relieved by (a) reimbursement or compensation from insurance or otherwise, (b) reasonable liquidation of the Participant's assets, to the extent such liquidation would not itself cause an immediate and heavy financial need, (c) cessation of Savings Contributions and Elective Profit Sharing Contributions, (d) other distributions from the Plan or any other plan, (e) loans from the Plan or any other plans, or (f) loans from commercial sources on reasonable terms. A need cannot reasonably be relieved by one of the listed actions if the effect would be to increase the amount of the need. The Administrator shall be entitled to rely on the Participant's certification of the foregoing except that the Administrator may require further documentation as to the amount necessary to satisfy the immediate and heavy financial need, or deny the hardship distribution, if under the circumstances the Administrator's reliance on the certification is not reasonable.

6.5.3. For purposes of this Plan, an immediate and heavy financial need is the need for money for:

(a) expenses for or necessary to obtain medical care described in Section 213(d) of the Code for the Participant or the Participant's spouse or dependents;

(b) costs directly related to the purchase (excluding mortgage payments) of a principal residence of the Participant;

(c) the payment of tuition and related educational fees for the next 12 months of post-secondary education for the Participant or the Participant's spouse, children or dependents;

(d) the prevention of the eviction of the Participant from his or her principal residence or the foreclosure on the mortgage of the Participant's principal residence; or

(e) any other reason added to the list of deemed immediate and heavy financial needs by the Commissioner of the Internal Revenue Service.

6.5.4. A Participant who has obtained a hardship distribution shall not be eligible to make any Savings Contributions or Elective Profit Sharing Contributions for the 12 months after the hardship distribution.

6.6. Loans to Participants.

6.6.1. Loans to a Participant from his or her Savings Account and, effective July 1, 1994, from his or her Rollover Account shall be allowed, subject to such uniform and nondiscriminatory rules as may from time to time be adopted by the Administrator. Loans from other Accounts shall not be allowed. The Trustee may make a loan to a Participant who has applied for a loan, in accordance with rules adopted by the Administrator, on forms provided by the Administrator.

6.6.2. A Participant shall be permitted to borrow no more than the lesser of (a) $50,000 reduced by the excess (if any) of (i) the highest outstanding balance of Plan loans during the previous 12 months over (ii) the current outstanding balance of Plan loans, or (b) 50% of the value of the Participant's Account as of the Valuation Date coincident with or next preceding the date on which the loan is made.

6.6.3. Loans shall be available to all Participants on a reasonably equivalent basis; provided, however, that the Trustee may make reasonable distinctions among prospective borrowers on the basis of creditworthiness and available security. Any amount withdrawn by or payable to a Participant from his or her Account while a loan is outstanding shall be immediately applied to reduce such loan.

6.6.4. (a) All loans to Participants made by the Trustee shall be secured by the pledge of the Participant's Account.

(b) Interest shall be charged at an interest rate which the Administrator finds to be reasonable on the date of the loan.

(c) Loans shall be for a term of five years or for such lesser term as the Administrator and the Trustee agree is appropriate, with substantially level amortization over the term of the loan.

(d) If not paid as and when due, any such outstanding loan or loans may be deducted from any benefit which is or becomes payable to such Participant or the Participant's Beneficiary. The Participant shall remain liable for any deficiency, and any surplus remaining shall be paid to the Participant.

(e) Any loan made to a Participant shall be (i) treated as an investment of the Participant's Account with interest payments credited and expenses deducted from the Participant's Account, and (ii) excluded from the Participant's Account for purposes of implementing the Participant's investment directions and allocation of the investment results of the Investment Funds.

6.7. Latest Commencement of Benefits. Payment of benefits shall commence in accordance with this Section, provided, however, in no event shall payment of benefits commence later than the April 1 of the calendar year following the calendar year in which the Participant attains age 70-1/2.

6.8. Post-Distribution Credits. If, after the distribution

of retirement or death benefits under this Plan, there remain in a Participant's Account any funds, or any funds shall be subsequently credited thereto, such funds shall be distributed to the Participant or his or her Beneficiary as promptly as practicable.

6.9. Prevention of Escheat. If the Administrator cannot ascertain the whereabouts of any person to whom a payment is due under the Plan, the Administrator may place the amount of the payment in a segregated account. If a segregated account is an interest bearing account, the interest, which may be net of expenses, shall be credited to the segregated account. If a segregated account holds Employer Securities, any dividends may be treated as earnings of the Trust Fund or of the segregated account, at the option of the Administrator. After two years from the date such payment is due, the Administrator may mail a notice of the payment to the last known address of such person as shown on the records of the Plan, the Employer and all Affiliates. If such person has not made claim for the payment within three months after the date of the mailing of the notice or if the notice is returned as undeliverable, then the payment and all remaining payments which would otherwise be due to such person shall be cancelled and the amount thereof shall be applied to reduce Profit Sharing Contributions. If any person subsequently has a claim allowed for such benefits, such person shall be treated as an omitted eligible Employee.

## SECTION 7
## TOP-HEAVY PLAN PROVISIONS

7.1. Minimum Benefits. For any Plan Year that this Plan is a Top-Heavy Plan, the Employer shall contribute, for and on behalf of each Non-Key Employee who is a Participant on the last day of the Plan Year, an amount which is not less than the lesser of (a) 3% of such Participant's Compensation, or (b) such Participant's Compensation multiplied by a fraction, determined with respect to the Key Employee for whom the fraction is greatest, the numerator of which is the contributions allocated to such Key Employee's Account for the Plan Year and the denominator of which is the Key Employee's Compensation for the Plan Year. In determining the minimum benefit, all contributions, including Savings Contributions, for any Participant to any plan included in the Aggregation Group shall be taken into account. If a Participant participates in this Plan and a defined benefit plan in the Aggregation Group, the Participant shall receive minimum benefits under such defined benefit plan.

7.2. Adjustment in Benefit Limitations. In applying the limits of Section 415 of the Code where a Participant participates in both one or more defined benefit plans and one or more defined contribution plans of the Employer, paragraphs (2)(B) and (3)(B) of Section 415(e) of the Code shall be applied by substituting "1.0" for "1.25", unless (a) the sum of the account balances and the present value of the accrued benefits of Key Employees do not exceed 90% of the account balances and the present value of the accrued benefits of all participants and their beneficiaries, as determined under Section 416(h) of the Code, and (b) the Employer elects to have the minimum benefit under Section 416 of the Code applied by substituting "4%" for "3%" therein.

## SECTION 8
## CLAIMS PROCEDURES

8.1. Application for Benefits. Each Participant or Beneficiary believing himself or herself eligible for benefits under this Plan may apply for such benefits by completing and filing with the Administrator an application for benefits on a form supplied by the Administrator. Before the date on which benefit payments commence, each such application must be supported by such information and data as the Administrator deems relevant and appropriate. Evidence of age, marital status (and, in the appropriate instances, death), and location of residence shall be required of all applicants for benefits.

8.2. Appeal of Denial of Claim for Benefits. In the event that any claim for benefits is denied in whole or in part, the Participant or Beneficiary whose claim has been so denied shall be notified of such denial in writing by the Administrator within 90 days after the Administrator receives the claim. The notice advising of the denial shall specify the reasons for denial, make

specific reference to pertinent Plan provisions, describe any additional material or information necessary for the claimant to perfect the claim (explaining why such material or information is needed), and shall advise the Participant or Beneficiary, as the case may be, of the procedure for the appeal of such denial. If a claimant wishes to appeal the denial of the claim, the claimant shall submit a written appeal to the Advisory Committee within 60 days after the Administrator notifies the claimant of the denial. The appeal shall set forth all of the facts upon which the appeal is based. Appeals which are not timely filed shall be barred. The Advisory Committee shall consider the merits of the claimant's appeal, the merits of any facts or evidence in support of the denial of benefits, and such other facts and circumstances as the Advisory Committee deems relevant. The Advisory Committee shall give the Administrator a written statement as to its recommendation on the appeal within 30 days after the Advisory Committee receives the appeal, unless special circumstances or the need to hold a hearing require an extension of up to 30 additional days. The Administrator shall then consider the recommendation of the Advisory Committee and give the claimant a written statement as to the Administrator's determination on the appeal within 60 days after the Advisory Committee receives the appeal, unless special circumstances or the need to hold a hearing require an extension of up to 60 additional days.

8.3. Effect of Administrator Decision. Any decision or action of the Administrator on appeal shall be final and binding on all persons absent fraud or arbitrary abuse of the wide discretion granted to the Administrator. No appeal or contest of any decision or action may be brought other than after following the procedures for claims and appeals as set forth herein by a legal proceeding in a court of competent jurisdiction brought within one year after such decision or action.

## SECTION 9
## ALLOCATION OF AUTHORITY AND RESPONSIBILITY

9.1. Authority and Responsibilities of the Administrator. The Administrator shall have the following duties and responsibilities: (a) to maintain and retain records relating to the Participants and Beneficiaries; (b) to prepare and furnish to Participants all information required under federal law or provisions of this Plan to be furnished to them; (c) to prepare and furnish to the Trustee sufficient Employee data and the amount of contributions received from all sources so that the Trustee may maintain separate Accounts for Participants and make required payments of benefits; (d) to provide directions to the Trustee with respect to payments of benefits and all other matters where called for in the Plan or requested by the Trustee; (e) to prepare and file or publish with the Secretary of Labor, the Secretary of the Treasury, their delegates and all other appropriate governmental officials, all reports and other information required under law to be so filed or published; (f) to arrange for bonding; (g) to consult with the Advisory Committee and the Investment Committee with respect to matters determined under Sections 9.2 and 9.3, respectively; (h) to recommend and facilitate approval of Plan changes; and (i) to coordinate implementation of changes to and administration of the Plan. The Administrator shall have the right to hire such professional assistants and consultants as it deems necessary or advisable, including, but not limited to: (i) accountants; (ii) actuaries; (iii) attorneys; (iv) consultants; and (v) clerical and office personnel. The costs for such assistants and advisers shall be paid from the Trust Fund as an expense of the Trust Fund unless the Employer elects to pay such costs.

9.2. Authority and Responsibilities of the Advisory Committee. The Advisory Committee shall have the following duties and responsibilities: (a) to provide assistance and consultation to the Administrator with respect to Plan changes and administrative procedures; (b) to develop recommendations for Plan changes, as deemed appropriate by the Advisory Committee; (c) to consult with the Administrator with respect to other matters at the discretion of the Administrator; and (d) to review appeals of denial of claims and make recommendations for action to the Administrator.

9.3. Authority and Responsibilities of the Investment Committee. The Investment Committee shall have the following duties and responsibilities: (a) to appoint the Trustee, to monitor the performance of the Trustee, and to terminate such

appointment; (b) to provide direction to the Trustee including direction of investment of all or part of the Trust Fund and the establishment of investment criteria and Investment Funds; and (c) to appoint investment advisors and investment managers, to monitor their performances, and to terminate such appointments.

9.4. Appointment and Tenure. The Advisory Committee and the Investment Committee shall each consist of a committee of one or more members who shall serve at the pleasure of the Board of Directors. Any committee member may be dismissed at any time, with or without cause, upon notice from the Board of Directors. Any committee member may resign by delivering his or her written resignation to the Board of Directors. Vacancies arising by the death, resignation or removal of a committee member shall be filled by the Board of Directors. If the Board of Directors fails to act, and in any event, until the Board of Directors so acts, the remaining members of a committee may appoint an interim member to fill any vacancy occurring on the committee. If no person has been appointed to the Advisory Committee or the Investment Committee, or if no person remains on one of the committees, the Company shall be deemed to be such committee.

9.5. Meetings; Majority Rule. Any and all acts of the Advisory Committee or the Investment Committee taken at a meeting shall be by a majority of all members of such committee. A committee may act by vote taken in a meeting (at which a majority of members shall constitute a quorum) if all members of the committee have received at least 10 days' written notice of such meeting or have waived notice. A committee may also act by majority consent in writing without the formality of convening a meeting. Each committee shall elect one of its members to serve as chairman. The chairman shall preside at all meetings of the committee or shall delegate such responsibility to another committee member.

9.6. Compensation. The Advisory Committee, the Investment Committee and the Administrator shall serve without compensation for services as such, but all expenses of such persons shall be paid or reimbursed by the Employer, and if not so paid or reimbursed, shall be paid from the Trust Fund.

9.7. Indemnification. Each member of the Advisory Committee, each member of the Investment Committee, and Employees carrying out the duties of the Administrator shall be indemnified by the Employer against costs, expenses and liabilities (other than amounts paid in settlement to which the Employer does not consent) reasonably incurred by the person in connection with any action to which the person may be a party by reason of his or her service as a member of the committee or for the Administrator, except in relation to matters as to which he or she shall be adjudged in such action to be personally guilty of negligence or willful misconduct in the performance of his or her duties. The foregoing right to indemnification shall be in addition to such other rights as the person may enjoy as a matter of law or by reason of insurance coverage of any kind, but shall not extend to costs, expenses and/or liabilities otherwise covered by insurance or that would be so covered by any insurance then in force if such insurance contained a waiver of subrogation. Rights granted hereunder shall be in addition to and not in lieu of any rights to indemnification to which the person may be entitled under the bylaws of the Company. Service on the Advisory Committee or the Investment Committee or for the Administrator shall be deemed in partial fulfillment of the person's function as an Employee, officer and/or director of the Employer, if the person serves in such capacity as well.

9.8. Authority and Responsibilities of the Company. The Company, as Plan sponsor, shall have the following (and only the following) authority and responsibilities: (a) to act as Administrator, (b) to appoint the Advisory Committee and the Investment Committee and to monitor each of their performances; (c) to communicate such information to the Advisory Committee, the Investment Committee, and the Trustee as each needs for the proper performance of its duties; (d) to provide channels and mechanisms through which the Advisory Committee, the Investment Committee, the Administrator and/or the Trustee can communicate with Participants and Beneficiaries; and (e) to perform such duties as are imposed by law or by regulation and to serve as Advisory Committee or the Investment Committee in the absence of an appointed committee or person. Any action which may be taken and any decision which may be made by the Company under the Plan (including authorization of Plan amendments or termination) may be

made by: (a) the Board of Directors; or (b) any committee to which the Board of Directors delegates discretionary authority with respect to the Plan.

9.9. Obligations of Named Fiduciaries. The Investment Committee, the Administrator and the Trustee are named fiduciaries within the meaning of Section 402(a) of ERISA. A named fiduciary shall have only those particular powers, duties, responsibilities and obligations specifically given to it under this Plan or the Trust Agreement. No named fiduciary shall have authority or responsibility to deal with matters other than as delegated to it under this Plan, under the Trust Agreement or by operation of law. Notwithstanding the foregoing, named fiduciaries may perform in more than one fiduciary capacity if so appointed and may reallocate duties between themselves by mutual agreement. A named fiduciary shall not in any event be liable for breach of fiduciary responsibility or obligation by another fiduciary (including named fiduciaries) if the responsibility or authority of the act or omission deemed to be a breach was not within the scope of such named fiduciary's authority or responsibility.

## SECTION 10
## AMENDMENT, TERMINATION, MERGERS AND CONSOLIDATIONS OF THE PLAN

10.1. Amendment. The Company (by its Board of Directors, an executive committee of its Board of Directors or other committee to which the Board of Directors delegates discretionary authority with respect to the Plan) may amend the provisions of this Plan at any time and from time to time, after consultation with the Advisory Committee; provided, however, that:

10.1.1. No amendment shall increase the duties or liabilities of the Trustee without the consent of such party.

10.1.2. No amendment shall deprive any Participant or Beneficiary of a deceased Participant of any of the benefits to which such person is entitled under the Plan with respect to contributions previously made or decrease the balance in any Participant's Account, except as permitted by Section 412(c)(8) of the Code and Section 302(c)(8) of ERISA.

10.1.3. No amendment changing the vesting schedule shall decrease the vested percentage of any Participant.

10.1.4. No amendment shall eliminate an optional form of benefit in violation of Section 411(d)(6).

10.1.5. No amendment shall provide for the use of funds or assets held to provide benefits under the Plan other than for the benefit of Employees and Beneficiaries, except as may be specifically authorized by statute or regulation.

10.1.6. Any amendment necessary to maintain the qualification of the Plan under Section 401(a) of the Code may be made without the further approval of the Board of Directors or any committee if signed by an officer of the Company.

10.2. Plan Termination. The Company reserves the right to terminate the Plan in whole or in part, after consultation with the Advisory Committee. Plan termination shall be effective as of the date specified by resolution of the Board of Directors. The Company shall instruct the Trustee to either (a) continue to manage and administer the assets of the Trust for the benefit of Participants and Beneficiaries under the terms and provisions of the Trust Agreement, or (b) pay over to each Participant the value of his or her interest, and thereupon dissolve the Trust.

10.3. Permanent Discontinuance of Profit Sharing Contributions. While it is the Company's intention to make substantial and recurring contributions to the Trust Fund under the provisions of the Plan, the right is, nevertheless, reserved to permanently discontinue Profit Sharing Contributions at any time. Such permanent discontinuance shall have the effect of a termination of the Plan, except that the Trustee shall not have the authority to dissolve the Trust Fund except upon adoption of a further resolution by the Board of Directors to the effect that the Plan is terminated and upon receipt from the Company of instructions to dissolve the Trust Fund. Failure to make a contribution solely because of a lack of net income shall not be deemed to be a permanent discontinuance of Profit Sharing Contributions.

10.4. Suspension of Profit Sharing Contributions. The Company shall have the right, at any time and from time to time, to suspend Profit Sharing Contributions to the Trust Fund under the Plan. Such suspension shall have no effect on the operation of the Plan except as set forth below:

10.4.1. If the Board of Directors determines by resolution that such suspension shall be permanent, a permanent discontinuance of contributions shall be deemed to have occurred as of the date of such resolution or such earlier date as is therein specified.

10.4.2. If a temporary suspension becomes a permanent discontinuance or a Plan termination, the discontinuance or termination shall be deemed to have occurred on the earlier of: (a) the date specified by resolution of the Board of Directors, or (b) the last day of the Plan Year next following the first Plan Year during the period of suspension in which there occurred a failure of the Employer to make contributions in a year in which there was net income out of which such contributions could have been made.

10.5. Mergers and Consolidations of Plans. In the event of any merger or consolidation of the Plan with, or transfer of assets or liabilities to, any other plan, each Participant and Beneficiary shall have a benefit in the surviving or transferee plan (determined as if such plan were then terminated immediately after such merger, etc.) that is equal to or greater than the benefit he or she would have been entitled to receive immediately before such merger, etc., in this Plan (had this Plan been terminated at that time).

10.6. Transfers of Assets to or from this Plan. A transfer of all or any portion of the assets or liabilities of the Plan to any other plan, or the transfer of all or any portion of the assets or liabilities of another plan to this Plan, shall be in accordance with directions of the Company. The Plan shall not accept a direct or indirect transfer of assets which would make the Plan subject to Sections 401(a)(11) and 417 of the Code with respect to any Participant.

10.7. Effect of Amendment and Restatement. Notwithstanding anything herein to the contrary, the identities, Account balances, Hours of Service, and Years of Eligibility Service of Participants and Employees as of the Effective Amendment Date, and the rights of persons terminating their employment with the Employer and all Affiliates prior to the Effective Amendment Date, shall be determined under the Plan as in effect prior to the Effective Amendment Date.

## SECTION 11
## PARTICIPATING EMPLOYERS

11.1. Adoption by Affiliates. With the consent of the Company, any Affiliate may adopt the Plan as a participating Employer. Each participating Employer shall be required to use the same Trustee and Trust Agreement as provided in this Plan, and the Trustee shall commingle, hold and invest as one Trust Fund all contributions made by participating Employers, as well as all increments thereof. With respect to all relations with the Trustee, the Advisory Committee, the Administrator and the Investment Committee, each participating Employer shall be deemed to have irrevocably designated the Company as its agent. The Company shall have authority to make any and all necessary rules

or regulations, binding upon all participating Employers and all Participants, to effectuate the purposes of the Plan.

11.2. Employee Transfers. If an Employee is transferred between Employers, the Employee involved shall carry with him or her the Employee's accumulated service and eligibility, no such transfer shall effect a termination of employment hereunder, and the participating Employer to which the Employee is transferred shall thereupon become obligated with respect to such Employee in the same manner as was the participating Employer from whom the Employee was transferred.

11.3. Discontinuance of Participation. Any participating Employer may discontinue or revoke its participation in the Plan. At the time of any such discontinuance or revocation, satisfactory evidence thereof and of any applicable conditions imposed shall be delivered to the Trustee. The Trustee shall retain assets for the Employees of the participating Employer under the Plan.

## SECTION 12
## MISCELLANEOUS PROVISIONS

12.1. Nonalienation of Benefits.

12.1.1. None of the payments, benefits or rights of any Participant or Beneficiary shall be subject to any claim of any creditor, and, in particular, to the fullest extent permitted by law, all such payments, benefits and rights shall be free from attachment, garnishment, trustee's process or any other legal or equitable process available to any creditor of such Participant or Beneficiary. No Participant or Beneficiary shall have the right to alienate, anticipate, commute, pledge, encumber, or assign any of the benefits or payments which he or she may expect to receive, contingently or otherwise, under this Plan, except the right to designate a Beneficiary or Beneficiaries as hereinbefore provided. Notwithstanding the foregoing, assignments permitted under the Code shall be permitted under the Plan, including (a) assignments pursuant to a qualified domestic relations order, and (b) any loans made by the Trustee to a Participant that are secured by a pledge of the borrower's Account, which shall give the Trustee a first lien on such interest to the extent of the entire outstanding amount of such loan, unpaid interest thereon, and all costs of collection.

12.1.2. If a domestic relations order is received by the Administrator, the Administrator shall make a determination as to whether the domestic relations order is a qualified domestic relations order as defined in Section 414(p) of the Code, treating the domestic relations order as a claim for benefits under the Plan and all alternate payees and the Participant as claimants. Within 30 days after the Administrator's receipt of the domestic relations order and at least 30 days prior to its determination, the Administrator shall notify the Participant and any alternate payees other than the one who is the subject of the domestic relations order of the receipt of the domestic relations order and the procedures that the Administrator will follow in determining the qualified status of the domestic relations order. During any period in which the issue of whether the domestic relations order is a qualified domestic relations order is pending, the Administrator shall segregate in a separate account under the Plan the amounts which would have been payable to the alternate payee during such period if the domestic relations order had been determined to be a qualified domestic relations order. If, within 18 months, it is finally determined that the domestic relations order is a qualified domestic relations order, the Administrator shall direct the Trustee to pay the segregated amount to the person entitled thereto. If, within 18 months, it is finally determined that the domestic relations order is not a qualified domestic relations order, or the issue has not yet been resolved, the Administrator shall direct the Trustee to pay the segregated amount without regard to the terms of the domestic relations order. Any determination that a domestic relations order is a qualified domestic relations order which is made after the close of the 18 month period shall be applied prospectively only.

12.1.3. The Trustee may make a lump sum distribution to an alternate payee pursuant to a qualified domestic relations order as soon as administratively practical after the Valuation Date following the earlier of the date a Participant attains age 50 or the date a Participant terminates employment. The Trustee may make a lump sum distribution pursuant to a qualified domestic relations order before such date provided no more than one distribution is made to each alternate payee.

12.2. No Contract of Employment. Neither the establishment of the Plan, nor any modification thereof, nor the creation of any fund, trust or Account, nor the payment of any benefits, shall be construed as giving any Participant or Employee, or any person whomsoever, the right to be retained in the service of the Employer, and all Participants and other Employees shall remain subject to discharge to the same extent as if the Plan had never been adopted.

12.3. Title to Assets. No Participant or Beneficiary shall have any right to, or interest in, any assets of the Trust Fund upon termination of his or her employment or otherwise, except to the extent of the benefits payable under the Plan to such Participant or Beneficiary out of the assets of the Trust Fund. All payments of benefits as provided for in this Plan shall be

made from the assets of the Trust Fund, and neither the Employer nor any other person shall be liable therefor in any manner.

12.4. Effect of Admission. By becoming a Participant, each Employee shall be conclusively deemed to have assented to the provisions of the Plan and the corresponding Trust Agreement and to all amendments to such instruments.

12.5. Payments to Minors, Etc. Any benefit payable to or for the benefit of a minor, an incompetent person or other person incapable of receipting therefor shall be deemed paid when paid to such person's guardian or to the party providing, or reasonably appearing to provide, for the care of such person, and such payment shall fully discharge the Trustee, the Administrator, the Employer and all other parties with respect thereto.

12.6. Approval of Restatement by Internal Revenue Service. Notwithstanding anything herein to the contrary, if the Commissioner of the Internal Revenue Service or his delegate should determine that the Plan, as amended and restated, does not qualify as a tax-exempt plan and trust under Sections 401 and 501 of the Code, and such determination is not contested, or if contested, is finally upheld, then the Plan shall operate as if it had not been amended and restated.

12.7. Other Miscellaneous. If any provision of this Plan is held invalid or unenforceable, such holding will not affect any other provisions hereof, and the Plan shall be construed and enforced as if such provisions were not been included. The Plan shall be binding upon the heirs, executors, administrators, personal representatives, successors, and assigns of the parties, including each Participant and Beneficiary, present and future. The headings and captions herein are provided for convenience only, shall not be considered a part of the Plan, and shall not be employed in the construction of the Plan. Except where otherwise clearly indicated by context, the masculine and the neuter shall include the feminine and the neuter, the singular shall include the plural, and vice-versa. The Plan shall be construed and enforced according to the laws of the State of Ohio to the extent not preempted by federal law, which shall otherwise control.

IN WITNESS WHEREOF, the Company has caused this Plan to be executed as of the _____ day of December, 1994.

THE SCOTTS COMPANY

By: /s/ Robert A. Stern
Robert A. Stern, Vice President - Human Resources

Exhibit 4(f)

Fifth Amendment and Consent, dated as of September 20, 1994, to the Third Amended and Restated Credit Agreement among Scotts Delaware, OMS, the banks listed therein and Chemical Bank, as agent

FIFTH AMENDMENT AND CONSENT, dated as of September 20, 1994 (this "Fifth Amendment"), to the Third Amended and Restated Credit Agreement dated as of April 7, 1992, as amended by a First Amendment dated as of November 19, 1992, a Second Amendment dated as of February 23, 1993, a Third Amendment dated as of December 15, 1993, and a Fourth Amendment dated as of July 5, 1994 (as so amended and as the same may be further amended, supplemented or otherwise modified from time to time, the "Credit Agreement"; capitalized terms used herein which are defined in the Credit Agreement, as amended hereby, are used herein as so defined), among The Scotts Company, a Delaware corporation ("Holdings"), The O.M. Scott & Sons Company, a Delaware corporation (the "Company"), the lenders from time to time parties thereto (collectively, the "Banks"; individually, a "Bank") and CHEMICAL BANK, a New York banking corporation ("Chemical"), as agent for the Banks (in such capacity, the "Agent").

W I T N E S S E T H:

WHEREAS, the Company and Holdings have requested that the Banks consent, subject to the terms and conditions hereof, to the merger of Holdings with and into The Scotts Company, an Ohio corporation ("Scotts Ohio"), with Scotts Ohio as the surviving corporation (the "Holdings Merger");

WHEREAS, the Company and Holdings have requested that the Banks consent, subject to the terms and conditions hereof, to the merger of the Company with and into Scotts Ohio with Scotts Ohio as the surviving corporation (the "Company Merger");

WHEREAS, the Company and Holdings have requested that the Banks consent, subject to the terms and conditions hereof, to the creation of a new, direct, wholly-owned Subsidiary of Scotts Ohio which shall be organized under the laws of Delaware (the "IP Holding Company"), and to the transfer from time to time to the IP Holding Company of certain patents, trademarks and other intellectual property rights currently owned by Holdings, the Company and their respective Subsidiaries;

WHEREAS, the Company and Holdings have requested that the Banks consent, subject to the terms and conditions hereof, to the creation of a new, direct, wholly-owned Subsidiary of the IP Holding Company which, at the option the Company (or, if the Company Merger has been consummated, Scotts Ohio), shall be organized under the laws of the Netherlands or the United Kingdom ("International Holdings"), and to the subsequent reorganization of certain of their respective foreign Subsidiaries under International Holdings, all as more fully described on Annex I hereto (the "Foreign Reorganization");

WHEREAS, the Banks have agreed to consent, subject to the terms and conditions hereof, to the Holdings Merger, the Company Merger, the creation of International Holdings and the Foreign Reorganization and the creation of the IP Holding Company; and

WHEREAS, in connection with such transactions, the Company, Holdings, Scotts Ohio and the Banks have agreed to the amendments and modifications of the Credit Agreement and the other Loan Documents provided for herein;

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

ARTICLE 1. AMENDMENTS TO CREDIT AGREEMENT.

1.1 Amendment to Subsection 1.1 (Definitions). (a) Addition of Certain Definitions. Subsection 1.1 of the Credit Agreement is hereby amended by adding thereto the following new definitions in appropriate alphabetical order:

"Assumption Agreement (Company Merger)" shall mean the Assignment and Assumption Agreement (Company Merger) to be executed and delivered by the Company, Scotts Ohio and, if the Holdings Merger has not theretofore been consummated, Holdings in favor of the Agent for the benefit of the Banks on the effective date of the Company Merger, substantially in the form

of Exhibit A to the Fifth Amendment.

"Assumption Agreement (Holdings Merger)" shall mean the Assignment and Assumption Agreement (Holdings Merger) to be executed and delivered by Holdings, Scotts Ohio and, if the Company Merger has not theretofore been consummated, the Company in favor of the Agent for the benefit of the Banks on the effective date of the Holdings Merger, substantially in the form of Exhibit B to the Fifth Amendment.

"Company Merger" shall mean the merger of the Company with and into Scotts Ohio, with Scotts Ohio as the surviving corporation, pursuant to the terms of the Company Merger Agreement.

"Company Merger Agreement" shall mean that certain agreement of merger to be entered into between the Company and Scotts Ohio and pursuant to which the Company will be merged with and into the Scotts Ohio.

"Fifth Amendment" shall mean the Fifth Amendment and Consent, dated as of September 20, 1994, to this Agreement.

"Foreign Reorganization" shall mean the reorganization of certain foreign Subsidiaries of Holdings under International Holdings, all as more fully described on Annex I to the Fifth Amendment.

"Holdings Merger" shall mean the merger of Holdings with and into Scotts Ohio, with Scotts Ohio the surviving corporation, pursuant to the terms of the Holdings Merger Agreement.

"Holdings Merger Agreement" shall mean that certain agreement of merger to be entered into between Holdings and Scotts Ohio and pursuant to which Holdings will be merged with and into the Scotts Ohio.

"Scotts Ohio" shall mean The Scotts Company, an Ohio corporation.

(b) Deletion of Certain Definitions. Subsection 1.1 of the Credit Agreement is hereby amended by deleting the definition set forth below in its entirety:

"Subordinated Note Indenture" shall mean the Indenture dated as of December 30, 1986, among the Company, Holdings and The Connecticut National Bank, as trustee, providing for the issuance of the Subordinated Notes, as amended, modified or supplemented, as permitted hereunder.

(c) Amendment to Subsection 1.1. Subsection 1.1 of the Credit Agreement is hereby amended by (i) deleting the definition of "Basic Agreements" in its entirety and (ii) inserting the following in lieu thereof:

"Basic Agreements" shall mean the collective reference to this Agreement, the Notes, the Collateral Documents, the Letters of Credit and, from and after the execution and delivery thereof to the Agent pursuant to the Fifth Amendment, the Assumption Agreement (Company Merger), the Assumption Agreement (Holdings Merger) and each other agreement executed and delivered to the Agent by Holdings, the Company or any of their respective Subsidiaries pursuant to the Fifth Amendment.

ARTICLE 2. CONSENT TO HOLDINGS MERGER.

2.1 Consent to Holdings Merger. Notwithstanding anything to the contrary contained in the Credit Agreement but subject to the satisfaction of the conditions precedent set forth below, each of the undersigned Banks hereby consents to (i) the formation by Holdings of Scotts Ohio and (ii) the Holdings Merger. Such consent shall not be effective unless and until the following conditions precedent have been satisfied:

(a) Execution of Fifth Amendment. The Agent shall have received this Fifth Amendment, executed and delivered by a duly authorized officer of each of Holdings, the Company, Scotts Ohio and each Bank.

(b) Assumption Agreement (Holdings Merger). The Agent shall have received the Assumption Agreement (Holdings Merger),

executed and delivered by a duly authorized officer of each of Holdings, Scotts Ohio and, if the Company Merger has not theretofore been consummated, the Company.

(c) Opinion of Counsel. The Agent shall have received an executed legal opinion of Vorys, Sater, Seymour and Pease, dated the effective date of the Holdings Merger and addressed to the Agent and Banks, substantially in the form of Exhibit C-1 hereto.

(d) Holdings Merger Agreement. The Agent shall have received true and complete copies (certified as such by the Secretary or an Assistant Secretary of Holdings and Scotts Ohio) of the Holdings Merger Agreement and any other agreements entered into by Scotts Ohio and/or Holdings in connection therewith; the Holdings Merger Agreement and such other agreements shall be in form and substance reasonably satisfactory to the Agent and its counsel.

(e) Consents, Licenses, Approvals, etc.. The Agent shall have received true and complete copies (certified as such by the Secretary or an Assistant Secretary of Holdings and Scotts Ohio) of all consents, licenses and approvals required in connection with (i) the Holdings Merger or (ii) the execution, delivery, performance, validity and enforceability of this Fifth Amendment, the Credit Agreement (as amended hereby), the other Loan Documents and the Assumption Agreement (Holdings Merger), and such consents, licenses and approvals shall be in full force and effect.

(f) Representations and Warranties. (i) Each of the representations and warranties made by Holdings and its Subsidiaries in or pursuant to the Credit Agreement and any other Basic Agreement to which any one or more of them are a party and the representations and warranties of Holdings and its Subsidiaries which are contained in any certificate or document furnished under of in connection herewith or therewith shall be true and correct in all material respects immediately prior to the effectiveness of the Holdings Merger as if made on and as of such time, (ii) each of the representations and warranties made by Scotts Ohio, as successor by merger to Holdings, and its Subsidiaries in or pursuant to the Credit Agreement and any other Basic Agreement to which any one or more of them are a party, and the representations and warranties of Scotts Ohio, as successor by merger to Holdings, and its Subsidiaries which are contained in any certificate or document furnished under or in connection herewith or therewith shall be true and correct in all material respects immediately after the effectiveness of the Holdings Merger as if made on and as of such time, and (iii) the Agent shall have received a certificate of a duly authorized officer of each of Holdings and Scotts Ohio certifying the matters set forth above in clauses (i) and (ii), respectively.

(g) No Default or Event of Default. No Default or Event of Default shall have occurred and be continuing both immediately prior to and after giving effect to the Holdings Merger.

(h) Stock Powers. Unless the Company Merger shall have theretofore been consummated, the Agent shall have received (i) stock powers duly executed by Holdings and evidencing the transfer from Holdings to Scotts Ohio of the ownership of the outstanding capital stock of the Company, (ii) undated stock powers for each such certificate duly executed in blank by Scotts Ohio and (iii) a letter from Scotts Ohio confirming that such certificates have been delivered to the Agent pursuant to the Holdings Guarantee, in each case in form and substance reasonably satisfactory to the Agent and its counsel.

2.2 Amendments to the Credit Agreement and the other Loan Documents. Upon the effectiveness of the Holdings Merger, the following amendments to the Credit Agreement and the other Loan Documents shall become effective:

(a) All references in the Credit Agreement and the other Loan Documents to "Holdings" shall be replaced by references to "Scotts Ohio, as successor by merger to Holdings".

ARTICLE 3. CONSENT TO COMPANY MERGER.

3.1 Consent to Company Merger. Notwithstanding anything to the contrary contained in the Credit Agreement but subject to the

satisfaction of the conditions precedent set forth below, each of the undersigned Banks hereby consents to the Company Merger. Such consent shall not be effective unless and until the following conditions precedent have been satisfied:

(a) Execution of Fifth Amendment. The Agent shall have received this Fifth Amendment, executed and delivered by a duly authorized officer of each of Holdings, the Company, Scotts Ohio and each Bank.

(b) Assumption Agreement (Company Merger). The Agent shall have received the Assumption Agreement (Company Merger), executed and delivered by a duly authorized officer of each of the Company, Scotts Ohio and, if the Holdings Merger has not theretofore been consummated, Holdings.

(c) Opinion of Counsel. The Agent shall have received an executed legal opinion of Vorys, Sater, Seymour and Pease, dated the effective date of the Company Merger and addressed to the Agent and Banks, substantially in the form of Exhibit C-2 hereto.

(d) Company Merger Agreement. The Agent shall have received true and complete copies (certified as such by the Secretary or an Assistant Secretary of Scotts Ohio) of the Company Merger Agreement and all other agreements entered into by Scotts Ohio and/or the Company in connection therewith; the Company Merger Agreement and such other agreements shall be in form and substance reasonably satisfactory to the Agent and its counsel.

(e) Consents, Licenses, Approvals, etc. The Agent shall have received true and complete copies (certified as such by the Secretary or an Assistant Secretary of Scotts Ohio) of all consents, licenses and approvals required in connection with (i) the Company Merger or (ii) the execution, delivery, performance, validity and enforceability of this Fifth Amendment, the Credit Agreement (as amended hereby), the other Loan Documents and the Assumption Agreement (Company Merger)

(f) Representations and Warranties. (i) Each of the representations and warranties made by the Company and its Subsidiaries in or pursuant to the Credit Agreement and any other Basic Agreement to which any one or more of them are a party and the representations and warranties of the Company and its Subsidiaries which are contained in any certificate or document furnished under of in connection herewith or therewith shall be true and correct in all material respects immediately prior to the effectiveness of the Company Merger as if made on and as of such time, (ii) each of the representations and warranties made by Scotts Ohio, as successor by merger to the Company, and its Subsidiaries in or pursuant to the Credit Agreement and any other Basic Agreement to which any one or more of them are a party, and the representations of Scotts Ohio, as successor by merger to the Company, and its Subsidiaries which are contained in any certificate or document furnished under or in connection herewith or therewith shall be true and correct in all material respects immediately after the effectiveness of the Company Merger as if made on and as of such time, and (iii) the Agent shall have received a certificate from a duly authorized officer of each of the Company and Scotts Ohio certifying the matters set forth above in clauses (i) and (ii), respectively.

(g) Stock Powers. The Agent shall have received (i) stock powers duly executed by Holdings and evidencing the transfer from the Company to Scotts Ohio of the ownership of the outstanding capital stock of each Subsidiary of the Company whose capital stock was pledged to the Agent pursuant to the Company Pledge Agreement immediately prior to the effectiveness of the Company Merger, (ii) undated stock powers for each such certificate duly executed in blank by Scotts Ohio and (iii) a letter from Scotts Ohio confirming that such certificates have been delivered to the Agent pursuant to the Company Pledge Agreement, in each case in form and substance reasonably satisfactory to the Agent and its counsel.

(h) No Default or Event of Default. No Default or Event of Default shall have occurred and be continuing both immediately prior to and after giving effect to the Company Merger.

(i) Filings, Registrations and Recordings. All filings, registrations and recordings described in Schedule I hereto shall have been completed in a manner satisfactory to the Agent and its counsel.

3.2 Amendments to the Credit Agreement. Upon the

effectiveness of the Company Merger, the following amendments to the Credit Agreement and the other Loan Documents shall become effective:

(a) All references in the Credit Agreement and the other Loan Documents to the Company shall be replaced by references to "Scotts Ohio, as successor by merger to the Company".

(b) Paragraph (i) of Section 9 to the Credit Agreement shall be amended to read in its entirety as follows:

(i) Change in Control. The occurrence of either of the following events: (i) any Person shall at any time own more than 30% of the issued and outstanding capital stock of the Company or (ii) a "Change of Control" as defined in the Section 1008 of the Subordinated Note Indenture shall occur.

(c) Subsection 7.15 of the Credit Agreement shall be deleted in its entirety and the following statement shall be substituted in lieu thereof: "Intentionally Omitted".

ARTICLE 4. CONSENT TO THE REORGANIZATION OF THE FOREIGN SUBSIDIARIES.

4.1 Consent to Reorganization of Foreign Subsidiaries. Notwithstanding anything to the contrary contained in the Credit Agreement but subject to the satisfaction of the conditions precedent set forth below, each of the undersigned Banks hereby consents to (i) the creation of International Holdings and (ii) the subsequent Foreign Reorganization. Such consent shall not be effective unless and until the following conditions precedent have been satisfied:

(a) IP Holdings Agreement. The Agent shall receive an agreement (in form and substance reasonably satisfactory to the Agent and its counsel) executed by IP Holdings and containing a covenant of IP Holdings to the effect that, if International Holdings acquires any material assets or property, IP Holdings will promptly (i) pledge 65% of the capital stock of International Holdings to the Agent for the benefit of the Banks by executing and delivering to the Agent a pledge agreement, substantially in the form of the UK Pledge Agreement (if International Holdings is organized under the laws of the United Kingdom) or the Netherlands Pledge Agreement (if International Holdings is organized under the laws of the Netherlands), (ii) take such other action as the Agent may reasonably request to ensure the perfection of the security interests granted to the Agent in the capital stock of International Holdings pursuant thereto and (iii) deliver to the Agent executed legal opinions (in form and substance reasonably satisfactory to the Agent and its counsel) of New York (or Ohio) and Netherlands or United Kingdom counsel (as applicable) as to the due authorization, execution, delivery and enforceability of such pledge agreement and the perfection of the security interest granted to the Agent in the capital stock of International Holdings pursuant thereto.

(b) International Holdings Agreement. The Agent shall receive (i) an agreement (in form and substance reasonably satisfactory to the Agent and its counsel) of International Holdings pursuant to which International Holdings will agree (A) to assume all obligations of Scotts-Sierra Horticultural Products Company ("SSHPC") and the Company (or, if the Company Merger has been consummated, Scotts Ohio) under the Netherlands Pledge Agreement and the UK Pledge Agreement, respectively, (B) to assume all obligations of SSHPC under the Pledge and Security Agreement, dated as of December 16, 1993 (the "SSHPC Pledge Agreement") made by SSHPC in favor of the Agent to the extent such obligations relate to the Pledged Stock (as defined therein) of, Sierra United Kingdom, Ltd. (formerly known as Grace-Sierra United Kingdom), Scotts Belgium, B.V.B.A. (formerly known as Grace-Sierra Belgium B.V.B.A.), Scotts Deutschland Gartenbauprodutke GMBH (formerly known as Grace-Sierra Deutschland Gardenbauprodukbe GMBH) and Scotts Australia PTY (formerly known as Grace-Sierra Australia PTY) (or, at the request of the Agent in lieu of the foregoing, to enter into a new pledge agreement substantially in the form of SSHPC Pledge Agreement with respect to such Pledged Stock) and (C) to take all actions necessary to ensure the continued perfection of the security interests granted to the Agent in the Mortgaged Securities (as defined in the UK Pledge Agreement) and the Pledged Stock (as defined in the Netherlands Pledge Agreement),

(ii) stock powers duly executed by SSHPC evidencing the transfer from SSHPC to International Holdings of the ownership of the share certificates and evidencing such Pledged Stock of the various Persons referred to in clause (B) above, together with undated stock powers for each such share certificate duly executed in blank by International Holdings and a letter from International Holdings confirming that such share certificates have been delivered pursuant to the SSHPC Pledge Agreement and (iii) executed legal opinions (in form and substance reasonably satisfactory to the Agent and its counsel) of New York, United Kingdom and Netherlands counsels as to the enforceability of the UK Pledge Agreement and the Netherlands Pledge Agreement against International Holdings and the perfection of the security interests granted to the Agent pursuant to the UK Pledge Agreement and the Netherlands Pledge Agreement and as to the enforceability of the SSHPC Pledge Agreement against International Holdings, and such other matters as the Agent and its counsel may reasonably request.

(c) Scotts Europe, B.V. Agreement. The Agent shall receive (i) an agreement (in form and substance reasonably satisfactory to the Agent and its counsel) of Scotts Europe, B.V. (formerly know as Grace-Sierra International, BV) pursuant to which Scotts Europe, B.V. will agree to assume all obligations of SSHPC under the SSHPC Pledge Agreement to the extent such obligations relate to the Pledged Stock (as defined therein) of Scotts France, SARL (formerly known as Grace-Sierra France, SARL) and Scotts Hispania S.A. (formerly known as Grace-Sierra Espana, S.A.), (ii) stock powers duly executed by SSHPC and evidencing the transfer from SSHPC to Scotts Europe, B.V. of the ownership of the share certificates evidencing such Pledged Stock, together with undated stock powers for each share certificate duly executed in blank by Scotts Europe, B.V. and a letter from Scotts Europe, B.V. confirming that such share certificates are being delivered pursuant to the SSHPC Pledge Agreement and (iii) executed legal opinions (in form and substance reasonably satisfactory to the Agent and its counsel) of Netherlands and New York (or Ohio) counsel as to the enforceability of the SSHPC Pledge Agreement against Scotts Europe, B.V. and such other matters as the Agent and its counsel may reasonably request.

## ARTICLE 5. CONSENT TO CREATION OF THE INTELLECTUAL PROPERTY HOLDING COMPANY.

5.1 Consent to Creation of the Intellectual Property Holding Company. Notwithstanding anything to the contrary contained in the Credit Agreement but subject to the satisfaction of the conditions precedent set forth below, each of the undersigned Banks hereby consent to the creation of the IP Holding Company. Such consent shall not be effective unless and until the following conditions precedent have been satisfied:

(a) Execution of Counterpart of Subsidiary Guarantee. The IP Holding Company shall become a party to the Subsidiaries Guarantee as a Guarantor under and as defined therein, and the Agent shall have received a counterpart to the Subsidiary Guarantee, executed and delivered by a duly authorized officer of the IP Holding Company.

(b) Execution of Subsidiary Security Agreement. The Agent shall have received a Subsidiary Security Agreement, substantially in the form of Exhibit D to this Fifth Amendment, executed and delivered by a duly authorized officer of the IP Holding Company.

(c) Stock Certificates/Powers; Opinion. The Agent shall have received (i) stock certificates evidencing the Company's (or, if the Company Merger has been consummated, Scotts Ohio's) ownership of the outstanding capital stock of the IP Holding Company, together with undated stock powers for each such certificate duly executed in blank by the Company or Scotts Ohio (as applicable) and a letter from the Company or Scotts Ohio (as applicable) confirming that such share certificates are being delivered to the Agent pursuant to the Company Pledge Agreement, in each case in form and substance reasonably satisfactory to the Agent and its counsel and (ii) an opinion (in form and substance reasonably satisfactory to the Agent and its counsel) of New York (or Ohio) counsel as to the due authorization, execution, delivery and enforceability of the Subsidiary Guarantee and the Subsidiary Security Agreement referred to in clause (b) above and such other matters as the Agent and its

counsel may reasonably request.

ARTICLE 6. MISCELLANEOUS.

6.1 Collateral Documents. Each of the parties hereto hereby acknowledges and agrees that each of the documents executed and delivered by International Holdings and the IP Holding Company (or either of them) pursuant to subsections 4 or 5 hereof, respectively, shall be deemed to be a Collateral Document for purposes of the Credit Agreement and all Loan Documents.

6.2 Limited Effect. Except as expressly amended hereby, all of the provisions, covenants, terms and conditions of the Credit Agreement and the other Basic Agreements shall continue to be, and shall remain, in full force and effect in accordance with their respective terms.

6.3 Expenses. Holdings, the Company and Scotts Ohio hereby agree to reimburse the Agent for all its reasonable costs and expenses (including, without limitation, reasonable legal fees and expenses) incurred in connection with the preparation, execution and delivery of this Fifth Amendment.

6.4 GOVERNING LAW. THIS FIFTH AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

6.5 Counterparts. This Fifth Amendment may be executed by one or more parties to this Fifth Amendment on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

6.6 Further Assurances. Each of Holdings, the Company and Scotts Ohio agree that at any time and from time to time upon the written request of the Agent, Holdings, the Company, Scotts Ohio and their respective Subsidiaries will execute and deliver such further documents and to do such further acts and things as the Agent may reasonably request in order to give effect to the purposes of this Fifth Amendment, the Assumption Agreement (Holdings Merger), the Assumption Agreement (Company Merger) and the Collateral Documents. Without limitation of the foregoing, each of Holdings, the Company and Scotts Ohio agrees to execute and deliver Uniform Commercial Code financing statements (or amendments to existing financing statements) and amendments to the Mortgages, and to make such recordations and filings as may be necessary, and to do such other things which the Agent may from time to time determine are necessary or desirable, to perfect or to preserve the security interests in the Collateral or any part thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered by their proper and duly authorized officers as of the date first above written.

THE SCOTTS COMPANY,
a Delaware corporation

By: /s/ P. D. Yeager
Title: Executive Vice President & CFO

THE O.M. SCOTT & SONS COMPANY,
a Delaware Corporation

By: /s/ P. D. Yeager
Title: Executive Vice President & CFO

THE SCOTTS COMPANY,
an Ohio corporation

By: /s/ P. D. Yeager
Title: Executive Vice President

& CFO

CHEMICAL BANK, as Agent and
as a Bank

By:
Title: Vice President

BANK ONE, COLUMBUS, N.A.

By: /s/ Douglas H. Klamfoth
Title: Douglas H. Klamfoth
Vice President

COMERICA BANK

By:
Title: Vice President

NBD BANK, N.A.

By:
Title: VP

PNC BANK, OHIO NATIONAL ASSOCIATION

By:
Title: AVP

NATIONAL CITY BANK, COLUMBUS,
F.K.A. BANKOHIO NATIONAL BANK

By: /s/ Anthony F. Salvatore, VP
Title: Vice President

THE BANK OF TOKYO TRUST COMPANY

By:
Title: Vice President

THE FIRST NATIONAL BANK OF CHICAGO

By: /s/ Richard T. Bedell
Title: Richard T. Bedell
Corporate Banking
Officer

THE BANK OF NOVA SCOTIA

By: /s/ A.S. Norsworthy
Title: Amanda Norsworthy
Assistant Agent

THE TORONTO-DOMINION BANK

By:
Title: Director-Corporate Accts.

UNION BANK

By:
Title: Vice President and
District Manager

CREDIT LYONNAIS CAYMAN ISLAND BRANCH

By:
Title: Authorized Signature

SOCIETE GENERALE

By:
Title: Vice President

SOCIETY NATIONAL BANK

By:
Title: Vice President

Each of the undersigned hereby consents to the foregoing Fifth Amendment and hereby confirms, reaffirms and restates that its obligations under each Loan Document to which it is a party will remain in full force and effect after giving effect to such Fifth Amendment and the amendments to the Credit Agreement and the other Loan Documents effected thereby.

BUNYON ENTERPRISES, INC.
BUNYON TRUCKING COMPANY, INC.
HYPER-HUMUS COMPANY, INC.
HYPONEX COMPANY, INC.
HYPONEX CORPORATION-MISSOURI
HYPONEX CORPORATION-CALIFORNIA
HYPONEX CORPORATION-COLORADO
HYPONEX CORPORATION-FLORIDA
HYPONEX CORPORATION-TEXAS
OLD FORT FINANCIAL CORP.
SCOTTS GRASS CO.
SCOTTS SOD CO.
SCOTTS ENERGY CO.
SCOTTS PESTICIDE CO.
SCOTTS GREEN LAWNS CO.
SCOTTS SERVICE CO.
SCOTTS PRODUCTS CO.
SCOTTS PLANT CO.
SCOTTS TREE CO.
SCOTTS PARK CO.
SCOTTS PRO TURF CO.
SCOTTS FERTILIZER CO.
SCOTTS PROFESSIONAL PRODUCTS CO.
SCOTTS TURF CO.
SCOTTS BEST LAWNS CO.
SCOTTS WEED CONTROL CO.
SCOTTS DESIGN CO.
SCOTTS TECH REP CO.
SCOTTS BROAD LEAF CO.
SCOTTS INSECTICIDE CO.
SCOTTS SPREADER CO.
SCOTTS IMPROVEMENT CO.
SCOTTS GOLF CO.
SCOTTS GARDEN CO.
SCOTTS CONTROL CO.
REPUBLIC TOOL & MANUFACTURING CORP.

By: /s/ Craig D. Walley
Title: Vice President &
Secretary

SCOTTS-SIERRA HORTICULTURAL
PRODUCTS COMPANY

By: /s/ Ken Holbrook
Title: President

SCOTTS-SIERRA CROP PROTECTION COMPANY

By: /s/ Ken Holbrook
Title: President

SCOTTS EUROPE, B.V. (f/k/a
Scotts-Sierra International, BV)
SIERRA UNITED KINGDOM, LTD. (f/k/a
Grace-Sierra United Kingdom)
SCOTTS HISPANIA, S.A. (f/k/a
Grace-Sierra Espana, S.A.)
SCOTTS BELGIUM B.V.B.A. (f/k/a
Grace-Sierra Belgium B.V.B.A.)
SCOTTS DEUTSCHLAND
GARTENBAUPRODUTKE GmbH (f/k/a
Grace-Sierra Deutschland
Gardenbauprodukbe GmbH)

By: /s/ Ken Holbrook
Title: Chairman

SCOTTS FRANCE, SARL (f/k/a
Grace-Sierra France, SARL)

By: /s/ Ken Holbrook
Title: Chairman

By:_____
Title:

SCOTTS AUSTRALIA PTY (f/k/a
Grace-Sierra Australia PTY)

By: /s/ Ken Holbrook
Title: Chairman

Exhibit 4(i)

Second Supplemental Indenture, dated as of September 20, 1994, among Registrant, OMS, Scotts Delaware and Chemical Bank, as trustee

SECOND SUPPLEMENTAL INDENTURE, dated as of September 20, 1994, among THE SCOTTS COMPANY, a corporation duly organized and existing under the laws of the State of Delaware, having its principal office at 14111 Scottslawn Road, Marysville, Ohio 43043 (the "Company"), THE O.M. SCOTT & SONS COMPANY, a corporation duly organized and existing under the laws of the State of Delaware, having its principal office at 14111 Scottslawn Road, Marysville, Ohio 43043, THE SCOTTS COMPANY, a corporation duly organized and existing under the laws of the State of Ohio, having its principal office at 14111 Scottslawn Road, Marysville, Ohio 43043 ("Scotts"), and CHEMICAL BANK, a banking corporation duly organized and existing under the laws of the State of New York, as Trustee (the "Trustee").

R E C I T A L S

WHEREAS, the Company has heretofore executed and delivered to the Trustee an Indenture, dated as of June 1, 1994, and a First Supplemental Indenture thereto dated June 12, 1994 (collectively, the "Indenture"), providing for the issuance by the Company of an unlimited amount of its unsecured debentures, notes or other evidences of indebtedness (the "Securities");

WHEREAS, pursuant to an Agreement and Plan of Merger dated as of September 20, 1994 (the "Merger Agreement"), between the Company and Scotts, the Company is merging (the "Merger") with and into Scotts effective September 20, 1994 (the "Effective Date") which Scotts being the survivor of the Merger;

WHEREAS, Section 801 of the Indenture provides that, in the event the Company shall consolidate with or merge into any other corporation, the successor corporation shall expressly assume, by an indenture supplemental to the Indenture, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of and interest on all the Securities and the performance of every covenant of the Indenture on the part of the Company to be performed or observed;

WHEREAS, Section 901(1) of the Indenture provides that the Company, when authorized by the Board Resolution and the Trustee may enter into a supplemental indenture without the consent of any Holders to evidence the succession of another corporation to the Company and the assumption by any such successor of the covenants of the Company in the Indenture and in the Securities;

WHEREAS, the Company has delivered to the Trustee (i) an Officers' Certificate and an Opinion of Counsel, each to the effect that the Merger and this Second Supplemental Indenture comply with Articles Eight and Nine of the Indenture and that all conditions precedent in the Indenture relating to the Merger and the execution and delivery of this Second Supplemental Indenture have been complied with and (ii) a copy of the Board Resolution authorizing the execution and delivery of this Second Supplemental Indenture;

WHEREAS, immediately after giving effect to the Merger, no Event of Default with respect to any series of Securities issued pursuant to the Indenture, and no event which, after notice or lapse of time or both, would become an Event of Default, will have occurred and be continuing; and

WHEREAS, all things necessary to authorize the assumption by Scotts of the Company's obligations under the Indenture and to make this Second Supplemental Indenture, when executed by the parties hereto, a valid and binding supplement to the Indenture have been done and performed.

NOW, THEREFORE, for and in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby mutually covenant and agree as follows:

SECTION 1. Assumption of Obligations. Scotts hereby expressly assumes, from and after the Effective Date, the due and punctual payment of the principal of and interest on all the Securities and the performance of every covenant of the Indenture on the part of the Company to be performed and observed. The Holder of each Security outstanding as of the date hereof shall have the right hereafter to receive on the Exchange Date of such Security securities of Scotts of line tenor, series, Stated Maturity and

principal amount and with a market value equal to the principal amount of such Security.

SECTION 2. Succession and Substitution. Scotts, from and after the Effective Date, by virtue of the aforesaid assumption and the delivery of this Second Supplemental Indenture, shall succeed to and be substituted for and may exercise every right and power of the Company under the Indenture with the same effect as if Scotts had been named as the Company in the Indenture.

SECTION 3. Representations and Warranties. Scotts, as of the date of execution of this Second Supplemental Indenture, represents and warrants that: (i) it is a corporation organized and existing under the laws of the State of Ohio; (ii) it has full corporate power and authority to execute and deliver this Second Supplemental Indenture and to perform its obligations under this Second Supplemental Indenture in accordance with its terms; and that (iii) the execution, delivery and performance of this Second Supplemental Indenture will not violate, conflict with or constitute a breach of, or a default under, its Articles of Incorporation or any other material agreement or instrument to

will not result in the creation of any lien on, or security interest in, any of its assets.

SECTION 4. Covenants. All covenants and agreements in this Second Supplemental Indenture by Scotts shall bind its respective successors and assigns, whether so expressed or not.

SECTION 5. Requests and Notices. Pursuant to Section 105 of the Indenture, any request, demand, authorization, direction, notice, consent, waiver or act of Holders or other document provided or permitted by the Indenture to be made upon, given or furnished to, or filed with the Company shall be addressed to Scotts at 14111 Scottslawn Road, Marysville, Ohio 43043 or at any other address previously furnished in writing to the Trustee by Scotts.

SECTION 6. Separability. In case any provision in this Second Supplemental Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 7. No Third Party Benefits. Nothing in this Second Supplemental Indenture, express or implied, shall give to any Person, other than the parties hereto and their successors under the Indenture, and the Holders of the Securities, any benefit or any legal or equitable right, remedy or claim under the Indenture.

SECTION 8. Continuance of Indenture. This Second Supplemental Indenture supplements the Indenture and shall be a part of and subject to all the terms thereof. The Indenture, as supplemented by this Second Supplemental Indenture, shall continue in full force and effect. This Second Supplemental Indenture shall become effective at the Effective Date.

SECTION 9. The Trustee. The Trustee shall not be responsible in any manner for or in respect of the validity or sufficiency of this Second Supplemental Indenture, or for or in respect of the recitals contained herein, all of which recitals are made by the Company, The O.M. Scott & Sons Company and Scotts solely.

SECTION 10. Governing Law. This Second Supplemental Indenture shall be governed by and construed in accordance with the laws of the State of New York.

SECTION 11. Defined Terms. All capitalized terms used in this Second Supplemental Indenture which are defined in the

Indenture but not otherwise defined herein shall have the same meaning assigned to them in the Indenture.

SECTION 12. Counterparts. This Second Supplemental Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Second Supplemental Indenture to be duly executed, and their respective corporate seals to be hereunto affixed and attested, all as of the date and year Second above written.

THE SCOTTS COMPANY, a Delaware corporation

By: /s/ P.D. Yeager
Name: Paul D. Yeager
Title: Executive Vice President & Chief Financial Officer

Attest:

/s/ Christiane W. Schmenk

THE O.M. SCOTT & SONS COMPANY,
a Delaware corporation

By: /s/ P.D. Yeager
Name: Paul D. Yeager
Title: Executive Vice President & Chief Financial Officer

Attest:

/s/ Christiane W. Schmenk

THE SCOTTS COMPANY, an Ohio corporation

By: /s/ P. D. Yeager
Name: Paul D. Yeager
Title: Executive Vice President & Chief Financial Officer

Attest:

/s/ Christiane W. Schmenk

CHEMICAL BANK, as Trustee

By: /s/ F. J. Grippo
Name: F. J. Grippo
Title: Vice President

Attest: