

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

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

Date of Report (Date of earliest event reported): January 27, 2005

THE SCOTTS COMPANY

(Exact name of registrant as specified in its charter)

Ohio
(State or other
jurisdiction of
incorporation)

1-13292
(Commission File Number)

31-1414921
(IRS Employer
Identification No.)

14111 Scottslawn Road, Marysville, Ohio 43041

(Address of principal executive offices) (Zip Code)

(937) 644-0011

(Registrant's telephone number, including area code)

Not Applicable

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Section 1 – Registrant’s Business and Operations

Item 1.01. Entry into a Material Definitive Agreement.

(a) On January 27, 2005, the Board of Directors (the “Board”) of The Scotts Company (the “Company”) adopted a resolution for a one-time cash compensation increase for Audit Committee members. Currently, Audit Committee members, as non-employee directors of the Company, each receive a \$45,000 annual retainer for the Board and Board committee meetings plus reimbursement of all reasonable travel and other expenses of attending such meetings. The Board approved a one-time increase to the Audit Committee’s annual retainer from \$45,000 to \$57,940 for Audit Committee members and to \$64,410 for the Audit Committee Chair. These increases were approved in recognition of the substantial time, effort and responsibilities that are associated with membership on the Audit Committee.

(b) At the Company’s Annual Meeting of Shareholders on January 27, 2005 (the “2005 Annual Meeting”), the proposal to approve The Scotts Company Employee Stock Purchase Plan (the “Stock Purchase Plan”) was approved by the Company’s shareholders. The Stock Purchase Plan provides a means for employees of the Company and its subsidiaries (other than Smith & Hawken, Ltd.) to authorize payroll deductions on a voluntary basis to be used for the periodic purchase of common shares of the Company.

All employees participating in the Stock Purchase Plan will have equal rights and privileges. Under the Stock Purchase Plan, eligible employees will be able to purchase common shares at a price (the “Purchase Price”) equal to at least 90% of the fair market value of the common shares of the Company at the end of the applicable offering period.

The maximum number of common shares that may be purchased under the Stock Purchase Plan is 150,000 common shares, subject to adjustment for changes in the capitalization of the Company. Common shares to be purchased under the Stock Purchase Plan may be either authorized but unissued shares or treasury shares.

The Stock Purchase Plan will be administered by a committee (the “Committee”) appointed by the Board. The Committee will establish the number of common shares that may be acquired during each offering period and administer procedures through which eligible employees may enroll in the Stock Purchase Plan. The Stock Purchase Plan provides that each offering period will consist of one calendar month, unless a different period is established by the Committee and announced to eligible employees before the beginning of the applicable offering period.

Any United States-based full-time or permanent part-time employee of the Company or a subsidiary of the Company (other than Smith & Hawken, Ltd.) who has reached age 18, is not a seasonal employee (as determined by the Committee) and has been an employee for at least 15 days before the first day of the applicable offering period will be eligible to participate in the Stock Purchase Plan. Upon enrollment, a participant must elect the rate at which he or she will make payroll contributions for the purchase of common shares. Elections may be in an amount of

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not less than \$10 per offering period or more than \$24,000 per fiscal year of the Company, unless the Committee specifies different maximum and/or minimum amounts at the beginning of the offering period. The contribution rate elected by a participant will continue in effect until modified by the participant.

A participant's contributions will be credited to the plan account maintained on his or her behalf. On the last day of each offering period, the value of each participant's plan account will be divided by the Purchase Price established for that offering period. Each participant will be deemed to have purchased the number of whole and fractional common shares produced by this calculation. As promptly as practicable after the end of each offering period, the Company will deliver the common shares purchased by a participant during that offering period to the custodian for the Stock Purchase Plan for deposit into that participant's custodial account.

Common shares acquired through the Stock Purchase Plan are held in a participant's custodial account under the Stock Purchase Plan (and may not be sold) until the earlier of (1) the date the participant terminates employment with the Company and its subsidiaries, (2) 12 full calendar months beginning after the end of the offering period in which the common shares were purchased or (3) the date on which a change in control affecting the Company occurs. Upon any such event, all whole common shares and cash held in a participant's custodial account will be made available to him or her and fractional shares will be distributed in cash equal to the fair market value of the fractional share on the termination date.

Participants will be entitled to vote the number of common shares credited to their respective custodial accounts (including any fractional shares).

Section 8 – Other Events

Item 8.01. Other Events.

At the Company's 2005 Annual Meeting, the proposal to approve the restructuring of the Company's corporate structure into a holding company by merging the Company into a newly-created, wholly-owned, second-tier limited liability company subsidiary, The Scotts Company LLC, pursuant to the agreement and plan of merger attached as Annex B to the Proxy Statement/Prospectus furnished to shareholders in connection with the solicitation on behalf of the Company's Board of proxies for use at the 2005 Annual Meeting (the "Restructuring Merger"), was approved and the related agreement and plan of merger adopted, by the Company's shareholders.

The Company intends to consummate the Restructuring Merger and implement the restructuring of the Company's corporate structure in the second quarter of the Company's 2005 fiscal year. Upon the effective date of the Restructuring Merger, each of the Company's common shares will be converted automatically into one common share of a newly-created holding company. The newly-created holding company is an Ohio corporation and will be a public company called "The Scotts Miracle-Gro Company" ("Scotts Miracle-Gro"), as successor to the Company. After the Restructuring Merger is completed, The Scotts Company LLC will be

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the successor to the Company and will be a direct, wholly-owned subsidiary of Scotts Miracle-Gro.

The restructuring will not affect the new parent holding company's management, corporate governance or capital stock structure. The Company's directors and officers immediately prior to the Restructuring Merger will be the directors and officers of the new parent holding company. The articles of incorporation, code of regulations, committee charters, code of business conduct and ethics and corporate governance guidelines of Scotts Miracle-Gro will be substantially identical to those of the Company (other than the provisions regarding the name of the corporation). Scotts Miracle-Gro will be subject to the rules and regulations of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as successor to the Company, and will be subject to the rules and regulations of NYSE. All of the Company's equity compensation and other employee benefit plans will become obligations of Scotts-Miracle Gro.

The rights of Scotts Miracle-Gro's shareholders after completion of the Restructuring Merger will be the same as the rights of the Company's shareholders prior to the Restructuring Merger.

The consolidated assets and liabilities of Scotts Miracle-Gro and its subsidiaries (including The Scotts Company LLC) immediately after the Restructuring Merger will be the same as the consolidated assets and liabilities of the Company and its subsidiaries immediately before the Restructuring Merger.

The Company's amended and restated senior secured credit agreement, entered into on October 22, 2003, as amended, which governs the Company's \$700.0 million revolving loan facility and the Company's \$400.0 million term loan facility, contains a provision specifically permitting the Company to consummate the Restructuring Merger. The indenture governing the Company's 6.625% senior subordinated notes due 2013, entered into on October 8, 2003, also specifically permits the Company to consummate the Restructuring Merger.

After the Restructuring Merger is completed, as permitted under the Company's amended and restated senior secured credit agreement and the indenture governing the Company's 6.625% senior subordinated notes due 2013, the Company intends to transfer the Company's obligations under each agreement to Scotts Miracle-Gro. The Scotts Company LLC, as successor to the Company by merger, will then become a subsidiary guarantor of Scotts Miracle-Gro's obligations under both the amended and restated senior secured credit agreement and the indenture governing the 6.625% senior subordinated notes due 2013, and Scotts Miracle-Gro will enter into appropriate documentation with the agent banks under the amended and restated senior secured credit agreement and the trustee under the indenture to such effect.

Section 9 – Financial Statements and Exhibits

Item 9.01. Financial Statements and Exhibits.

(a) Financial statements of businesses acquired:

Not applicable.

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(b) Pro forma financial information:

Not applicable.

(c) Exhibits:

<u>Exhibit No.</u>	<u>Description</u>
2.1	Agreement and Plan of Merger, dated as of December 13, 2004, by and among The Scotts Company, The Scotts Miracle-Gro Company and The Scotts Company LLC
10.1	The Scotts Company Employee Stock Purchase Plan

SIGNATURE

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

THE SCOTTS COMPANY

Dated: February 1, 2005

By: /s/ Christopher L. Nagel
Printed Name: Christopher L. Nagel
Title: Executive Vice President and
Chief Financial Officer

INDEX TO EXHIBITS

Current Report on Form 8-K
Dated February 1, 2005

The Scotts Company

<u>Exhibit No.</u>	<u>Description</u>
2.1	Agreement and Plan of Merger, dated as of December 13, 2004, by and among The Scotts Company, The Scotts Miracle-Gro Company and The Scotts Company LLC
10.1	The Scotts Company Employee Stock Purchase Plan

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of December 13, 2004, by and among THE SCOTTS COMPANY, an Ohio corporation ("SCOTTS"), THE SCOTTS COMPANY LLC, an Ohio limited liability company ("SCOTTS LLC"), and THE SCOTTS MIRACLE-GRO COMPANY, an Ohio corporation ("SCOTTS MIRACLE-GRO").

WITNESSETH:

WHEREAS, the authorized capital stock of SCOTTS consists of (i) 100,000,000 common shares, without par value, of which 33,013,047 common shares were issued and outstanding as of December 1, 2004 and none were held in treasury on such date and (ii) 195,000 preferred shares, without par value, none of which are currently issued and outstanding;

WHEREAS, the authorized capital stock of SCOTTS MIRACLE-GRO currently consists of (i) 1,000 common shares, without par value, of which 100 common shares are issued and outstanding as of the date hereof and owned by SCOTTS and (ii) 500 preferred shares, without par value, none of which are currently issued and outstanding;

WHEREAS, as of the Effective Time (as hereinafter defined), SCOTTS MIRACLE-GRO will have authorized not less than 100,000,000 common shares, without par value, and 195,000 preferred shares, without par value;

WHEREAS, SCOTTS MIRACLE-GRO is the sole member of SCOTTS LLC and owns 100% of the membership interests of SCOTTS LLC as of the date hereof;

WHEREAS, SCOTTS MIRACLE-GRO and SCOTTS LLC are newly-formed entities organized for the purpose of participating in the transactions herein contemplated;

WHEREAS, SCOTTS desires to create a holding company structure by merging with and into SCOTTS LLC in a transaction in which (i) SCOTTS LLC will be the surviving entity in the merger and (ii) each outstanding common share of SCOTTS will be converted into one common share of SCOTTS MIRACLE-GRO;

WHEREAS, for federal income tax purposes, it is intended that the merger contemplated by this Agreement qualify as a reorganization under Section 368 of the Internal Revenue Code of 1986, as amended;

WHEREAS, this Agreement has been approved by the Boards of Directors of SCOTTS and SCOTTS MIRACLE-GRO and by the manager of SCOTTS LLC; and

WHEREAS, this Agreement has been adopted and approved by SCOTTS, as the sole shareholder of SCOTTS MIRACLE-GRO, and by SCOTTS MIRACLE-GRO, as the sole member of SCOTTS LCC;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereby agree that the terms of the merger and the mode of carrying them into effect shall be as follows:

ARTICLE I

THE MERGER

SECTION 1.01. *The Merger.* Subject to the terms and provisions of this Agreement, and in accordance with the General Corporation Law of the State of Ohio (the "OGCL") and Chapter 1705 of the Ohio Revised Code governing limited liability companies (the "LLC Act"), at the Effective Time, SCOTTS shall merge with and into SCOTTS LLC (the "Merger"). SCOTTS LLC shall be the surviving

entity (hereinafter sometimes referred to as the “Surviving Company”) of the Merger and shall continue its limited liability company existence under the laws of the State of Ohio. At the Effective Time, the separate corporate existence of SCOTTTS shall cease.

SECTION 1.02. *Effective Time.* The Merger shall become effective in accordance with the provisions of Sections 1701.791 and 1701.81 of the OGCL and Sections 1705.36 and 1705.38 of the LLC Act, upon the filing of a certificate of merger with the Secretary of State of the State of Ohio. The date and time when the Merger shall become effective is herein referred to as the “Effective Time.”

SECTION 1.03. *Effects of the Merger.* At the Effective Time, the Merger shall have the effects provided for herein and in Sections 1701.791 and 1701.82 of the OGCL and Sections 1705.36 and 1705.39 of the LLC Act.

SECTION 1.04. *Principal Office.* The principal office of the Surviving Company shall be located at 14111 Scottslawn Road, Marysville, Ohio 43041.

SECTION 1.05. *Articles of Organization.* As of the Effective Time, the Articles of Organization of SCOTTTS LLC, as in effect immediately prior to the Effective Time, shall be the articles of organization of the Surviving Company until thereafter duly amended in accordance with the provisions thereof and applicable law.

SECTION 1.06. *Operating Agreement.* As of the Effective Time, the Operating Agreement of SCOTTTS LLC, as in effect immediately prior to the Effective Time, shall be the operating agreement of the Surviving Company until thereafter amended in accordance with the provisions thereof, the articles of organization of the Surviving Company and applicable law.

SECTION 1.07. *Manager of the Surviving Company.* At the Effective Time, the manager of SCOTTTS LLC immediately prior to the Effective Time shall become the manager of the Surviving Company and shall serve as the manager of the Surviving Company in accordance with the provisions of the operating agreement of the Surviving Company and applicable law.

SECTION 1.08. *Officers of the Surviving Company.* At the Effective Time, each person who is an officer of SCOTTTS immediately prior to the Effective Time shall become an officer of the Surviving Company, with each such person to hold the same office in the Surviving Company in accordance with the operating agreement thereof, as he or she held in SCOTTTS immediately prior to the Effective Time.

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

ARTICLE II

MANNER, BASIS AND EFFECT OF CONVERTING SHARES AND MEMBERSHIP INTERESTS

SECTION 2.01. *Conversion of Shares and Membership Interests.* At the Effective Time:

(a) Each common share, without par value, of SCOTTTS (the “Scotts Common Shares”) issued and outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into one fully paid and nonassessable

common share, without par value, of SCOTTS MIRACLE-GRO (the “Scotts Miracle-Gro Common Shares”).

(b) Each Scotts Common Share contributed to SCOTTS MIRACLE-GRO pursuant to Section 4.01 of this Agreement immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of SCOTTS or SCOTTS MIRACLE-GRO, be converted into one fully paid and nonassessable Scotts Miracle-Gro Common Share and shall be held by SCOTTS MIRACLE-GRO in its treasury immediately after the Effective Time.

(c) The membership interests of SCOTTS LLC issued and outstanding immediately prior to the Effective Time shall remain issued and outstanding, and SCOTTS MIRACLE-GRO shall remain the sole member of SCOTTS LLC.

(d) Each Scotts Miracle-Gro Common Share issued and outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, be canceled and retired and shall cease to exist, and shall not be converted into interests of the Surviving Company or the right to receive cash, securities or any other right or property.

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

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

SECTION 2.04. *Dissenting Shares.* Notwithstanding anything in this Agreement to the contrary, the Scotts Common Shares which are outstanding immediately prior to the Effective Time and which are held by SCOTTS shareholders who have not voted such Scotts Common Shares in favor of adoption of this Agreement, who have delivered to SCOTTS a written demand for payment of the fair cash value of such Scotts Common Shares in the manner provided in Section 1701.85 of the OGCL and who have otherwise complied fully with all of the requirements of Section 1701.85 of the OGCL, shall not be converted into Scotts Miracle-Gro Common Shares as provided in this Agreement; provided, however, that (a) the holder of such Scotts Common Shares (“Dissenting Shares”), upon full compliance with the requirements of Section 1701.85 of the OGCL, shall be entitled to payment of the fair cash value of such Dissenting Shares in accordance with the provisions of Section 1701.85 of the OGCL; (b) all other rights accruing from such Dissenting Shares, including voting and dividend or distribution rights, shall be suspended in accordance with Section 1701.85 of the OGCL; and (c) in the event (i) any holder of Dissenting Shares subsequently withdraws such holder’s demand with the consent of SCOTTS or fails to establish such

holder's entitlement to the fair cash value of Dissenting Shares in accordance with Section 1701.85 of the Ohio Revised Code, or (ii) any holder of Dissenting Shares does not file a complaint demanding a determination of the fair cash value of such Dissenting Shares within the period provided in Section 1701.85 of the OGCL, such holder shall forfeit the right to receive the fair cash value of such Dissenting Shares and such Dissenting Shares shall thereupon be deemed to have been converted into Scotts Miracle-Gro Common Shares as provided in this Agreement.

SECTION 2.05. *Stock Plans and Executive Retirement Plan.*

(a) Each option to purchase Scotts Common Shares granted under The Scotts Company 1992 Long Term Incentive Plan, The Scotts Company 1996 Stock Option Plan, or The Scotts Company 2003 Stock Option and Incentive Equity Plan (collectively, the "Stock Plans"), which is outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder of any such option, be converted into and become an option to purchase the same number of Scotts Miracle-Gro Common Shares as the number of Scotts Common Shares which were subject to such option immediately prior to the Effective Time at the same exercise price per share and upon the same terms and subject to the same conditions as are in effect at the Effective Time.

(b) Each stock appreciation right covering Scotts Common Shares granted under The Scotts Company 2003 Stock Option and Incentive Equity Plan, which is outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder of any such stock appreciation right, be converted into and become a stock appreciation right covering the same number of Scotts Miracle-Gro Common Shares as the number of Scotts Common Shares which were subject to such stock appreciation right immediately prior to the Effective Time at the same exercise price per share and subject to the same terms and conditions as are in effect at the Effective Time.

(c) The Scotts Common Shares attributable to accounts of participants under The Scotts Company Executive Retirement Plan (the "Executive Retirement Plan") relating to common share units and to accounts of directors of SCOTTS holding stock units received under The Scotts Company 1996 Stock Option Plan or The Scotts Company 2003 Stock Option and Incentive Equity Plan, immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of such participants and directors, be converted into the same number of Scotts Miracle-Gro Common Shares and such Scotts Miracle-Gro Common Shares shall be attributable to the accounts of such participants and directors upon the same terms and subject to the same conditions as are in effect at the Effective Time.

(d) SCOTTS MIRACLE-GRO shall reserve for purposes of each Stock Plan and the Executive Retirement Plan a number of Scotts Miracle-Gro Common Shares equal to the number of Scotts Common Shares reserved by SCOTTS for issuance under such Stock Plan or the Executive Retirement Plan as of the Effective Time.

(e) As of the Effective Time, SCOTTS MIRACLE-GRO hereby assumes the Stock Plans and the Executive Retirement Plan and all obligations of SCOTTS under the Stock Plans, including the outstanding options, stock appreciation rights and stock units granted pursuant thereto, and the Executive Retirement Plan.

ARTICLE III

CONDITIONS TO THE MERGER

SECTION 3.01. *Conditions to Each Party's Obligations to Effect the Merger.* The respective obligations of each party hereto to consummate the Merger and the other transactions contemplated by this Agreement are subject to the satisfaction at or prior to the Effective Time of the following conditions:

(a) *Shareholder Approval.* This Agreement shall have been adopted by the requisite vote of the shareholders of SCOTTS.

(b) *Amendment of Articles.* The Articles of Incorporation of SCOTTS MIRACLE-GRO shall have been amended to authorize not less than 100,000,000 common shares, without par value, and 195,000 preferred shares, without par value.

(c) *Form S-4 Registration Statement.* The registration statement on Form S-4 filed with the U.S. Securities and Exchange Commission by SCOTTS MIRACLE-GRO in connection with the issuance of Scotts Miracle-Gro Common Shares in the Merger shall have become effective under the Securities Act of 1933, as amended, and shall not be the subject of any stop order or proceedings seeking a stop order, and SCOTTS MIRACLE-GRO shall have received all state securities laws or “blue sky” permits and authorizations necessary, or exemptions from such permits and authorizations, to issue Scotts Miracle-Gro Common Shares in exchange for the Scotts Common Shares in the Merger.

(d) *NYSE Listing.* The Scotts Miracle-Gro Common Shares issuable to SCOTTS shareholders pursuant to this Agreement and such other shares required to be reserved for issuance in connection with the Merger shall have been authorized for listing on the New York Stock Exchange upon official notice of issuance.

ARTICLE IV

MISCELLANEOUS

SECTION 4.01. *Contribution of Treasury Stock.* Immediately prior to the Effective Time, SCOTTS will contribute to the capital of SCOTTS MIRACLE-GRO all the Scotts Common Shares then held in the treasury of SCOTTS.

SECTION 4.02. *Amendment.* Subject to applicable law, this Agreement may be amended, modified or supplemented by written agreement of SCOTTS, SCOTTS MIRACLE-GRO and SCOTTS LLC, after authorization of such action by the Boards of Directors of SCOTTS and SCOTTS MIRACLE-GRO and by the manager of SCOTTS LLC, at any time prior to the filing of the certificate of merger with the Secretary of State of the State of Ohio, as contemplated by Section 1.02 of this Agreement, except that after the adoption of this Agreement by the shareholders of SCOTTS, this Agreement may not be amended if it would violate Section 1701.791 of the OGCL, Section 1705.36 of the LLC Act or the federal securities laws.

SECTION 4.03. *Termination.* At any time prior to the filing of the certificate of merger with the Secretary of State of the State of Ohio, as contemplated by Section 1.02 of this Agreement, this Agreement may be terminated and the Merger may be abandoned by the mutual consent of SCOTTS, SCOTTS MIRACLE-GRO and SCOTTS LLC, after determination by the Boards of Directors of SCOTTS and SCOTTS MIRACLE-GRO and the manager of SCOTTS LLC that the Merger is not in the best interests of their respective entities, notwithstanding approval of this Agreement by the shareholders of SCOTTS.

SECTION 4.04. *Appointment of Agent.* The Surviving Company consents to be sued and served with process in the State of Ohio and irrevocably appoints the Secretary of State of the State of Ohio as its agent to accept service of process in any proceeding in the State of Ohio to enforce against the Surviving Company any obligation of SCOTTS, or to enforce the rights of a dissenting shareholder of SCOTTS.

SECTION 4.05. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed to be a duplicate original, but all of which, taken together, shall be deemed to constitute a single instrument.

IN WITNESS WHEREOF, SCOTTS, SCOTTS MIRACLE-GRO and SCOTTS LLC have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

ATTEST:

/s/ ANDREW COOGLE

THE SCOTTS COMPANY,
an Ohio corporation

By: /s/ CHRISTOPHER L. NAGEL

Name: Christopher L. Nagel
Title: EVP and CFO

ATTEST:

/s/ ANDREW COOGLE

THE SCOTTS MIRACLE-GRO COMPANY,
an Ohio corporation

By: /s/ CHRISTOPHER L. NAGEL

Name: Christopher L. Nagel
Title: EVP and CFO

ATTEST:

/s/ ANDREW COOGLE

THE SCOTTS COMPANY LLC
an Ohio limited liability company

By: /s/ CHRISTOPHER L. NAGEL

Name: Christopher L. Nagel
Title: EVP and CFO

THE SCOTTS COMPANY
EMPLOYEE STOCK PURCHASE PLAN

1.00 PURPOSE

This Plan is intended to foster and promote the Company's long-term financial success and to increase shareholder value by [1] providing Participants an opportunity to acquire an ownership interest in the Company and [2] enabling the Company to attract and retain the services of outstanding individuals upon whose judgment, interest and dedication the successful conduct of the Company's business is largely dependent.

2.00 DEFINITIONS

When used in this Plan, the following terms will have the meanings given to them in this section unless another meaning is expressly provided elsewhere in this document or clearly required by the context. When applying these definitions, the form of any term or word will include any of its other forms.

Act. The Securities Exchange Act of 1934, as amended.

Beneficiary. The person a Participant designates to receive (or exercise) any Plan benefits (or rights) that are unpaid (or unexercised) when the Participant dies. A Beneficiary may be designated only by following the procedures described in Section 10.02; neither the Company nor the Committee is required or permitted to infer a Beneficiary from any other source.

Board. The Company's Board of Directors.

Change in Control. The occurrence of any of the following events:

[1] Any "person," including a "group" [as such terms are used in Act §§13(d) and 14(d)(2), but excluding the Company, any of its Subsidiaries, any employee benefit plan of the Company or any of its Subsidiaries or Hagedorn Partnership, L.P. or any party related to Hagedorn Partnership, L.P. as determined by the Committee] is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Act), directly or indirectly, of securities of the Company representing more than 30 percent of the combined voting power of the Company's then outstanding securities; or

[2] The adoption or authorization by the shareholders of the Company of a definitive agreement or a series of related agreements [a] for the merger or other business combination of the Company with or into another entity in which the shareholders of the Company immediately before the effective date of such merger or other business combination own less than 50 percent of the voting power in such entity; or [b] for the sale or other disposition of all or substantially all of the assets of the Company; or

[3] The adoption by the shareholders of the Company of a plan relating to the liquidation or dissolution of the Company; or

[4] For any reason, Hagedorn Partnership, L. P. or any party related to Hagedorn Partnership, L.P. as determined by the Committee becomes the "beneficial owner" (as defined in Rule 13d-3 under the Act), directly or indirectly, of securities of the Company representing more than 49 percent of the combined voting power of the Company's then outstanding securities.

Code. The Internal Revenue Code of 1986, as in effect on the Effective Date or as amended or superseded after the Effective Date, and any regulations and applicable rulings issued under the Code.

Committee. The committee to which the Board delegates responsibility for administering the Plan.

Company. The Scotts Company, an Ohio corporation and any successor to it.

Custodial Account. The account established for each Participant to which the Company transfers shares of Stock acquired under the Plan.

Effective Date. The date the Plan is adopted by the Board.

Eligible Employee. As of any Entry Date, any US-based regular full-time or permanent part-time Employee who [1] has reached age 18, [2] is not a seasonal employee (i.e., as determined by the Committee), [3] has been an Employee for at least 15 days before the applicable Entry Date, [4] is employed by a Subsidiary other than Smith & Hawken, Ltd. and [5] complies with Section 3.00 and other Plan provisions.

Employee. Any person who, on an applicable Entry Date, is a common law employee of any Employer. A worker who is classified as other than a common law employee but who is subsequently reclassified as a common law employee of an Employer for any reason and on any basis will be treated as a common law employee from the first Entry Date that begins after the date of that determination and will not retroactively be reclassified as an Employee for any purpose of this Plan.

Employer. The Company and each Subsidiary employing an Eligible Employee.

Entry Date. The first day of each Offering Period and the date that Purchase Rights are granted under the Plan for the ensuing Offering Period.

Fair Market Value. The value of one share of Stock on any relevant date, determined under the following rules:

[1] If the Stock is traded on an exchange, the reported "closing price" on the relevant date, if it is a trading day, otherwise on the next trading day;

[2] If the Stock is traded over-the-counter with no reported closing price, the mean between the lowest bid and the highest asked prices on that quotation system on the relevant date if it is a trading day, otherwise on the next trading day; or

[3] If neither of the preceding apply, the fair market value as determined by the Committee in good faith.

Offering Period. The period during which payroll deductions will be accumulated in Plan Accounts to fund the purchase of shares of Stock. Each Offering Period will consist of one calendar month, unless a different period is established by the Committee and announced to Eligible Employees before the beginning of the Offering Period.

Participant. Any Eligible Employee who complies with the conditions described in Section 3.00 for the current Offering Period.

Plan. The Scotts Company Employee Stock Purchase Plan. This program is not intended to comply with Code §§422 or 423.

Plan Account. The individual account established by the Committee for each Participant and to which all amounts described in Section 3.01[1][a] are credited until applied as described in Section 6.00.

Purchase Date. The last day of each Offering Period and the date on which shares of Stock are purchased in exchange for the Purchase Price.

Purchase Price. The price that each Participant must pay to purchase shares of Stock under this Plan but which may never be less than 90 percent of the Fair Market Value of a share of Stock on each Purchase Date (or the first trading day following the Purchase Date if the Purchase Date is not a trading date).

Purchase Right. The right to purchase shares of Stock subject to the terms of the Plan.

Stock. A common share, without par value, issued by the Company.

Subsidiary. Any corporation, partnership or other form of unincorporated entity of which the Company owns, directly or indirectly, 50 percent or more of the total combined voting power of all classes of stock, if the entity is a corporation; or of the capital or profits interest, if the entity is a partnership or another form of unincorporated entity.

Termination. Cessation of the employee-employer relationship between a Participant and each Employer for any reason. Also, a Participant will be treated as having Terminated on the date his or her employer is no longer an Employer.

3.00 PARTICIPATION

3.01 Enrollment.

[1] Each Eligible Employee may become a Participant for any Offering Period beginning after the date he or she complies with each of the following conditions:

[a] Authorizes the Employer to withhold a portion of his or her taxable compensation. This authorization will be made under rules developed by the Committee within the following limits: each authorization [i] must be stated in whole dollars, [ii] may not authorize or result in authorization of a deduction [A] less than the amount specified by the Committee (which may never be less than \$10.00 per pay period or [B] more than the amount specified by the Committee (which may never be more than, in the aggregate, \$24,000 for each Plan Year), [iii] must be signed by the enrolling Eligible Employee and [iv] must be delivered to the Committee within the period specified by the Committee.

[b] Complies with any other rules established by the Committee.

[2] By enrolling in the Plan, each Participant will be deemed to have [a] agreed to the terms of the Plan and [b] authorized the Employer to withhold from his or her compensation [i] the amounts authorized under Section 3.01[1][a] and [ii] any taxes and other amounts due in connection with any transaction contemplated by the Plan.

3.02 Duration of Election to Participate.

Subject to the terms of the Plan:

[1] Participants' withholding elections will be implemented beginning with the first payroll period ending in the Offering Period for which it is filed and will remain in effect until revoked or changed under the rules described in Section 3.02[2].

[2] A Participant who elects to participate in the Plan for any Offering Period by complying with the rules described in Section 3.01 may change or revoke that election for any subsequent Offering Period but only by complying with the rules described in Section 3.01 as if the changed or revoked election were a new election. Any change to or revocation of an earlier election will be effective as of the first day of the first Offering Period beginning at least 15 calendar days after the revised election is delivered to the Committee and will remain in effect until revoked or changed under the rules described in this section.

3.03 No Interest Paid. No interest will be paid with respect to any amount credited to or held in any Plan Account.

4.00 ADMINISTRATION

4.01 Committee Duties.

[1] The Committee is responsible for administering the Plan and has all powers appropriate and necessary to that purpose. Consistent with the Plan's objectives, the Committee may adopt, amend and rescind rules and regulations relating to the Plan, to the extent appropriate to protect the

Company's interests and has complete discretion to make all other decisions necessary or advisable for the administration and interpretation of the Plan. Any action by the Committee will be final, binding and conclusive for all purposes and upon all persons. The Committee is granted all powers appropriate and necessary to administer the Plan.

[2] Consistent with the terms of the Plan, the Committee:

[a] May exercise all discretion retained to it under the Plan;

[b] Will Establish the number of shares of Stock that may be acquired during each Offering Period if the number available during any Offering Period is less than all remaining available shares determined under Section 5.02;

[c] Develop and impose other terms and conditions it believes are appropriate and necessary to implement the purposes of this Plan;

[d] Establish and maintain a Plan Account for each Participant to which will be [i] credited with amounts described in Section 3.01[1][a] and [ii] debited with all amounts applied to purchase shares of Stock;

[e] Establish a Custodial Account for each Participant which will be credited with shares of Stock until distributed as provided in Section 7.00;

[f] Administer procedures through which Eligible Employees may enroll in the Plan;

[g] Disseminate information about the Plan to Eligible Employees; and

[h] Apply all Plan rules and procedures.

4.02 Delegation of Ministerial Duties. In its sole discretion, the Committee may delegate any ministerial duties associated with the Plan to any person (including employees) that it deems appropriate other than those duties described in Section 4.01[a], [b] and [c].

4.03 General Limit on Committee. Consistent with applicable law and Plan terms, the Plan will be administered in a manner that extends equal rights and privileges to all Participants.

5.00 OFFERING

5.01 Right to Purchase. Subject to Sections 5.02, 5.03 and 6.00, the number of shares of Stock that may be purchased during each Offering Period will be established by the Committee before the beginning of each Offering Period.

5.02 Number of Shares of Stock. Subject to Section 5.03, the aggregate number of shares of Stock that may be purchased under the Plan is 150,000.

5.03 Adjustment in Capitalization. If, after the Effective Date, there is a Stock dividend or Stock split, recapitalization (including payment of an extraordinary dividend), merger, consolidation, combination, spin-off, distribution of assets to shareholders, exchange of shares, or other similar corporate change affecting Stock, the Committee will appropriately adjust [1] the number of Purchase Rights that may or will be issued, [2] the aggregate number of shares of Stock available under Section 5.02 or subject to outstanding Purchase Rights (as well as any share-based limits imposed under this Plan), [3] the respective Purchase Price, number of shares and other limitations applicable to outstanding or subsequently issued Purchase Rights and [4] any other factors, limits or terms affecting any outstanding or subsequently issued Purchase Rights.

5.04 Source of Stock. Shares of Stock to be purchased under the Plan may, in the Committee's discretion, be newly issued shares or treasury shares previously acquired by the Company. Shares of authorized but unissued shares of Stock may not be delivered under the Plan if the Purchase Price is less than the par value of the Stock.

6.00 PURCHASE OF SHARES

6.01 Purchase.

[1] Throughout each Offering Period, the Employer will withhold from each Participant's regular payroll the amount the Participant has elected under Section 3.01[1][a]. These amounts will be held in the Participant's Plan Account until the Purchase Date.

[2] As of each Purchase Date and subject to the Plan's terms and limits, the value of each Participant's Plan Account will be divided by the Purchase Price established for that Offering Period and each Participant will be deemed to have purchased the number of whole and fractional shares of Stock produced by dividing the value of the Participant's Plan Account as of the Purchase Date by the Purchase Price. Simultaneously, the Participant's Plan Account will be charged for the amount of the purchase.

6.02 Remaining Available Shares.

[1] If application of the procedures described in Section 6.01 would result in the purchase of a number of shares of Stock larger than the number of shares of Stock offered during that Offering Period, the Committee will allocate available shares of Stock among Participants and any cash remaining in Participants' Plan Accounts will be credited to the next Offering Period and, subject to the terms of the Plan, applied along with additional amounts credited to that Offering Period to purchase shares of Stock during that Offering Period and at the Purchase Price established for that Offering Period.

[2] If application of the procedures described in Section 6.01 would result in the purchase of a number of shares of Stock less than the number of shares of Stock made available for purchase for any Offering Period, the excess shares of Stock will be available for purchase during any subsequent Offering Period.

6.03 Delivery of Shares; Participants' Custodial Accounts.

[1] At or as promptly as practicable after the end of each Offering Period, the Company will deliver the shares of Stock purchased by a Participant during that Offering Period to the custodian for deposit into that Participant's Custodial Account.

[2] Unless the Committee decides otherwise, cash dividends on any shares of Stock credited to a Participant's Custodial Account will be automatically reinvested in additional whole and fractional shares of Stock unless the Participant has affirmatively elected to receive the dividend in cash. All cash dividends credited to Participants' Custodial Accounts will be paid over by the Company to the custodian at the dividend payment date and all cash dividends to be paid to a Participant in cash will be distributed at the dividend payment date. Purchases of Stock for purposes of dividend reinvestment will be made as promptly as practicable (but not more than 30 days) after a dividend payment date. The custodian will make these purchases, as directed by the Committee, either [a] in transactions on any securities exchange upon which shares of Stock are traded, otherwise in the over-the-counter market, or in negotiated transactions, or [b] directly from the Company at 100 percent of the Fair Market Value of a share of Stock on the dividend payment date. These shares will be distributed as provided in Section 7.00.

[3] Each Participant's Custodial Account will be credited with any shares of Stock distributed as a dividend or distribution in respect of shares of Stock credited to that Participant's Custodial Account or in connection with a split of Stock credited to that Participant's Custodial Account

[4] As soon as reasonably practicable after receipt, the custodian will sell any noncash dividends (other than Stock) received with respect to any Stock held in a Participant's Custodial Account and apply the proceeds of that sale to purchase additional shares of Stock in the manner described in Section 6.03[2]. After this transaction is completed, the custodian will credit the purchased shares of

Stock to the Custodial Account to which was credited the Stock with respect to which the noncash dividend was distributed.

[5] Each Participant will be entitled to vote the number of shares of Stock credited to his or her Custodial Account (including any fractional shares) on any matter as to which the approval of the Company's shareholders is sought. If a Participant does not vote or grant a valid proxy with respect to shares credited to his or her Custodial Account, those shares will be voted by the custodian in accordance with any stock exchange or other rules governing the custodian in the voting of shares held for customer accounts. Similar procedures will apply in the case of any consent solicitation of Company shareholders.

7.00 TERMINATION/ DISTRIBUTION OF CUSTODIAL ACCOUNTS

7.01 Effect of Termination on Election to Participate.

A Participant who Terminates will be deemed to have withdrawn from the Plan, and all cash amounts credited to his or her Plan Account for the Offering Period during which the Termination occurs will be returned to the Participant or, if appropriate, to his or her Beneficiary and no shares of Stock will be purchased for that Participant for the Offering Period during which he or she Terminates.

7.02 Distribution of Custodial Accounts.

[1] Subject to Section 8.00, no later than the earlier of [a] 12 full calendar months beginning after the end of each Offering Period or [b] the date the Participant Terminates for any reason, all whole shares of Stock and cash held in his or her Custodial Account will be distributed to the Participant or transferred as the Participant elects and any fractional shares of Stock held in a Custodial Account will be converted to cash equal to the Fair Market Value of the fractional share on the Termination date.

[2] Shares of Stock held in Custodial Accounts that are to be distributed to a former Participant will be distributed in one or more certificates for whole shares issued in the name of and delivered to the Participant.

[3] Custodial Accounts that are to be transferred to a broker-dealer or financial institution that maintains an account for the Participant will be transferred in one or more certificates for whole shares, and cash in lieu of fractional shares will be paid directly to the former Participant as determined under Section 7.02[1].

[4] Any Participant that wants to withdraw or transfer shares of Stock must give instructions to the custodian in a form and manner that complies with rules prescribed by the Committee and the custodian.

8.00 MERGER, CONSOLIDATION OR SIMILAR EVENT

If the Company undergoes a Change in Control, all shares of Stock and cash held in each Participant's Custodial Account will be made available under procedures developed by the Custodian and the Committee.

9.00 AMENDMENT, MODIFICATION AND TERMINATION OF PLAN

9.01 Amendment, Modification, Termination of Plan. The Plan will automatically terminate after all available shares have been sold. Also, the Board may terminate, suspend or amend the Plan at any time without shareholder approval except to the extent that shareholder approval is required to satisfy applicable requirements imposed by [1] Rule 16b-3 under the Act, or any successor rule or regulation, [2] applicable requirements of the Code or [3] any securities exchange, market or other quotation system on or through on which the Company's securities are listed or traded. Also, no Plan amendment may

[4] result in the loss of a Committee member's status as a "non-employee director" as defined in Rule 16b-3 under the Act, or any successor rule or regulation, with respect to any employee benefit plan of the Company, [5] cause the Plan to fail to meet requirements imposed by Rule 16b-3 or [6] without the consent of the affected Member adversely affect any Purchase Right issued before the amendment, modification or termination. However, nothing in this section will restrict the Committee's right to exercise the discretion retained in Section 4.00.

9.02 Effect of Plan Termination.

[1] If the Plan is terminated effective on a day other than the last day of any Offering Period, the Offering Period during which the Plan is terminated also will end on the same day. Any cash balances held in Plan Accounts and Custodial Accounts when the Plan is terminated will be repaid by check or cash to the Participant for whom the Plan Account was established, and no additional shares of Stock will be sold through this Plan for that Offering Period. All shares of Stock held in Custodial Accounts will be distributed following the procedures described in Section 7.02.

[2] If the plan is terminated as of the last day of any Offering Period, the Committee will apply the terms of the Plan through the end of that Offering Period. However, no further shares of Stock will be offered under this Plan for any subsequent Offering Period and all shares of Stock the held in Custodial Accounts will be distributed following the procedures described in Section 7.02.

10.00 MISCELLANEOUS

10.01 Restriction on Transfers. No right or benefit under the Plan may be transferred, assigned, alienated, pledged or otherwise disposed of in any way by a Participant. All rights and benefits under the Plan may be exercised during the Participant's lifetime only by the Participant.

10.02 Beneficiary Designation. Each Participant may name a Beneficiary or Beneficiaries (who may be named contingently or successively) to receive any Plan benefits that are unpaid at the Participant's death. Each designation made will revoke all earlier designations made by the same Participant, must be made on a form prescribed by the Committee and will be effective only when filed in writing with the Committee. If a Participant has not made an effective Beneficiary designation, the deceased Participant's Beneficiary will be his or her surviving spouse or, if there is no surviving spouse, the deceased Participant's estate. The identity of a Participant's designated Beneficiary will be based only on the information included in the latest beneficiary designation form completed by the Participant and will not be inferred from any other evidence.

10.03 No Guarantee of Employment or Participation. Nothing in the Plan may be construed as:

[1] Interfering with or limiting the right of any Employer to terminate any Participant's employment at any time; or

[2] Conferring on any Participant or Employee any right to continue as an Employee.

10.04 Tax Requirements and Notification. Each Participant is solely responsible for satisfying local, state and federal tax requirements associated with any taxable amount received from or associated with his or her participation in the Plan. The Employer will withhold required taxes in the same manner and for the same taxing jurisdiction as it withholds taxes from Participants' other compensation.

10.05 Indemnification. Each individual who is or was a member of the Committee or of the Board will be indemnified and held harmless by the Company against and from any loss, cost, liability or expense that may be imposed upon or reasonably incurred by him or her in connection with or resulting from any claim, action, suit or proceeding to which he or she may be made a party or in which he or she may be involved by reason of any action taken or failure to take action under the Plan as a Committee member and against and from any and all amounts paid, with the Company's approval, by him or her in settlement of any matter related to or arising from the Plan as a Committee member or paid by him or her in satisfaction of any judgment in any action, suit or proceeding relating to or arising from the Plan against

him or her as a Committee member, but only if he or she gives the Company an opportunity, at its own expense, to handle and defend the matter before he or she undertakes to handle and defend it in his or her own behalf. The right of indemnification described in this section is not exclusive and is independent of any other rights of indemnification to which the individual may be entitled under the Company's organizational documents, by contract, as a matter of law or otherwise. The foregoing right of indemnification is not exclusive and is independent of any other rights of indemnification to which the person may be entitled under the Company's organizational documents, by contract, as a matter of law or otherwise.

10.06 No Limitation on Compensation. Nothing in the Plan is to be construed to limit the right of the Company to establish other plans or to pay compensation to its employees or directors, in cash or property, in a manner not expressly authorized under the Plan.

10.07 Requirements of Law. The availability of Purchase Rights and the issuance of shares of Stock will be subject to all applicable laws, rules and regulations and to all required approvals of any governmental agencies or national securities exchange, market or other quotation system. Also, no shares of Stock will be sold under the Plan unless the Company is satisfied that the issuance of those shares of Stock will comply with applicable federal and state securities laws. Certificates for shares of Stock delivered under the Plan may be subject to any stock transfer orders and other restrictions that the Committee believes to be advisable under the rules, regulations and other requirements of the Securities and Exchange Commission, any stock exchange or other recognized market or quotation system upon which the Stock is then listed or traded, or any other applicable federal or state securities law. The Committee may cause a legend or legends to be placed on any certificates issued under the Plan to make appropriate reference to restrictions within the scope of this section.

10.08 Use of Funds. All amounts credited to and held in Plan Accounts may be used by the Company for any corporate purpose and the Company is not required to segregate Plan Accounts from its general assets.

10.09 Expenses. Except as otherwise provided in this section and the Plan, costs and expenses incurred in the administration of the Plan and maintenance of Plan Accounts will be paid by the Company, including the custodian's annual fees and any brokerage fees and commissions arising in connection with the purchase of shares of Stock upon reinvestment of dividends and distributions. In no circumstance will the Company pay any brokerage fees and commissions arising in connection with the sale of shares of Stock acquired under the Plan by any Participant.

10.10 Governing Law. The Plan and all related agreements will be construed in accordance with and governed by the laws (other than laws governing conflicts of laws) of the United States and of the State of Ohio.

10.11 No Impact on Benefits. The right to purchase shares of Stock under this Plan is an incentive designed to promote the objectives described in Section 1.00 and are not to be treated as compensation for purposes of calculating a Participant's rights under any employee benefit plan.