

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): September 16, 2004  
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THE SCOTTS COMPANY  
-----

(Exact name of registrant as specified in its charter)

Ohio  
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1-13292  
-----

31-1414921  
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(State or other jurisdiction of  
incorporation)

(Commission File Number)

(IRS Employer  
Identification No.)

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

(937) 644-0011  
-----

(Registrant's telephone number, including area code)

Not Applicable  
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(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))

## Section 1 - Registrant's Business and Operations

### Item 1.01. Entry into a Material Definitive Agreement

On September 16, 2004, The Scotts Company ("Company") entered into an Employment Agreement and Covenant Not to Compete ("Agreement") with Robert F. Bernstock, an Executive Vice President and President, North America, of the Company, effective as of October 1, 2004, relating to his employment with the Company. The Agreement has an initial term of three years commencing on October 1, 2004 and expiring on September 30, 2007, and supercedes the letter agreement entered into by the Company and Mr. Bernstock on April 23, 2003 setting forth his initial terms of employment. The term of the Agreement will automatically extend for one additional year unless, at least thirty days prior to the end of the initial term, either the Company or Mr. Bernstock gives to the other written notice that the term will not be extended for such one year period. The parties may renew the Agreement for additional periods on mutually agreeable terms.

Under the Agreement, Mr. Bernstock will (a) be paid a base annual salary of \$540,000 with such increases as the Compensation and Organization Committee of the Company's Board of Directors and the Company's Board of Directors may approve in their discretion; (b) participate in The Scotts Company Executive/Management Incentive Plan with a Target Payment Percentage (as defined in that plan) of sixty-five percent; (c) receive a restricted stock grant of 25,000 common shares of the Company as of October 1, 2004, as to which any forfeiture restrictions will lapse on September 30, 2009 if Mr. Bernstock is then employed by the Company or on September 30, 2007 if Mr. Bernstock is then employed by the Company and is not then serving as Chief Operating Officer of the Company or a more senior position; (d) be eligible for additional grants and awards under The Scotts Company 2003 Stock Option and Incentive Equity Plan on a basis no less favorable to Mr. Bernstock than other senior management executives, commensurate with his position and title, targeted at the 50th percentile of peer companies for the chief operating officer position; (e) be entitled to participate in all of the Company's benefit programs for senior management executives; (f) receive paid vacation, paid holidays and sick leave in accordance with the Company's policies for senior executive officers; (g) receive an automobile allowance of at least \$12,000 annually; (h) be permitted, and, in some circumstances members of his immediate family will be permitted, to receive use of one or more of the Company-owned or leased and Company operated aircraft in accordance with the Company's standard executive flight and travel policies; and (i) receive either \$4,000 to be used in lieu of the provision of personal financial planning, or be provided with personal financial planning up to a cost or value of \$4,000. In addition, if Mr. Bernstock attains the age of 55 while actively employed by the Company and completes at least six years of full-time continuous employment with the Company, the Company will extend active employee health care benefits required to be made available under COBRA until Mr. Bernstock reaches age 65 (or, in the event of his death, would have attained age 65) or becomes entitled to benefits under the federal "Medicare Part A" program, whichever occurs first (the "Extended Health Care Coverage"). During the period in which COBRA coverage is statutorily required under ERISA, Mr. Bernstock (or his spouse or dependents in the case of his death) will pay the COBRA premium then in effect for those who elect COBRA coverage under the Company's health plan. Thereafter, during the Extended Health Care Coverage period, Mr. Bernstock is to pay 150% of such COBRA premium in effect from time to time for those who elect COBRA coverage under the Company's health plan.

If Mr. Bernstock separates from employment with the Company prior to April 24, 2005, for any reason, Mr. Bernstock must repay to the Company a pro-rated portion of the \$300,000 sign-on bonus he received pursuant to his April 23, 2003 letter agreement with the Company. This pro-ration will be based on the non-expired portion of the 24-month period which commenced April 23, 2003. Any repayment must be paid by Mr. Bernstock in a single lump sum payable within 30 days of his separation from the Company.

If Mr. Bernstock resigns, absent a constructive termination, or is terminated for cause, Mr. Bernstock will (a) receive payment of his unpaid accrued base salary to the date of termination of employment, and (b) be entitled to any amounts provided under the terms of the Company's benefit plans and employment policies.

If Mr. Bernstock resigns following a constructive termination, or is discharged by the Company for any reason other than for cause (including by reason of the Company's refusal to offer Mr. Bernstock a renewal of the Agreement on then substantially comparable terms), Mr. Bernstock will receive (a) payment of his accrued unpaid base salary to the date of termination of employment, (b) payment of a lump sum amount equal to two times the sum of his annual base salary and incentive target bonus for such year, (c) payment of the amount of incentive he would have earned for such year pro-rated to the date of termination, (d) payment of amounts payable under the Company's benefit plans, perquisites and policies, (e) if the Extended Health Care Coverage provisions of the Agreement are not otherwise due to Mr. Bernstock, his spouse or dependents, medical coverage will be provided for a 24-month period following the date of termination at the same coverage level as is made available to active senior management employees of the Company, subject to the charges for such extended coverage described above in respect of Extended Health Care Coverage, and (f) if the Extended Health Care Coverage provisions of the Agreement are applicable, supplemental retirement income in an amount equal to one hundred fifty percent of the then effective annual COBRA coverage premium.

During any period that Mr. Bernstock fails to perform his duties under the Agreement as a result of incapacity due to physical or mental illness, Mr. Bernstock will continue to receive his full base salary, as well as other applicable employee benefits provided to other senior executives of the Company, less any amounts paid under the Company's long-term or short-term disability plans before termination of Mr. Bernstock's employment, until his employment is terminated. Mr. Bernstock's employment will be terminated if he dies, or if he becomes disabled and cannot perform his duties for a period of more than six months. In the event of the death of Mr. Bernstock, Mr. Bernstock's estate or designated beneficiary will receive Mr. Bernstock's accrued and unpaid base salary to date of death. Bonuses, benefits and perquisites and reimbursements will be payable in accordance with the terms of the governing plan documents or Company policies. Upon termination of Mr. Bernstock's employment due to his death or incapacity, Mr. Bernstock, or his estate or designated beneficiary in the event of his death, will also receive within thirty days of the date of death or disability termination, (a) a lump sum amount equal to two times the sum of Mr. Bernstock's annual base salary and incentive target bonus (in each case as in effect in the year of disability or death), (b) payment of the amount of incentive he would have earned for such year pro-rated to the date of termination, and (c) if the Extended Health Care Coverage provisions of the Agreement are applicable, supplemental retirement income in an amount equal to one hundred fifty percent of the then effective annual COBRA coverage premium.

Also, in the event that Mr. Bernstock's employment is terminated by the Company for any reason other than cause, he resigns following a constructive termination, or his employment is terminated due to his death or incapacity, his stock-based awards and other stock-based compensation, if any, shall vest, become exercisable, or mature, as applicable; provided, that in the case of the restricted stock award pursuant to the Agreement and future stock-based compensation, Mr. Bernstock's termination of employment or resignation following constructive termination occurs on or after he attains age 55.

Under the Agreement, Mr. Bernstock has agreed to maintain the confidentiality of the Company's proprietary and confidential information, and to not engage in Prohibited Competitive Activities (as defined in the Agreement) for specified periods of time (ranging from 18 months to 36 months depending upon the specific activity) in the event that his employment is terminated due to the expiration of the Agreement, his resignation other than due to a constructive termination or by the Company without cause.

The Company and Mr. Bernstock entered into a First Amendment to Employment Agreement and Covenant Not to Compete, effective as of October 1, 2004 (the "First Amendment"), pursuant to which the Company will maintain during the term of the Agreement and for a period of 60 months thereafter directors and officers liability insurance covering Mr. Bernstock (or his estate, if he is deceased or incompetent), providing coverage at least as favorable as coverage under the Company's policy in effect at the time of execution of the Agreement. If Mr. Bernstock's employment is terminated by the Company for any reason other than cause or he resigns following a constructive termination, the 60 month period will remain in effect as though the Agreement had expired at the end of its regular term.

The Company and Mr. Bernstock entered into a Second Amendment to Employment Agreement and Covenant Not to Compete, effective as of October 1, 2004 (the "Second Amendment"), for the purpose of clarifying the provisions of the Agreement relating to personal use of Company aircraft.

The foregoing is a summary of key elements of the Agreement and the First and Second Amendments thereto. The complete Agreement, First Amendment and Second Amendment are attached hereto as Exhibits 10.1, 10.2 and 10.3, respectively, and should be reviewed for additional information.

On November 3, 2004, the Company and Mr. Bernstock entered into amendments to the award agreements (the "2003 SAR Award Agreements") evidencing the June 2, 2003 and November 19, 2003 grants of freestanding stock appreciation rights to Mr. Bernstock. These amendments served to make the terms of the 2003 SAR Award Agreements consistent with the terms of Mr. Bernstock's Employment Agreement and Covenant Not to Compete. These amendments are attached hereto as Exhibits 10.5 and 10.6 and should be reviewed for additional information.

A specimen form of Stock Option Agreement (as amended through October 23, 2001) for Non-Qualified Stock Options granted to employees under The Scotts Company 1996 Stock Option Plan, Netherlands specimen, is attached as Exhibit 10.7.

A specimen form of the 2003 Stock Option and Incentive Equity Plan Award Agreement for Nondirectors is attached as Exhibit 10.8.

A specimen form of the 2003 Stock Option and Incentive Equity Plan Award Agreement for Directors is attached as Exhibit 10.9.

#### Item 1.02. Termination of a Material Definitive Agreement.

As discussed in Item 1.01 of this Current Report on Form 8-K, the Employment Agreement and Covenant Not to Compete entered into on September 16, 2004 by the Company and Robert F. Bernstock supercedes the letter agreement which had been entered into by them on April 23, 2003.

## Section 9 - Financial Statements and Exhibits

### Item 9.01. Financial Statements and Exhibits.

- (a) Financial statements of businesses acquired:  
Not applicable.
- (b) Pro forma financial information:  
Not applicable.



(c) Exhibits:

Exhibit No.  
Description

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10.1  
Employment  
Agreement  
and Covenant  
Not to  
Compete,  
effective as  
of October  
1, 2004,  
between The  
Scotts  
Company and  
Robert F.  
Bernstock

10.2 First  
Amendment to  
Employment  
Agreement  
and Covenant  
Not to  
Compete,  
effective as  
of October  
1, 2004,  
between The  
Scotts  
Company and  
Robert F.  
Bernstock

10.3 Second  
Amendment to  
Employment  
Agreement  
and Covenant  
Not to  
Compete,  
effective as  
of October  
1, 2004,  
between The  
Scotts  
Company and  
Robert F.  
Bernstock

10.4 The  
Scotts  
Company 2003  
Stock Option  
and  
Incentive  
Equity Plan  
Award  
Agreement  
for  
Nondirectors,  
effective as  
of October  
1, 2004,  
between The  
Scotts  
Company and  
Robert F.  
Bernstock,  
in respect

of grant of  
25,000  
shares of  
restricted  
stock 10.5  
Amendment to  
The Scotts  
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Stock Option  
and  
Incentive  
Equity Plan  
Award  
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for  
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effective as  
of October  
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between The  
Scotts  
Company and  
Robert F.  
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in respect  
of June 2,  
2003 award  
of  
freestanding  
stock  
appreciation  
rights 10.6  
Amendment to  
The Scotts  
Company 2003  
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Agreement  
for  
Nondirectors,  
effective as  
of October  
1, 2004,  
between The  
Scotts  
Company and  
Robert F.  
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in respect  
of November  
19, 2003  
award of  
freestanding  
stock  
appreciation  
rights 10.7  
Form of 1996  
Stock Option  
Plan Award  
Agreement  
10.8 Form of  
2003 Stock  
Option and  
Incentive  
Equity Plan  
Award  
Agreement  
for  
Nondirectors  
10.9 Form of  
2003 Stock  
Option and  
Incentive  
Equity Plan  
Award  
Agreement  
for  
Directors

[Remainder of page intentionally left blank;  
signature on following page.]



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: November 19, 2004

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 November 19, 2004

The Scotts Company

Exhibit No.  
Description

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--- 10.1  
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10.2 First  
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10.3 Second  
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Agreement  
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Agreement  
for  
Nondirectors  
10.9 Form of  
2003 Stock  
Option and

Incentive  
Equity Plan  
Award  
Agreement  
for  
Directors

EMPLOYMENT AGREEMENT  
and  
COVENANT NOT TO COMPETE

EMPLOYMENT AGREEMENT and COVENANT NOT TO COMPETE (the "Employment Agreement"), by and between THE SCOTTS COMPANY (the "Company") and ROBERT F. BERNSTOCK (the "Executive"), effective as of October 1, 2004.

WITNESSETH:

WHEREAS, the Executive desires to continue to utilize the services of the Executive in the new capacities of its President North America, and Executive Vice President, and the Executive is willing to render such services; and

WHEREAS, the Company and the Executive desire to evidence in this Employment Agreement the terms under which the Executive will perform such services;

NOW THEREFORE, in consideration of the premises, respective covenants and agreements of the parties contained in this Employment Agreement, and intending to be legally bound, the Executive and the Company agree as follows:

1. Title and Duties

(a) General. The Executive agrees to continue in the employment of the Company on and after October 1, 2004, pursuant to the terms of this Employment Agreement. The Executive's titles will be President North America and Executive Vice President of the Company. The Executive's duties and responsibilities will be as described in the Company's Bylaws (as in effect as of the date of this Employment Agreement) and the Executive shall at all times report directly to the Chief Executive Officer of the Company, or as otherwise agreed by the Executive. The Executive will exercise due diligence and reasonable care in the performance of the Executive's duties under this Employment Agreement. During the Term of this Employment Agreement, a change in the Executive's assignments or duties shall not constitute "Constructive Termination", as defined in Paragraph 2(c), if, in any given fiscal year, the Executive does not lose supervision or reporting relationships over business functions or segments that have generated one hundred million dollars or more of revenue in the prior fiscal year, or which constitute a core business function of the Company.

(b) Board Service. The Executive will be permitted to serve on the boards of for-profit organizations so long as such activities do not materially interfere with the performance of his duties hereunder. The Company acknowledges that the board positions (3) on October 1, 2004, held by the Executive do not materially interfere with the Executive's performance of duties under this Employment Agreement.

(c) Place of Performance. The Executive shall primarily perform his duties and conduct his business at the offices of the

Company, located in Marysville, Ohio, except for required travel reasonably required for the Company's business.

2. Term

(a) General Term. Unless earlier terminated as provided for herein, the term of this Employment Agreement will be for three years, beginning on October 1, 2004, and ending on September 30, 2007 (the "Term"). The Term of this Employment Agreement shall automatically extend for one additional year unless, at least thirty days prior to the end of the Term, either of the Company or the Executive shall give to the other written notice that the Term shall not extend for such one year period. The parties may renew this Employment Agreement for additional periods on mutually agreeable terms and conditions. Neither the Company nor the Executive is under any obligation to agree to such extensions and may refuse to extend or renew this Employment Agreement for any or no reason; provided, however, that the Company's refusal to offer the Executive a renewal on substantially comparable terms, as determined at the time of refusal, shall constitute a termination by the Company not for Cause, as if effected under Paragraph 2(c) below.

(b) Termination Due to Resignation Without Constructive Termination or Termination For Cause. If the Executive's employment with the Company is terminated by the Executive due to the Executive's voluntary resignation (other than voluntary resignation following "Constructive Termination", as defined below) or by the Company for "Cause" (as defined below), this Employment Agreement shall terminate immediately (except for the provisions of Paragraphs 4, 5, 6 and 7). For purposes of this Employment Agreement, the Executive may be terminated for "Cause" by majority vote of the Board of Directors of the Company as a result of the (i) Executive's conviction or plea of nolo contendere for the commission of an act or acts constituting a felony under the laws of the United States or any state thereof; (ii) upon the Executive's willful and continued failure to substantially perform his duties hereunder (other than any such failure resulting from the Executive's incapacity due to physical or mental illness); (iii) misconduct that materially injures the Company or a subsidiary of the Company or a subsidiary of the Company; or (iv) breach of any written covenant or agreement with the Company or a subsidiary of the Company. Any conduct or condition causing termination for Cause under Clauses (ii) or (iv) of this Paragraph 2(b) may be cured by the Executive within thirty days after written notice is delivered to the Executive from the Company and no termination shall occur for such reasons prior to the expiration of the cure period, if no cure occurs. For these purposes, no refusal to act or failure to adhere shall be considered as grounds for Cause unless it is done, or omitted to be done, in bad faith without reasonable belief that the action or omission was in the best interest of the Company. In the event corrective action is not satisfactorily taken by the Executive, a final written notice of termination shall be provided to the Executive by the Company. In such event the Executive shall receive the amounts described in Paragraph 3(i) following termination of this Employment Agreement. Any resignation by the Executive shall be communicated by at least thirty days' advance written notice.

(c) Resignation Following Constructive Termination; Termination Not for Cause. If the Executive's employment is terminated during the Term of this Employment Agreement (i) due to resignation following "Constructive Termination" (as defined below) or (ii) the Executive is discharged by the Company for any reason other than for Cause (as defined in Paragraph 2(b)), this Employment Agreement shall terminate immediately (except for the confidentiality provisions of Paragraph 4(a) and the provisions of Paragraphs 5, 6 and 7) and the Executive shall receive the amounts described in Paragraph 3(j) following termination of this Employment Agreement.

For purposes of this Employment Agreement, a "Constructive Termination" shall be deemed to have occurred in the event that (i) the Executive's Base Salary as defined in Paragraph 3(a) is reduced, (ii) a significant diminution in the Executive's responsibilities, authority or scope of duties is effected by the Board of Directors and/or Chief Executive Officer and such diminution is made without the Executive's written consent (without regard to whether or not any change is made to the Executive's title); (iii) the Company materially breaches this Employment Agreement; (iv) the failure by the Company to continue in effect any compensation or benefit plan in which the Executive is entitled to participate which is material to the Executive's total compensation, unless an equitable arrangement has been made with respect to such plan, or the failure by the Company to continue the Executive's participation therein (or in such substitute or alternative plan) on a basis not materially less favorable, both in terms of the amount of benefits provided and the level of the Executive's participation relative to other participants; (v) the Company fails to obtain the assumption of this Employment Agreement as required by Paragraph 7(b); or (vi) the Company terminates the Executive's employment other than for Cause (as defined in Paragraph 3(b)) within twenty four months after a Change in Control of the Company.

For purposes of this Employment Agreement, a "Change in Control of the Company" means the occurrence of any of the following events after October 1, 2004: (i) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) other than the Company, subsidiaries of the Company, an employee benefit plan sponsored by the Company, or Hagedorn Partnership, L.P. or its successor or any party related to Hagedorn Partnership, L.P. (as determined by the Board of Directors) is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of more than thirty percent of the combined voting stock of the Company; (ii) the shareholders of the Company adopt or approve a definitive agreement or series of related agreements for the merger or other business consolidation with another person and, immediately after giving effect to the merger or consolidation, (A) less than fifty percent of the total voting power of the outstanding voting stock of the surviving or resulting person is then "beneficially owned" (within the meaning of Rule 13d-3 under the Exchange Act) in the aggregate by (x) the stockholders of the Company immediately prior to such merger or consolidation, or (y) if a record date has been set to determine the stockholders of the Company entitled to vote with respect to such merger or consolidation, the stockholders of the Company as of such record date and (B) any "person" or "group" (as defined in Section 13(d)(3) or 14(d)(2) of the Exchange Act) has become the direct or

indirect "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act) of more than fifty percent of the voting power of the voting stock of the surviving or resulting person; (iii) the Company, either individually or in conjunction with one or more of its subsidiaries, sells, assigns, conveys, transfers, leases or otherwise disposes of, or the subsidiaries sell, assign, convey, transfer, lease or otherwise dispose of, all or substantially all of the properties and assets of the Company and the subsidiaries, taken as a whole (either in one transaction or a series of related transactions), to any person (other than the Company or a wholly owned subsidiary); (iv) for any reason, Hagedorn Partnership, L.P. or its successor or any party related to Hagedorn Partnership, L.P. (as determined by the Board of Directors) becomes the beneficial owner, as defined above, directly or indirectly, of securities of the Company representing more than forty-nine percent of the combined voting power of the Company's then-outstanding voting securities; or (v) the adoption or authorization by the shareholders of the Company of a plan providing for the liquidation or dissolution of the Company. Any resignation by the Executive as a result of assertion of a Constructive Termination shall be communicated by delivery to the Board of Directors of the Company of thirty days' advance written notice of such Constructive Termination and the grounds therefor, during which period the Company shall be entitled to cure or remedy the matters set forth in such notice to the Executive's reasonable satisfaction. Unless the Executive shall withdraw such notice prior to the expiration of such thirty day period, such resignation shall take effect upon the expiration of thirty days from the date of the delivery of such notice.

(d) Death; Disability. If the Executive shall die, or become disabled and cannot perform the Executive's duties for a period of more than six months, this Employment Agreement shall terminate immediately. For purposes of this Employment Agreement, the Executive shall be disabled as of the earlier of (i) the first date on which the Executive shall become eligible to receive disability benefits under the Company's long-term disability plan (or Social Security disability benefits at a time when the Company does not maintain a long-term disability plan or such plan is not available to the Executive); or (ii) if, as a result of the Executive's incapacity due to physical or mental illness, the Executive shall have been absent from his duties hereunder for the entire period of six consecutive months, and within thirty days after written notice in accordance with the provisions of Paragraphs 2(b) and 7(e) is given, shall not have returned to the performance of his duties. In such events, the Executive or his estate or beneficiary shall receive the amounts described in Paragraph 3(h).

### 3. Compensation

(a) Base Salary. Each year during the Term hereof, the Executive will be paid a base salary of \$540,000 per annum ("Base Salary"), payable in accordance with the Company's payroll guidelines, subject to applicable tax and benefit plan withholding. Increases may be made to the Executive's Base Salary (in accordance with the standard performance review procedures for senior executive officers of the Company) at the discretion of the Compensation and Organization Committee and approved by the Board of Directors based upon the Executive's individual performance. Notwithstanding the foregoing, if



the Executive's Base Salary is increased, it shall not thereafter be decreased during the Term of this Employment Agreement.

(b) Incentive Target. The Executive shall be a participant in The Scotts Company Executive/Management Incentive Plan, with a Target Payment Percentage (as defined in such plan) of sixty-five percent, and in any successor to such plan. The goals for the Executive under such plan shall be consistent with those established for other senior executives in general, taking into consideration the Executive's position and duties with the Company.

(c) Stock-Based Compensation. As of October 1, 2004, the Executive shall receive a restricted stock grant of twenty-five thousand shares of stock of the Company. The terms of grant shall specify that any forfeiture restrictions shall lapse on September 30, 2009, if the Executive is then employed by the Company, or on September 30, 2007, if the Executive is then employed by the Company and is not then serving as Chief Operating Officer of the Company, or in a more senior position with the Company. The Executive shall be eligible for additional grants and awards under The Scotts Company 2003 Stock Option and Incentive Equity Plan or any successor plan (the "Equity Plan") on a basis no less favorable to the Executive than other senior management executives, commensurate with his position and title, targeted at least at the 50th percentile of peer companies for the chief operating officer position.

(d) Benefit Plan Participation. The Executive shall be entitled to participate in all of the Company's benefit programs for senior management executives. The Executive shall participate in, and be eligible to receive benefits under, any "employee welfare benefit plans" and "employee pension benefit plans" (as such terms are defined in the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) and business travel insurance plans and programs as shall apply to general and/or executive employees of the Company; and shall be provided benefits under such plans and agreements substantially equivalent (in the aggregate) to the benefits provided to other senior executive officers of the Company and on substantially similar terms and conditions as such benefits are provided to other senior executive officers of the Company. Notwithstanding the foregoing, the Executive is not eligible for participation in the Company's pension plan. The Executive will participate, or be eligible to participate where participation is voluntary, in any non-qualified pension, supplemental executive retirement programs, deferred compensation, and excess benefit plans sponsored by the Company and available to any of the Company's senior management executives. During the Term, the Company shall provide to the Executive all of the fringe benefits and perquisites that are provided to other senior executive officers of the Company, and the Executive shall be entitled to receive any other fringe benefits or perquisites that become available to other senior executive officers of the Company subsequent to the date of execution of this Employment Agreement. Without limiting the generality of the foregoing, the Company shall provide the Executive with the following benefits during the Term: (i) paid vacation, paid holidays and sick leave in accordance with the Company's standard policies for its senior executive officers, which policies shall provide the Executive with benefits no less favorable (in the aggregate) than those provided to any other senior executive officers of the Company; (ii) an automobile

allowance of at least \$12,000 annually and no less than any such allowance provided to any other senior executive officer of the Company; (iii) the Executive and, in some circumstances, members of his immediate family shall receive use of one or more Company-owned or leased and Company operated aircraft in accordance with the Company's standard executive flight and travel policies. The Executive acknowledges that part of any such travel may constitute additional taxable compensation of the Executive, but the Company makes no tax representation relating thereto. In the event that the Executive shall attain the age of fifty-five years while in the active employment of the Company, and completes at least six years of full-time continuous employment with the Company, the Company will extend active employee health care benefits required to be available to the Executive for a limited period ("COBRA Coverage") under Part Six of Title One of ERISA, until the Executive attains the age of sixty-five years (or, in the event of the Executive's death, would have attained the age of sixty-five years) or becomes entitled to benefits under the Federal "Medicare Part A" program, whichever shall first occur. The Executive will pay a premium for such extended health care coverage. During the period in which COBRA Coverage is statutorily required under ERISA, the Executive (or his spouse or dependents in the event of his death) shall pay the COBRA premium then in effect for those who elect COBRA Coverage under the Company's health plan or plans. Thereafter, during the extended coverage period described in this Paragraph 3(d), the Executive shall pay one hundred fifty percent of such COBRA premium in effect from time to time for such coverage.

(e) Personal Financial Planning. The Company will provide the Executive with either a \$4,000 amount to be used in lieu of the provision of personal financial planning, or will provide personal financial planning up to a cost or value of such amount. The value of such services or such amount will be added to the Executive's taxable income. Some or all of such value or amount may be tax deductible by the Executive, but the Company makes no tax representation relating thereto.

(f) Executive Physical. The Executive shall receive a comprehensive physical examination annually at Company expense through a physician or physicians of the Executive's choice under the Cleveland Clinic or OSU Executive Medical Services facilities, provided that part of such expense may be reimbursed through one or more Company welfare benefit plans.

(g) Repayment of Sign-On Bonus. In the event that the Executive shall separate from employment with the Company prior to April 24, 2005, for any reason, the Executive shall repay to the Company a pro-rated portion of the \$300,000 sign-on bonus he received pursuant to his agreement entered into with the Company on April 23, 2003. Such pro-ration shall be based on the non-expired part of the twenty-four month period which commenced April 23, 2003. Such repayment shall be paid by the Executive in a single lump sum payable within thirty days of the Executive's separation from the Company.

(h) Compensation on Death or Disability. During any period that the Executive fails to perform his duties hereunder as a result of incapacity due to physical or mental illness, the Executive shall

continue to receive his full Base Salary, as well as other applicable employee benefits provided to other senior executives of the Company, less any amounts paid under the Company's long-term or short-term disability plans before termination of the Executive's employment, until his employment is terminated pursuant to Paragraph 2(d) hereof. In the event of the death of the Executive, the Executive's estate or designated beneficiary shall receive the Executive's accrued and unpaid Base Salary to date of death. Bonuses, benefits and perquisites and reimbursements shall be payable in accordance with the terms of the governing plan documents or Company policies. Upon termination of this Employment Agreement under Paragraph 2(d), the Executive, or the Executive's estate or designated beneficiary in the event of the Executive's death, shall also receive within thirty days of the date of death or disability termination, a lump sum amount equal to two times the sum of Executive's annual Base Salary and incentive target bonus (in each case as in effect in the year of disability or death), plus the payments and benefits set forth in Paragraphs 3(j)(iii), (j)(v), (k) and (l), at the times indicated therein. The Executive, in the manner designated by the Company, may designate a beneficiary or beneficiaries other than his estate to receive such amount. No other severance amount shall be payable under the Employment Agreement on account of the Executive's death or disability.

(i) Compensation in the Event of Resignation Other Than on Account of Constrictive Termination or in the Event of Discharge for Cause. If the Executive's employment is terminated by the Company for Cause (as defined in Paragraph 2(b)) or the Executive resigns for any reason other than pursuant to Constructive Termination (as defined in Paragraph 2(c)) the Executive will receive payment of his unpaid accrued Base Salary to the date of termination of employment, and shall be entitled to any amounts provided under the terms of the Company's benefit plans and employment policies, and the Company shall have no further obligations to the Executive under this Employment Agreement.

(j) Compensation in the Event of Resignation Following Constructive Termination or Discharge by the Company Other than for Cause. In the event that the Executive shall be entitled to compensation pursuant to Paragraph 2(c), the Executive shall receive within fifteen days of termination of employment, except as required by Paragraphs 3(j)(iii) and (iv) below, the following:

(i) The Executive's accrued and unpaid Executive's Base Salary as described in Paragraph 3(a) through the date of termination;

(ii) except as provided in Paragraph 3(j)(iii), in lieu of further cash compensation payments to the Executive pursuant to Paragraph 3, the Company shall pay the Executive, within thirty days of the date of the Executive's termination, a lump sum amount equal to two times the sum of the Executive's annual Base Salary and incentive target bonus (for such year);

(iii) in addition to the compensation described in Paragraph 3(j)(ii), the Executive shall receive the amount of incentive the Executive would have earned for such year pro-rated to the date of termination, and payable at the time incentive

payments are regularly payable to recipients of such payments for such year;

(iv) the amounts payable under the Company's benefit plans, perquisites and policies shall be payable under the terms of the respective plan documents and personnel policies; provided, however that if health benefits are not otherwise due to the Executive, his spouse or dependents under Paragraph 3(d), medical coverage shall be provided for a twenty-four month period following the date of termination at the same coverage level as is made available to active senior management employees of the Company, subject to the charges for such coverage described in Paragraph 3(d); and

(v) additionally, the provisions of Paragraph 7(i) and 7(j) shall remain in effect as though this Employment Agreement expired at the end of its regular Term described in Paragraph 2(a), irrespective of its earlier termination.

(k) Vesting. The Executive has received prior to October 1, 2004, stock-based awards relating to fifty thousand shares of Company stock on June 2, 2003, and twenty-five thousand shares of Company stock on November 19, 2003. The Executive has also received a stock award pursuant to Paragraph 3(c) of this Employment Agreement, and may receive additional stock-based compensation in the future. Notwithstanding anything in the award documents under which such awards were made to the contrary, all such awards shall vest, become exercisable, or mature, as applicable, in the event of termination of the Executive's employment by the Company for any reason other than for Cause, or in the event of the Executive's resignation following Constructive Termination, provided, however, that this provision shall apply to the stock award pursuant to this Employment Agreement of twenty-five thousand shares of Company stock and any additional stock based compensation in the future only if the Executive's termination of employment or resignation following Constructive Termination occurs on or after the attainment of the age of fifty-five years. The Company agrees to make, and represents that the Board has authorized as of the date of this Employment Agreement, an amendment to any of the relevant award instruments as shall be necessary to be consistent with this Paragraph 3(k), as well as adding a provision prohibiting cancellation of the award without the consent of the Executive. The time and manner of payment or transfer will be determined in accordance with the terms and provisions of the Equity Plan.

(l) Supplemental Retirement Benefit. During any period in which the Executive or his spouse or dependents receives regular and extended health care continuation coverage pursuant to Paragraph 3(d), the Executive or his spouse or dependents shall receive a supplemental retirement income payment equal to one hundred fifty percent of the then-effective annual COBRA coverage premium. Such amount shall be paid in a single sum, payable in the first month of each applicable calendar year in which such amount is payable, and shall be subject to all applicable tax withholding. Such amount shall be deemed to be payable under a plan described in sections 201(2), 301(a)(3) and 401(a)(2) of ERISA and subject to Department of Labor Regulation 2520.104-23 (or any similar successor regulation).

#### 4. Confidentiality and Non-Competition

(a) Nondisclosure. The Executive recognizes and acknowledges that the Executive will have access to certain information concerning the Company that is confidential and proprietary and constitutes valuable and unique property of the Company. The Executive agrees that the Executive will not at any time, either during or after the Executive's employment, disclose to others, use, copy or permit to be copied, except pursuant to the Executive's duties on behalf of the Company or its successors, subsidiaries, assigns or nominees, and except pursuant to requirements of law or any lawful judicial or administrative proceeding, any secret, proprietary or confidential information of the Company (whether or not developed by the Executive) including, without limitation technical information, product information and formulae, process, business and marketing strategies, customer information and other information concerning the Company's and subsidiaries' products, promotions, development, financing, expansion plans, business policies and practices, salaries and benefits and other forms of information considered by the Company to be proprietary and confidential and in the nature of Trade Secrets, without the prior written consent of the Chief Executive Officer or Board of Directors of the Company. The Executive will return upon request all property (other than personal property), including keys, notes, memoranda, writings, lists, files, reports, customer lists, correspondence, tapes, disks, cards, surveys, maps, logs, machines, technical data, formulae or any other tangible property or document and any and all copies, duplicates or reproductions that have been produced by, received by or otherwise been submitted to the Executive in the course of his service with the Company or a subsidiary of the Company.

(b) Need for Covenant. The Executive and the Company agree that the Executive, by virtue of his position with the Company, is in possession of highly sensitive information regarding the Company's investors, contracts, plans and operations, and those of its corporate affiliates, that the Executive is the Company's representative to current and potential clients, that other entities each compete vigorously with the Company throughout various portions of the Company's area of operations, and the Executive's use of such knowledge for the benefit of a competitor of the Company would provide a competitive advantage to a competitor that would be highly detrimental to the Company. The Executive's skills, knowledge and services are unique, and the success or failure of the Company is dependent upon the Executive's services. The Executive agrees that the Company has a legitimate business interest in protecting this information and preventing competitors from utilizing such information. Therefore, the Executive agrees that, during the Term of this Employment Agreement and for a period of thirty-six months (except as provided in Paragraph 4(c)(3), below) following the termination of this Employment Agreement (i) due to expiration of the Term or, (ii) by the Executive other than due to Constructive Termination or (iii) by the Company due to discharge without Cause, the Executive will not engage in any Prohibited Competitive Activities, as provided in Paragraph 4(c).

(c) Competitive Activities. During the time period specified in Paragraph 4(b), the Executive shall not:

(1) engage in, or have any interest in any person, firm, corporation, business or other entity (as an officer, director, employee, agent, stockholder or other security holder, creditor, consultant or otherwise) that engages in or renders any service (including, without limitation, advertising or business consulting) which is the same, similar or competitive to the Company's principal business activities, as the same may be conducted from time to time;

(2) interfere with any contractual relationship that may exist from time to time of the business of the Company, including, but not limited to, any contractual relationship with any director, officer, employee, or sales agent, or supplier of the Company;

(3) for an eighteen month period following termination of this Employment Agreement, without the Chief Executive Officer's or Board of Directors' consent, which may be withheld for any or no reason, solicit, induce or influence, or seek to induce or influence, any person who currently is, or from time to time may be, engaged in or employed by the Company (as an officer, director, employee, agent or independent contractor) in any managerial or executive or technical position to terminate his or her employment or engagement by the Company; or

(4) deliberately engage in any action that the Company advises the Executive has or will cause substantial harm to the Company.

Such activities are defined as "Prohibited Competitive Activities". Notwithstanding anything to the contrary contained herein, the Executive, directly or indirectly, may own publicly traded stock constituting not more than three percent of the outstanding shares of such class of stock of any corporation if, and as long as, the Executive is not an officer, director, employee or agent of, or consultant or advisor to, or has any other relationship or agreement with such corporation; except as provided in Paragraph 1(b).

(d) Injunctive Relief. The Company and the Executive agree that money damages may not be adequate to compensate the Company for the Executive's breach of any provision of this Paragraph 4 and that the Company therefore will be entitled to a decree for specific performance or other appropriate remedy, including injunctive relief, to enforce the Executive's performance of any such provision. The Executive expresses, agrees and acknowledges that this Covenant Not to Compete is necessary for the protection of the Company because of the nature and scope of its business and the Executive's position with, and services for, the Company. The Executive acknowledges that any breach of this Covenant Not to Compete would result in irreparable damage to the Company.

(e) Reasonableness. The Executive expressly agrees and acknowledges as follows:

(1) This Covenant Not to Compete is reasonable as to time and geographical area and does not place any unreasonable burden upon the Executive;

(2) The general public will not be harmed as a result of enforcement of this Covenant Not to Compete;

(3) The Executive has requested or has had the opportunity to request that his personal legal counsel review this Covenant Not to Compete; and

(4) The Executive understands and hereby agrees to each and every term and condition of this Covenant Not to Compete.

#### 5. Indemnification

If, at any time during or after the Term of this Employment Agreement, the Executive is made a party to, or is threatened to be made a party in, any civil, criminal or administrative action, suit or proceeding by reason of the fact that the Executive is or was a director, officer, employee, or agent of the Company, or of any other corporation or any partnership, joint venture, trust or other enterprise for which the Executive served as such at the request of the Company, then the Executive shall be indemnified by the Company against expenses actually and reasonably incurred (including the advancement of legal fees and expenses) by the Executive or imposed on the Executive in connection with, or resulting from, the defense of such action, suit or proceeding, or in connection with, or resulting from, any appeal therein if the Executive acted in good faith and in a manner the Executive reasonably believed to be in or not opposed to the best interest of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the Executive's conduct was unlawful, except with respect to matters as to which it is adjudged that the Executive is liable to the Company or to such other corporation, partnership, joint venture, trust or other enterprise for gross negligence or willful misconduct in the performance of the Executive's duties. As used herein, the term "expenses" shall include all obligations actually and reasonably incurred by the Executive for the payment of money, including, without limitation, attorney's fees, judgments, awards, fines, penalties and amounts paid in satisfaction of a judgment or in settlement of any such action, suit or proceeding, except amounts paid to the Company or such other corporation, partnership, joint venture, trust or other enterprise by the Executive.

#### 6. Arbitration

Except as provided in Paragraph 4, any controversy or claim arising out of or relating to this Employment Agreement, or any breach thereof, except as provided in Paragraph 4, shall be adjudged only by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon such award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be held in the City of Columbus, Ohio, or such other place as may be agreed upon at the time by the parties to the arbitration. The arbitrator(s) shall, in their award, allocate between the parties the costs of arbitration, which shall include reasonable attorneys' fees of the parties, as well as the arbitrators' fees and expenses, in such proportions as the arbitrator(s) deem just.

7. Other Provisions

(a) Governing Law. This Employment Agreement will be governed by, and construed and enforced in accordance with, the laws of the State of Ohio, excluding any conflicts of law, rule or principle that might otherwise refer to the substantive law of another jurisdiction.

(b) Assignment. Except as otherwise indicated, this Employment Agreement is not assignable without the written authorization of both parties; provided that the Company may assign this Employment Agreement to any entity to which the Company transfers substantially all of its assets or to any entity which is a successor to the Company by reorganization, incorporation, merger or similar business combination. In the event of any such transfer or assignment by the Company, the rights and privileges of the Board hereunder shall be vested in the Board of Directors or other governing body of the transferee or successor entity. However, notwithstanding anything to the contrary contained herein, this Employment Agreement will be binding upon any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company, and the Company will require any such successor by agreement, in form and substance satisfactory to the Executive, to expressly assume and agree to perform this Employment Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place. In addition to the Executive's rights above, if a Change in Control of the Company occurs as described in Paragraph 2(c) above, the failure of the Company to obtain such agreement prior to the effectiveness of any such succession shall be a breach of this Employment Agreement and shall entitle the Executive to compensation from the Company in the same amount and on the same terms as the Executive would be entitled to hereunder if the Executive resigned from the Executive's employment due to a Constructive Termination, as described in Paragraph 2(c), except that for purposes of implementing the foregoing, the date on which any such succession becomes effective shall be deemed the date of termination. As used in this Employment Agreement, "the Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which executes and delivers the agreement provided for in this Paragraph 7(b) or which otherwise becomes bound by all the terms and provisions of this Employment Agreement by operation of law. This Employment Agreement and all rights of the parties hereto shall inure to the benefit of and be enforceable by the parties hereto, their assigns, personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

(c) Survival of Certain Provisions. Except as otherwise provided herein, the provisions of Paragraphs 4, 5 and 6 of this Employment Agreement shall survive the termination of this Employment Agreement.

(d) Prior Agreements Voided. Upon commencement of the Term of this Employment Agreement, this Employment Agreement supersedes all previous employment agreements, written or oral, between the Company and the Executive, including, without limitation, the agreement of April 23, 2003. This Employment Agreement may be amended only by



written amendment duly executed by both parties hereto or their legal representatives and authorized by action of the Board. Except as otherwise specifically provided in this Employment Agreement, no waiver by either party hereto of any breach by the other party hereto of any condition or provision of this Employment Agreement to be performed by such other party shall be deemed a waiver of a subsequent breach of such condition or provision or a waiver of a similar or dissimilar provision or condition at the same or at any prior or subsequent time.

(e) Notices. Any notice or other communication required or permitted pursuant to the terms of this Employment Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States mail, first class, postage prepaid and registered with return receipt requested, addressed to the intended recipient at his or its address set forth below and, in the case of a notice or other communication to the Company, directed to the attention of the Chief Executive Officer with a copy to the General Counsel of the Company, or to such other address as the intended recipient may have theretofore furnished to the sender in writing in accordance herewith, except that until any notice of change of address is received, notices shall be sent to the following addresses:

If to the Executive:	If to the Company:
Mr. Robert F. Bernstock	The Scotts Company
[address]	Attn: Chief Executive Officer
	14111 Scottslawn Road
	Maryville, Ohio 43201

(f) Reformation. If any one or more of the provisions or parts of a provision contained in this Employment Agreement including, without limitation, the restrictions contained in Paragraph 4, shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision or part of a provision of this Employment Agreement, but this Employment Agreement shall be reformed and construed as if such invalid or illegal or unenforceable provision or part of a provision had never been contained herein and such provisions or part thereof shall be reformed so that it would be valid, legal and enforceable to the maximum extent permitted by law.

(g) Mitigation. The Executive shall not be required to mitigate damages (or the amount of any compensation provided under this Employment Agreement to be paid) following the Executive's termination of employment, by seeking employment or otherwise.

(h) Rights under Stock-Based Plans. In the event that any Incentive Compensation Plan or the Option Plan are amended to reduce, modify limit or restrict any of the Executive's accrued or vested rights thereunder, the Company hereby agrees that no such amendment shall apply to the Executive without the Executive's written consent.

(j) Amendments Related to Indemnification. The Company will not amend the provisions of its governing documents which pertain to the Executive's indemnification in the Executive's capacity as an officer except to substitute therefor provisions which are more favorable to the Executive, except as otherwise required by law or the

rules of any securities exchange or similar entity, or by applicable law.

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

(l) Due Authorization. The Company represents that its execution of this Employment Agreement and covenants specified in this Employment Agreement have been duly authorized by its Board and that there are no impediments to it fulfilling its obligations hereunder.

The Scotts Company

By: /s/ Denise Stump  
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Its: Executive Vice President  
Global Human Resources

AGREED AND ACCEPTED this  
16th day of September,  
2004 and effective as of  
October 1, 2004.

/s/ Robert F. Bernstock  
-----  
Robert F. Bernstock

Signed in my presence on 9-16-04.

/s/ Ellen Richards  
-----  
Ellen Richards  
Notary Public, State of Ohio  
My Commission Expires 08-16-05

FIRST AMENDMENT  
TO  
EMPLOYMENT AGREEMENT  
AND  
COVENANT NOT TO COMPETE

THIS FIRST AMENDMENT TO EMPLOYMENT AGREEMENT AND COVENANT NOT TO COMPETE (the "Employment Agreement"), by and between THE SCOTTS COMPANY (the "Company") and ROBERT F. BERNSTOCK (the "Executive"), effective as of October 1, 2004.

WITNESSETH:

WHEREAS, the Executive and the Company entered into an Employment Agreement and Covenant Not to Compete, effective as of October 1, 2004, which was executed on September \_\_, 2004 (the "Employment Agreement"); and

WHEREAS, it has been discovered that, due to a transcription error, a provision of the Employment Agreement was inadvertently deleted in the document delivered to the Company and the Executive for execution; and

WHEREAS, the Company desires to correct such accidental deletion and the Executive agrees to such correction through execution of this First Amendment to the Employment Agreement, effective as though included in the text of the original Employment Agreement itself;

NOW THEREFORE, in consideration of the premises and agreements of the parties contained in this First Amendment, and intending to be legally bound, the Executive and the Company agree that the Employment Agreement is hereby amended as follows:

1. Paragraph 7 is hereby amended by the addition of the following Paragraph 7(i), to appear between Paragraphs 7(h) and 7(j) in the text thereof.

"(i) D & O Insurance. The Company shall maintain during the Term of this Employment Agreement and for a period of sixty months thereafter Directors and Officers Liability Insurance covering the Executive (or the Executive's estate, if the Executive is deceased or incompetent), which provides coverage at least as favorable to the Executive (or the Executive's estate, if the Executive is deceased or incompetent), as coverage under the Company's policy in effect on the date of execution of this Employment Agreement, and which coverage shall be increased from time to time in such amounts as the Board may determine to be appropriate in light of the Company's operations."

2. Except as hereby amended, the Executive and the Company hereby ratify the terms and provisions of the Employment Agreement, as executed on September \_\_, 2004.

The Scotts Company

By: /s/ Denise Stump

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Its: Executive Vice President  
Global Human Resources

AGREED AND ACCEPTED this \_\_\_\_  
day of October, 2004 and  
effective as of October 1,  
2004.

/s/ Robert F. Bernstock

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Robert F. Bernstock

SECOND AMENDMENT  
TO  
EMPLOYMENT AGREEMENT  
AND  
COVENANT NOT TO COMPETE

THIS SECOND AMENDMENT TO EMPLOYMENT AGREEMENT AND COVENANT NOT TO COMPETE (the "Employment Agreement"), by and between THE SCOTTS COMPANY (the "Company") and ROBERT F. BERNSTOCK (the "Executive"), effective as of October 1, 2004.

WITNESSETH:

WHEREAS, the Executive and the Company entered into an Employment Agreement and Covenant Not to Compete, effective as of October 1, 2004, which was executed on September \_\_, 2004 (the "Employment Agreement"); and

WHEREAS, the Company entered into a First Amendment to such Employment Agreement and Covenant Not to Compete, on October \_\_, 2004; and

WHEREAS, the Company and the Executive desire to clarify the provisions of the Employment Agreement relating to personal use of Company aircraft, through execution of this Second Amendment;

NOW THEREFORE, in consideration of the premises and agreements of the parties contained in this Second Amendment, and intending to be legally bound, the Executive and the Company agree that the Employment Agreement is hereby amended as follows:

1. Paragraph 3(d) is hereby amended in its entirety:

(d) Benefit Plan Participation. The Executive shall be entitled to participate in all of the Company's benefit programs for senior management executives. The Executive shall participate in, and be eligible to receive benefits under, any "employee welfare benefit plans" and "employee pension benefit plans" (as such terms are defined in the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) and business travel insurance plans and programs as shall apply to general and/or executive employees of the Company; and shall be provided benefits under such plans and agreements substantially equivalent (in the aggregate) to the benefits provided to other senior executive officers of the Company and on substantially similar terms and conditions as such benefits are provided to other senior executive officers of the Company. Notwithstanding the foregoing, the Executive is not eligible for participation in the Company's pension plan. The Executive will participate, or be eligible to participate where participation is voluntary, in any non-qualified pension, supplemental executive retirement programs, deferred compensation, and excess benefit plans sponsored by the Company and available to any of the Company's senior management executives. During the Term, the Company shall provide to the Executive all of the fringe benefits and perquisites that are provided to other senior executive officers of the Company, and the Executive shall be entitled to receive any other fringe benefits or perquisites that become available to other senior executive officers of the Company subsequent to the

date of execution of this Employment Agreement. Without limiting the generality of the foregoing, the Company shall provide the Executive with the following benefits during the Term: (i) paid vacation, paid holidays and sick leave in accordance with the Company's standard policies for its senior executive officers, which policies shall provide the Executive with benefits no less favorable (in the aggregate) than those provided to any other senior executive officers of the Company; (ii) an automobile allowance of at least \$12,000 annually and no less than any such allowance provided to any other senior executive officer of the Company; (iii) the Executive and, in some circumstances, members of his immediate family shall receive use of one or more Company-owned or leased and Company operated aircraft in accordance with the Company's standard executive flight and travel policies, in any event not to exceed more than twenty hours of personal use per year. The Executive acknowledges that part of any such travel may constitute additional taxable compensation of the Executive, but the Company makes no tax representation relating thereto. For purposes of this Paragraph 3(d), if members of the Executive's family accompany the Executive on any business trip of the Executive, such family member travel will not constitute personal use of the aircraft, and an hour of personal use of Company aircraft shall be measured only during each hour in which the aircraft is actually flying. The determination of personal use shall be consistent with Treasury Regulations 1.162-6, 1.132-2 and 1.132-5 and related guidance. In the event that the Executive shall attain the age of fifty-five years while in the active employment of the Company, and completes at least six years of full-time continuous employment with the Company, the Company will extend active employee health care benefits required to be available to the Executive for a limited period ("COBRA Coverage") under Part Six of Title One of ERISA, until the Executive attains the age of sixty-five years (or, in the event of the Executive's death, would have attained the age of sixty-five years) or becomes entitled to benefits under the Federal "Medicare Part A" program, whichever shall first occur. The Executive will pay a premium for such extended health care coverage. During the period in which COBRA Coverage is statutorily required under ERISA, the Executive (or his spouse or dependents in the event of his death) shall pay the COBRA premium then in effect for those who elect COBRA Coverage under the Company's health plan or plans. Thereafter, during the extended coverage period described in this Paragraph 3(d), the Executive shall pay one hundred fifty percent of such COBRA premium in effect from time to time for such coverage.

2. Except as hereby amended, the Executive and the Company hereby ratify the terms and provisions of the Employment Agreement, as executed on September \_\_, 2004, as amended by the First Amendment thereto.

The Scotts Company

By: /s/ Denise Stump

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Its: Executive Vice President  
Global Human Resources

AGREED AND ACCEPTED this \_\_\_\_  
day of October, 2004 and  
effective as of October 1,  
2004.

/s/ Robert F. Bernstock

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Robert F. Bernstock

THE SCOTTS COMPANY

2003 STOCK OPTION AND INCENTIVE EQUITY PLAN

AWARD AGREEMENT FOR NONDIRECTORS

The Scotts Company ("Company") believes that its business interests are best served by ensuring that you have an opportunity to share in the Company's business success. To this end, the Company adopted the 2003 Stock Option and Incentive Equity Plan ("Plan") through which key employees, like you, may acquire (or share in the appreciation of) shares of the Company's common stock.

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

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

- o Carefully read this Award Agreement and the attached copies of the Plan and Prospectus; and
- o Call us at (937) 578-5630 if you have any questions about your Award. Or, you may send a written inquiry to:

The Scotts Company  
Attn: Scott Messer  
Vice President Human Resources  
14111 Scottslawn Road  
Marysville, OH 43041



## DESCRIPTION OF YOUR AWARD

You have been awarded 25,000 shares of Restricted Stock (the "Award"), which, may not be sold, transferred, pledged, assigned or otherwise alienated or hypothecated for any reason (except as provided in Section 2.00 below to satisfy the tax withholding obligations that arise from this Award) until the later of: (i) six months following your termination of employment with the Company for any reason other than death or disability (as defined in the Plan), regardless of the prior vesting of such Restricted Stock, and (ii) the occurrence of one of the vesting events described in Section 1.00 below. Furthermore, except as otherwise provided in the Plan, until the occurrence of one of the vesting events described in Section 1.00 below, each of the 25,000 shares of Restricted Stock described above shall be held by the Company as escrow agent along with any dividends that may be granted thereon. If you fail to satisfy one of the vesting events prior to October 1, 2009, all 25,000 shares of Restricted Stock described herein (and any dividends attributable thereto) shall be forfeited. Upon the occurrence of a vesting event, you shall own the shares of stock and be entitled to all dividends thereon.

## GENERAL TERMS AND CONDITIONS

THESE TERMS AND CONDITIONS APPLY TO ALL AWARDS ISSUED UNDER THIS AWARD AGREEMENT. THIS IS MERELY A SUMMARY OF THESE IMPORTANT TERMS AND CONDITIONS; YOU ARE URGED TO READ THE ENTIRE PLAN AND PROSPECTUS (COPIES OF WHICH ARE ATTACHED), ALL OF THE TERMS OF WHICH ARE INCORPORATED BY REFERENCE INTO THIS AWARD AGREEMENT.

1.00 LOSS OF AN AWARD/VESTING EVENTS. The 25,000 shares of Restricted Stock subject to this Award and any dividends that may be granted following the Date of Grant shall be forfeited on October 1, 2009, unless one of the following vesting events first occurs:

[1] You are continuously employed by the Company from the Date of Grant until September 30, 2007, and at any time on or after September 30, 2007, you are not serving as the Chief Operating Officer of the Company or in any position that is more senior to the Chief Operating Officer of the Company;

[2] You are continuously employed by the Company from the Date of Grant until September 30, 2009 (regardless of your position);

[3] You [a] die or [b] become disabled (as defined in Section 1.00(1)(d) of the Employment Agreement and Covenant Not to Compete as of October 1, 2004, between you and the Company (the "Employment Agreement")), prior to October 1, 2009;

[4] You separate from employment with the Company on or before September 30, 2007, and after you have attained the age of fifty-five years, for any reason other than for "Cause" or due to your voluntary resignation without "Constructive Termination", in each case as such terms are defined in the Employment Agreement, or in any successor to, or renewal of, such agreement.

2.00 RESTRICTIONS ON THE SALE OF SHARES FOLLOWING VESTING. Notwithstanding the occurrence of a vesting event described in Section 1.00 above, except to

satisfy the tax withholding obligations that arise from this grant of Restricted Stock, no shares of Restricted Stock may be sold, transferred, pledged, assigned or otherwise alienated or hypothecated until six months following your termination of employment with the Company for any reason other than death or disability (as defined in the Plan). The restrictions reflected in this Section 2.00 shall not apply to any vested dividends that are attributable to the shares of Restricted Stock granted herein.

3.00 CANCELLATION OF AWARDS BY COMPANY. Except as otherwise specifically provided in this Award Agreement, your Award shall be noncancellable, unless you consent in writing.

4.00 AMENDMENT/TERMINATION. We may amend or terminate the Plan at any time, but cannot cancel your Award without your written consent, except as otherwise specifically provided in this Award Agreement.

#### 5.00 TAX TREATMENT OF YOUR RESTRICTED STOCK GRANT

The 25,000 shares of Restricted Stock described in this Award were granted on October 1, 2004 (the "Date of Grant"). Restricted stock awards granted pursuant to the Plan are taxed in accordance with the rules of section 83 of the Internal Revenue Code. Each employee who receives a restricted stock award is urged to discuss the income tax consequences of the award with his or her income tax advisor. A very general explanation of the applicable rules follows.

The general tax rule is that you will recognize ordinary income equal to the fair market value of the shares of Restricted Stock when the restrictions lapse (i.e., when such shares become vested). However, you may accelerate your recognition of ordinary income to the tax year in which your Date of Grant occurs (in this case 2004) by filing an election under section 83(b) of the Internal Revenue Code. The section 83(b) election must be made no later than 30 days after the Date of Grant. If you timely file the section 83(b) election, you will recognize as ordinary income the fair market value of the stock on the Date of Grant. You will not recognize any further ordinary income when the restrictions on the award subsequently lapse. Attached is a form you can use to make this election.

When you sell your Restricted Stock, the tax treatment will depend on whether you have timely made an election under section 83(b) of the Internal Revenue Code. Under current Federal tax law, if you have made such a timely election and you sell your stock after it is vested and at least 12 months from the Date of Grant, any gain from the sale will be a long term capital gain. Any gain from a sale on or before this 12 month period will be a short-term capital gain. If you do not make a timely section 83(b) election, the holding period for long-term capital gain treatment on the sale of your stock begins on the date the restrictions on your restricted stock lapse.

Under the terms of your Agreement, the Company will hold all dividends in escrow along with your shares of Restricted Stock. These dividends will be taxable to you as compensation at the same time, and in the same manner, as the shares of Restricted Stock unless you have made the section 83(b) election. If you make the section 83(b) election the dividends are taxable as dividends.

The Company may be required by law to withhold Federal, state or local taxes on any ordinary income attributable to your Restricted Stock Award. If you make a section 83(b) election, these taxes will be due and payable for the year in which the Date of Grant occurs. If you do not make a section 83(b) election, these taxes will be due and payable for the year in which the restrictions on your restricted stock award lapse. Upon determination by the Company of the year in which taxes are due and the amount of taxes required to be withheld, you are liable to the Company for the amount of taxes that must be withheld. You may satisfy this obligation by either: (i) paying the Company in cash or by certified or cashier's check, (ii) authorizing the Company to withhold monies owing from the Company to you or (iii) authorize the Company to withhold from the shares granted in your Restricted Stock Award. The latter type of payment cannot be made if you make a section 83(b) election.

We must emphasize that if you want to make the section 83(b) election, which may be to your advantage if the stock rises in value, you must do so by filing the attached or a similar form with the Internal Revenue Service Center with which you file your federal income tax return no later than 30 days after the Date of Grant. Even though you timely make the section 83(b) election, you may not sell the Restricted Stock until the restrictions imposed on such stock lapse (i.e., the stock vests), and as otherwise provided hereunder. In addition, one copy of the election must be submitted with your income tax return for the taxable year for which the property is transferred and a copy of the election must be filed with the Company.

If you make a section 83(b) election, the election may not be revoked. In addition, if you file such an election and the stock is subsequently forfeited, you will not be entitled to a corresponding income tax deduction for the amount of income taxes that you paid as a result of making the section 83(b) election. You also will not be able to file for a refund of the income taxes.

Once again, we urge you to talk with your individual tax advisor concerning the tax consequences of your Restricted Stock Award. The Company and its employees do not make any tax representations or recommendations. This general explanation is being provided simply to assist you in understanding the concepts before you meet with your individual advisor.

You must sign this Agreement; if you do not, your Award will be cancelled. By signing this Agreement you acknowledge that this Award is granted under and is subject to the terms and conditions described in this Agreement and in the Plan.

OPTIONEE/GRANTEE

THE SCOTTS COMPANY

/s/ Robert F. Bernstock

/s/ Denise Stump

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Robert F. Bernstock

Denise Stump

(date signed) 11/4/04

(date signed) 11/04/04

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DATE OF THIS AGREEMENT: October 1, 2004

ELECTION UNDER SECTION 83(b) OF THE INTERNAL REVENUE CODE

Pursuant to the provisions of Section 83(b) of the Internal Revenue Code of 1986, as amended, the undersigned (the "Taxpayer") hereby elects to include in gross income, for the taxable year set forth below, the excess, if any, of the fair market value of the property described below (valued as of the time of transfer) over the amount (if any) paid therefor. Pursuant to the provisions of Section 1.83-2(e)(7) of the Treasury regulations, the Taxpayer hereby states that copies of this election have been furnished to the persons described in Section 1.83-2(d) of such regulations.

1. Name of Taxpayer: -----  
-----

2. Address of Taxpayer: -----  
-----  
-----

3. Social Security Number:    - -  
-----

4. Description of Property Covered by Election: -----  
-----  
-----

5. Date Property Transferred:    , 20  
-----

6. Taxable Year for Which Election is Made:    , 20  
-----

7. Fair Market Value of Property at Time of Transfer:\*                        \$  
-----

8. Amount Paid for Property:    \$  
-----

9. Nature of Restrictions to Which Property is Subject: -----  
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Signature of Taxpayer    Date

\* (DETERMINED WITHOUT REGARD TO ANY RESTRICTIONS OTHER THAN RESTRICTIONS WHICH BY THEIR TERMS WILL NEVER LAPSE)

AMENDMENT TO  
THE SCOTTS COMPANY  
2003 STOCK OPTION AND INCENTIVE EQUITY PLAN  
AWARD AGREEMENT FOR NONDIRECTORS

On June 2, 2003, Robert F. Bernstock (the "Executive") received a grant of freestanding stock appreciation rights. This grant was evidenced by an Award Agreement issued by The Scotts Company (the "Company") and by an acknowledgement executed by the Executive.

Subsequent to issuance of the Award Agreement, the Executive and the Company have entered into an Employment Agreement and Covenant Not To Compete as of October 1, 2004 (hereinafter, including any successor to, or renewal of, such agreement, called the "Employment Agreement"). Pursuant to Paragraph 3(k) of the Employment Agreement, the Award Agreement of June 2, 2003 is hereby amended.

1. Section 1.00 [1][a] is hereby amended in the entirety, to read as follows:

"If your employment is terminated by the Company for "Cause" or you resign other than due to "Constructive Termination", in each case as such terms are defined in the Employment Agreement and Covenant Not To Compete between you and the Company that is effective October 1, 2004 (or in any successor to, or renewal of, such agreement) (the "Employment Agreement"), the Award may expire earlier than its Expiration Date as provided in the Plan based on those events; or"

2. Section 2.00 of the Award Agreement is hereby amended in the entirety, to read as follows:

"2.00 CANCELLATION OF AWARDS BY COMPANY. Except as otherwise specifically provided in this Award Agreement, your Award shall be noncancellable, unless you consent in writing."

3. Section 3.00 is hereby amended in the entirety, to read as follows:

"3.00 AMENDMENT/TERMINATION. We may amend or terminate the Plan at any time, but we may not cancel or terminate your Award without your written consent, except as otherwise specifically provided in this Award Agreement. Your Award shall vest, become exercisable, or mature, as applicable, in the event of your termination of employment by the Company for any reason other than for "Cause", or in the event you resign following "Constructive Termination," in each case as such terms are defined in the Employment Agreement."

4. Except as amended hereby, the Award Agreement shall remain in full force and effect.

5. This Amendment shall be effective October 1, 2004.

GRANTEE

THE SCOTTS COMPANY

/s/ Robert F. Bernstock

/s/ Denise Stump

-----  
Robert F. Bernstock

-----  
Denise Stump

(date signed) 11/03/04  
-----

(date signed) 11/03/04  
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AMENDMENT TO  
THE SCOTTS COMPANY  
2003 STOCK OPTION AND INCENTIVE EQUITY PLAN  
AWARD AGREEMENT FOR NONDIRECTORS

On November 19, 2003, Robert F. Bernstock (the "Executive") received a grant of freestanding stock appreciation rights. This grant was evidenced by an Award Agreement issued by The Scotts Company (the "Company") and by an acknowledgement executed by the Executive.

Subsequent to issuance of the Award Agreement, the Executive and the Company have entered into an Employment Agreement and Covenant Not To Compete as of October 1, 2004 (hereinafter, including any successor to, or renewal of, such agreement, called the "Employment Agreement"). Pursuant to Paragraph 3(k) of the Employment Agreement, the Award Agreement of November 19, 2003 is hereby amended.

1. Section 1.00 [1][a] is hereby amended in the entirety, to read as follows:

"If your employment is terminated by the Company for "Cause" or you resign other than due to "Constructive Termination", in each case as such terms are defined in the Employment Agreement and Covenant Not To Compete between you and the Company that is effective October 1, 2004 (or in any successor to, or renewal of, such agreement) (the "Employment Agreement"), the Award may expire earlier than its Expiration Date as provided in the Plan based on those events; or"

2. Section 2.00 of the Award Agreement is hereby amended in the entirety, to read as follows:

"2.00 CANCELLATION OF AWARDS BY COMPANY. Except as otherwise specifically provided in this Award Agreement, your Award shall be noncancellable, unless you consent in writing."

3. Section 3.00 is hereby amended in the entirety, to read as follows:

"3.00 AMENDMENT/TERMINATION. We may amend or terminate the Plan at any time, but we may not cancel or terminate your Award without your written consent, except as otherwise specifically provided in this Award Agreement. Your Award shall vest, become exercisable, or mature, as applicable, in the event of your termination of employment by the Company for any reason other than for "Cause", or in the event you resign following "Constructive Termination," in each case as such terms are defined in the Employment Agreement."

4. Except as amended hereby, the Award Agreement shall remain in full force and effect.



5. This Amendment shall be effective October 1, 2004.

GRANTEE

THE SCOTTS COMPANY

/s/ Robert F. Bernstock

/s/ Denise Stump

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Robert F. Bernstock

-----  
Denise Stump

(date signed) 11/03/04  
-----

(date signed) 11/03/04  
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STOCK OPTION AGREEMENT  
(Non-Qualified Stock Option)  
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THIS STOCK OPTION AGREEMENT is entered into as of \_\_\_\_\_ (the "Grant Date") by and between The Scotts Company ("Scotts" or "we") and \_\_\_\_\_ ("Optionee" or "you").

1. Grant of Option. You are hereby granted an option (the "Option") under Scotts' 1996 Stock Option Plan (the "Plan") to purchase \_\_\_\_\_ common shares of Scotts. This Option is not intended to qualify as an incentive stock option under Section 422 of the Internal Revenue Code of 1986.

2. Terms and Conditions of Your Option. The purchase price (the "Option Price") to be paid by you upon the exercise of your Option is \$\_\_\_\_\_ per share. Subject to the terms and conditions of the Plan: a) you may exercise your Option immediately, however, if you exercise your Option within three years of the Grant Date, you agree that all proceeds will be retained by Scotts; b) if your employment with Scotts or any of its affiliates is terminated within three years from the Grant Date, the exercisability of your Option will be governed by Section 7 of the Plan; and c) your Option terminates and ceases to be exercisable on the fifth anniversary of the Grant Date.

3. Exercise. Once vested, you may exercise your Option, in whole or in part, by delivering to Merrill Lynch a signed notice of exercise. If you die or transfer your Option as permitted under the Plan, the person entitled to exercise the Option must deliver the signed notice of exercise. The notice of exercise must state the number of whole common shares being purchased. You may pay the Option Price in any manner permitted by Section 6.4 of the Plan. You (or if you die, your estate) will be responsible for paying to Scotts the amount of any taxes we are required by law to withhold in connection with the exercise of the Option. You may satisfy these tax withholding requirements in any manner permitted under Section 10.4 of the Plan. No proceeds from the exercise of your Option will be paid to you until all tax withholding requirements have been satisfied.

4. Your Rights as a Shareholder. You have no rights or privileges as a shareholder of Scotts as to any of the common shares covered by the Option until you are issued a share certificate.

5. General. This Agreement incorporates and your Option is subject to all of the provisions of the Plan which are not specifically described in this Agreement. If there is any inconsistency between the provisions of this Agreement and those of the Plan, the provisions of the Plan control. This Agreement is governed by Ohio law. This Agreement represents the entire and exclusive agreement between you and Scotts concerning your Option grant. Any change, termination or attempted waiver of the provisions of this Agreement must be made in a writing signed by you and Scotts. The rights and obligations of Scotts under this Agreement will also extend to our successors and assigns.

IN WITNESS WHEREOF, Scotts has caused this Agreement to be executed by its duly authorized officer, and Optionee has executed this Agreement, in each case, effective as of the Grant Date.

THE SCOTTS COMPANY

By:

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David M. Aronowitz  
Executive Vice President, General Counsel

Optionee acknowledges receipt of a copy of the Plan and the Prospectus dated October 1, 2002, and all supplements thereto, related to the Plan. Optionee represents that Optionee is familiar with the terms and conditions of the Plan. By signing below, Optionee accepts the Option subject to all terms and conditions of this Agreement and the Plan. Optionee agrees to accept as binding, conclusive and final all decisions or interpretations of the committee administering the Plan should any questions arise under the Plan or this Agreement.

OPTIONEE:

-----  
Signature of Optionee

THE SCOTTS COMPANY

2003 STOCK OPTION AND INCENTIVE EQUITY PLAN

AWARD AGREEMENT FOR NONDIRECTORS

The Scotts Company ("Company") believes that its business interests are best served by ensuring that you have an opportunity to share in the Company's business success. To this end, the Company adopted the 2003 Stock Option and Equity Incentive Plan ("Plan") through which key employees, like you, may acquire (or share in the appreciation of) shares of the Company's common stock.

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

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

- Carefully read this Award Agreement and the attached copies of the Plan and Prospectus; and
- Call us at \_\_\_\_\_ if you have any questions about your Award. Or, you may send a written inquiry to:

[Insert Address]

## DESCRIPTION OF YOUR INCENTIVE STOCK OPTIONS

YOU HAVE BEEN AWARDED INCENTIVE STOCK OPTIONS (or "ISOs") TO PURCHASE \_\_\_\_\_ SHARES OF COMPANY STOCK. You may purchase one share of the Company's common stock for each ISO, but only if you pay \$\_\_\_\_\_ ("Exercise Price") for each share you purchase and meet the terms and conditions described in this Agreement and in the Plan and the Prospectus.

Special (and favorable) income tax rules apply to ISOs, but only if certain conditions are met and the ISOs are exercised before \_\_\_\_\_ ("Expiration Date"). These conditions and other terms affecting your ISOs are described in this Agreement and in the Plan and Prospectus.

### LIMITS ON EXERCISING YOUR ISOS

Your ISOs will vest (and be exercisable) on \_\_\_\_\_.

This does not mean that you must exercise your ISOs on this date; this is merely the first date that you may do so. However, your ISOs will expire unless they are exercised on or before the Expiration Date.

There are some special situations in which your options may vest earlier. These are described later in this Agreement.

At any one time you may not exercise ISOs to buy fewer than 100 shares of Company stock (or, if smaller, the number of your outstanding vested ISOs). Also, you may never exercise an ISO to purchase a fractional share of Company stock; ISOs for fractional shares will always be redeemed for cash.

### EXERCISING YOUR ISOS

After they vest, you may exercise your ISOs by completing a form. This form, and other procedures that you must follow, are available from Merrill Lynch or by contacting us at the number (or address) shown above.

#### DESCRIPTION OF YOUR NONQUALIFIED STOCK OPTIONS

YOU HAVE BEEN AWARDED NONQUALIFIED STOCK OPTIONS (or "NSOs") TO PURCHASE \_\_\_\_\_ SHARES OF COMPANY STOCK. You may purchase one share of the Company's common stock for each NSO, but only if you pay \$\_\_\_\_\_ ("Exercise Price") for each share purchased, you exercise the NSOs on or before \_\_\_\_\_ ("Expiration Date") and meet the terms and conditions described in this Agreement and in the Plan and in the Prospectus.

#### LIMITS ON EXERCISING YOUR NSOS

Your NSOs will vest (and be exercisable) on \_\_\_\_\_.

This does not mean that you must exercise your NSOs on this date; this is merely the first date that you may do so. However, your NSOs will expire unless they are exercised on or before the Expiration Date.

There also are some special situations in which your options may vest earlier. These are described later in this Agreement.

At any one time you may not exercise NSOs to buy fewer than 100 shares of Company stock (or, if smaller, the number of your outstanding vested NSOs). Also, you may never exercise an NSO to purchase a fractional share of Company stock; NSOs for fractional shares will always be redeemed for cash.

#### EXERCISING YOUR NSOS

After they vest, you may exercise your NSOs by completing a form. This form, and other procedures that you must follow, are available from Merrill Lynch or by contacting us at the number (or address) shown above.

## DESCRIPTION OF YOUR AFFILIATED STOCK APPRECIATION RIGHTS

YOU HAVE BEEN AWARDED \_\_\_\_\_AFFILIATED STOCK APPRECIATION RIGHTS (or "ASARS"). ASARS are associated with stock options that also were issued on the date of this Agreement.

ASARS will automatically be exercised when you exercise the affiliated option. When this happens, the difference between the value of one share of Company stock on the date of this Agreement and the date the ASAR is exercised will be applied against the price you must pay to exercise the affiliated option.

However, if you do not exercise the affiliated option on or before \_\_\_\_\_, the ASARS will expire and may not be exercised at a later date.

### LIMITS ON EXERCISING YOUR ASARS

Your ASARS will vest on \_\_\_\_\_.

This does not mean that you must exercise the affiliated option on this date to realize the benefit of your ASAR; this is merely the first date that you may do so. However, your ASARS (and the affiliated options) will expire unless they are exercised on or before the Expiration Date.

There also are some special situations in which your ASARS may vest earlier. These are described later in this Agreement.

### TAX TREATMENT OF YOUR ASARS

This brief discussion of the federal tax rules that affect your ASARS is provided as general information (not as personal tax advice) and is based on the Company's understanding of federal tax laws and regulations in effect as of the date of this Agreement.

You should consult with a tax or financial adviser to ensure you fully understand the tax ramifications of your Award.

You are not required to pay ordinary income taxes on the value of an ASAR when it is issued or when it vests (there are no tax consequences if your ASARS expire without being exercised). However, you are required to pay income tax (at ordinary income tax rates) when an ASAR is exercised. This tax is calculated by applying ordinary income tax rates to the difference between the value of a share of Company stock when the ASAR is exercised and the value of a share of Company stock on the date of this Agreement.

## DESCRIPTION OF YOUR FREESTANDING STOCK APPRECIATION RIGHTS

YOU HAVE BEEN AWARDED \_\_\_\_\_ FREESTANDING STOCK APPRECIATION RIGHTS (or "FSARs"). Each FSAR enables you to receive the difference between the value of one share of Company stock when the FSAR is exercised and the value of one share of Company stock on the date of this Agreement. And you may realize this appreciation without making any cash investment. However, you must exercise your FSARs no later than \_\_\_\_\_ ("Expiration Date"). If you do not exercise your FSARs on or before this date, they will expire and may not be exercised at a later date.

## LIMITS ON EXERCISING YOUR FSARS

Your FSARs will vest (and be exercisable) on \_\_\_\_\_.

This does not mean that you must exercise your FSARs on this date; this is merely the first date that you may do so. However, your FSARs will expire unless they are exercised before the Expiration Date.

There also are some special situations in which your FSARs may vest earlier. These are described later in this Agreement.

## EXERCISING YOUR FSARS

After they vest, you may exercise your FSARs by delivering a signed exercise notice to us at the address shown above. Contact us for a copy of this notice.

## TAX TREATMENT OF YOUR FSARS

This brief discussion of the federal tax rules that affect your FSARs is provided as general information (not as personal tax advice) and is based on the Company's understanding of federal tax laws and regulations in effect as of the date of this Agreement.

You should consult with a tax or financial adviser to ensure you fully understand the tax ramifications of your Award.

You are not required to pay ordinary income taxes on the value of an FSAR when it is issued or when it vests. However, you are required to pay income tax (at ordinary income tax rates) when you exercise your FSAR (there are no tax consequences if your FSAR expires without being exercised). If your FSAR is paid in shares of Company stock, your taxes are calculated by applying ordinary income tax rates to the value (on the date your FSAR is exercised) of the shares of Company stock you receive. Any subsequent appreciation in the value of these shares will be taxed at capital gains rates when the shares are sold. If your FSAR is paid in cash, your taxes are calculated by applying ordinary income tax rates to the amount of cash you receive.



## DESCRIPTION OF YOUR TANDEM STOCK APPRECIATION RIGHTS

YOU HAVE BEEN AWARDED \_\_\_\_\_ TANDEM STOCK APPRECIATION RIGHTS (or "TSARs"). TSARs are associated with stock options and enable you to receive the difference between the value of one share of Company stock when the TSAR is exercised and the value of one share of Company stock on the date of this Agreement.

You may realize the appreciated value of your TSAR without making any cash investment but only if you exercise your TSARs on or before \_\_\_\_\_ ("Expiration Date"). If you do not exercise your TSARs on or before this date, they will expire and may not be exercised at a later date.

You have a choice to make when your TSARs (and the associated options) vest:

- You may exercise a TSAR without actually spending any money; or
- You may exercise the option associated with your TSAR, in which case you will receive one share of Company stock for each option exercised, although you will be required to actually pay the option's Exercise Price.

Also, if you decide to exercise a TSAR, the associated option will expire automatically and, if you exercise the option, the associated TSAR will expire automatically.

### LIMITS ON EXERCISING YOUR TSARS

Your TSARs will vest (and be exercisable) on \_\_\_\_\_.

This does not mean that you must exercise your TSARs on this date; this is merely the first date that you may do so. However, your TSARs will expire unless they are exercised before the Expiration Date.

There also are some special situations in which your TSARs may vest earlier. These are described later in this Agreement.

### EXERCISING YOUR TSARS

After they vest, you may exercise your TSARs by delivering a signed exercise notice to us at the address shown above. Contact us for a copy of this notice.

### TAX TREATMENT OF YOUR TSARS

This brief discussion of the federal tax rules that affect your TSARs is provided as general information (not as personal tax advice) and is based on the Company's understanding of federal tax laws and regulations in effect as of the date of this Agreement.

You should consult with a tax or financial adviser to ensure you fully understand the tax ramifications of your Award.

You are not required to pay ordinary income taxes on the value of a TSAR when it is issued or when it vests. However, you are required to pay income tax (at ordinary income tax rates) when you exercise your TSAR. There are no tax consequences if your TSAR expires without being exercised or if your TSAR is cancelled because you exercised the related option, although there may be tax consequences associated with the exercise of the related option. If your TSAR is paid in shares of Company stock, your taxes are calculated by applying ordinary income tax rates to the value (on the date your TSAR is exercised) of the Company stock you receive. Any subsequent appreciation in the value of these shares will be taxed at capital gains rates when the shares are sold. If your TSAR is paid in cash, your taxes are calculated by applying ordinary income tax rates to the amount of cash you receive.

## DESCRIPTION OF YOUR RESTRICTED STOCK

YOU HAVE BEEN AWARDED \_\_\_\_\_ SHARES OF RESTRICTED STOCK which will mature into an equal number of shares of Company stock if you are actively employed on \_\_\_\_\_ ("Expiration Date") and have met all other Plan conditions.

### YOUR RIGHTS IN RESTRICTED STOCK BEFORE THE EXPIRATION DATE

Until all restrictions and conditions have been met, your Restricted Stock certificates will be held in escrow. Also, the Company will defer distribution of any dividends that are declared on your Restricted Stock until the Expiration Date. These dividends will be distributed as of the Expiration Date if all the restrictions and conditions are met or will be forfeited if these restrictions and conditions have not been met.

However, you may vote your Restricted Shares before all the terms and conditions described in this Agreement are met. This is the case even though your Restricted Stock will not be distributed to you until the Expiration Date.

### TAX TREATMENT OF YOUR RESTRICTED STOCK

This brief discussion of the federal tax rules that affect your Restricted Stock is provided as general information (not as personal tax advice) and is based on the Company's understanding of federal tax laws and regulations in effect as of the date of this Agreement.

You should consult with a tax or financial adviser to ensure you fully understand the tax ramifications of your Award.

You are not required to pay income taxes on your Restricted Stock at this time. However, you will be required to pay income taxes (at ordinary income tax rates) when (and if) applicable restrictions and conditions are met. The amount of ordinary income you will recognize is the value of your Restricted Stock when the terms and conditions described in this Agreement lapse. Any subsequent appreciation of the shares will be taxed at capital gains rates when you sell the shares. If applicable restrictions and conditions are not met before the Expiration Date, your Restricted Stock will expire and no taxes will be due.

You may increase the portion of your Award's value that is subject to capital gains tax rates by making a special election [known as a Code ss.83(b) election] within 30 days of the date of this Agreement. However, there are important tax and investment issues that you must consider before making a Code ss.83(b) election. These should be discussed with your personal tax and investment adviser.

## DESCRIPTION OF YOUR PERFORMANCE STOCK

YOU HAVE BEEN AWARDED \_\_\_\_\_ SHARES OF PERFORMANCE STOCK which will mature into an equal number of shares of Company stock if the following goals are met before \_\_\_\_\_ ("Measurement Date") and you meet all other Plan conditions:

Insert description of applicable performance goals - these should be specific to the grantee and relate to one or more of the criteria listed in the Plan.

## YOUR RIGHTS IN PERFORMANCE STOCK BEFORE THE MEASUREMENT DATE

Until all performance goals have been met, your Performance Stock certificates will be held in escrow. Also, the Company will defer distribution of any dividends that are declared on your Performance Stock until the Measurement Date. These dividends will be distributed as of the Measurement Date if all the restrictions and conditions are met or will be forfeited if these restrictions and conditions have not been met.

However, you may vote your Performance Stock before all the terms and conditions described in this Agreement are met. This is the case even though your Performance Stock will not be distributed to you until the Measurement Date.

## TAX TREATMENT OF YOUR PERFORMANCE STOCK

This brief discussion of the federal tax rules that affect your Performance Stock is provided as general information (not as personal tax advice) and is based on the Company's understanding of federal tax laws and regulations in effect as of the date of this Agreement.

You should consult with a tax or financial adviser to ensure you fully understand the tax ramifications of your Award.

You are not required to pay income taxes on your Performance Stock at this time. However, you will be required to pay income taxes (at ordinary income tax rates) when (and if) applicable restrictions and conditions are met. The amount of ordinary income you will recognize is the value of your Performance Stock when the terms and conditions described in this Agreement lapse. Any subsequent appreciation of the shares will be taxed at capital gains rates when you sell the shares. If applicable restrictions and conditions are not met before the Measurement Date, your Performance Stock will expire and no taxes will be due.

You may increase the portion of your Award's value that is subject to capital gains tax rates by making a special election [known as a Code ss.83(b) election] within 30 days of the date of this Agreement. However, there are important tax and investment issues that you must consider before making a Code ss.83(b) election. These should be discussed with your personal tax and investment adviser.

GENERAL TERMS AND CONDITIONS

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THESE TERMS AND CONDITIONS APPLY TO ALL AWARDS ISSUED UNDER THIS AWARD AGREEMENT. THIS IS MERELY A SUMMARY OF THESE IMPORTANT TERMS AND CONDITIONS; YOU ARE URGED TO READ THE ENTIRE PLAN AND PROSPECTUS (COPIES OF WHICH ARE ATTACHED), ALL OF THE TERMS OF WHICH ARE INCORPORATED BY REFERENCE INTO THIS AWARD AGREEMENT.

1.00 LOSS OF AN AWARD. There are ways in which you may forfeit an Award.

[1] IF YOU TERMINATE EMPLOYMENT . . .

Normally, your Awards will expire on the date specified earlier in this Agreement. However, these Awards may expire earlier than their Expiration Date if you terminate employment (as defined in the Plan).

[a] If your employment is terminated by the Company for cause (as defined in the Plan), the Awards will expire on the date your employment ends; or

[b] If you terminate employment because you [i] die or [ii] become disabled (as defined in the Plan), the Awards will expire no later than 60 months after you terminate (12 months in the case of any ISOs); or

[c] If you terminate after reaching either [i] age 55 and completing at least 10 years of employment or [ii] age 62 regardless of your years of service, the Awards will expire no later than 60 months after you terminate (three months in the case of ISOs); or

[d] If you terminate employment for any other reason, your Awards will expire no later than 90 days after you terminate.

Note, it is your responsibility to keep track of when your Awards expire.

[2] IF YOU ENGAGE IN CONDUCT THAT IS HARMFUL TO THE COMPANY (OR SUBSIDIARY) . . .

You also will forfeit any outstanding Awards and must return to the Company all shares and other amounts you have received through the Plan if, without our consent, you do any of the following within 180 days before and 730 days after terminating employment with the Company:

[a] You serve (or agree to serve) as an officer, director, consultant or employee of any proprietorship, partnership or corporation or become the owner of a business or a member of a partnership that competes with any portion of the Company's (or a Subsidiary's) business with which you have been involved anytime within five years before termination of employment or render any service (including, advertising business consulting) to entities that compete with any portion of the Company's (or a Subsidiary's) business with which you have been involved anytime within five years before termination of employment;

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

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

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

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

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

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

2.00 BUY OUT/CANCELLATION OF AWARDS BY COMPANY. We may decide at any time to buy out your Award. This may happen without your consent and at any time. If we decide to buy out your Awards, we will pay you the difference between the value of Awards that are exercisable (or vested) at that time and that are being bought out and the Exercise Price associated with that Award. However, no payment will be made for any cancelled Awards that are not vested (and not exercisable) on the cancellation date.

3.00 AMENDMENT/TERMINATION. We may amend or terminate the Plan at any time.

# # #

You must sign this Agreement; if you do not, your Award will be cancelled. By signing this Agreement you acknowledge that this Award is granted under and is subject to the terms and conditions described in this Agreement and in the Plan.

OPTIONEE/GRANTEE

THE SCOTTS COMPANY

- - - - -  
(date signed)

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(date signed)

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- - - - -

DATE OF THIS AGREEMENT: - - - - -

THE SCOTTS COMPANY

2003 STOCK OPTION AND INCENTIVE EQUITY PLAN

AWARD AGREEMENT FOR DIRECTORS

The Scotts Company ("Company") believes that its business interests are best served by ensuring that you have an opportunity to share in the Company's business success. To this end, the Company adopted the 2003 Stock Option and Incentive Equity Plan ("Plan") through which its directors may acquire (or share in the appreciation of) shares of the Company's common stock.

We cannot guarantee that the value of your options (or the value of the stock you acquire through an option) will increase. This is because the value of the Company's stock is affected by many factors. However, the Company believes that your efforts contribute to the value of the Company's stock and that the Plan (and the options granted through the Plan) is an appropriate means of sharing with you the value of your contribution to the Company's business success.

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

- Carefully read this Award Agreement and the attached copies of the Plan and Prospectus; and
- Call us at (937) 644-0011 if you have any questions about your options. Or, you may send a written inquiry to:

The Scotts Company  
Attn: Vice President Human Resources  
14111 Scottslawn Road  
Marysville, OH 43041



## DESCRIPTION OF YOUR NONQUALIFIED STOCK OPTIONS

YOU HAVE BEEN AWARDED NONQUALIFIED STOCK OPTIONS (or "NSOs") TO PURCHASE \_\_\_\_\_ SHARES OF COMPANY STOCK. You may purchase one share of the Company's common stock for each NSO, but only if you pay \$\_\_\_\_\_ ("Exercise Price") for each share purchased, you exercise the NSOs on or before \_\_\_\_\_ ("Expiration Date") and meet the terms and conditions described in this Agreement and in the Plan and in the Prospectus.

### LIMITS ON EXERCISING YOUR NSOS

Your NSOs will vest (and be exercisable) on \_\_\_\_\_ [6 months from grant date][12 months from grant date]

This does not mean that you must exercise your NSOs on this date; this is merely the first date that you may do so. However, your NSOs will expire unless they are exercised on or before the Expiration Date.

There also are some special situations in which your options may vest earlier. These are described later in this Agreement.

At any one time you may not exercise NSOs to buy fewer than 100 shares of Company stock (or, if smaller, the number of your outstanding vested NSOs). Also, you may never exercise an NSO to purchase a fractional share of Company stock; NSOs for fractional shares will always be redeemed for cash.

### EXERCISING YOUR NSOS

After they vest, you may exercise your NSOs by completing a form. This form, and other procedures that you must follow, are available from Merrill Lynch or by contacting us at the number (or address) shown above.

## GENERAL TERMS AND CONDITIONS

THESE TERMS AND CONDITIONS APPLY TO ALL OPTIONS ISSUED UNDER THIS AWARD AGREEMENT. THIS IS MERELY A SUMMARY OF THESE IMPORTANT TERMS AND CONDITIONS; YOU ARE URGED TO READ THE ENTIRE PLAN AND PROSPECTUS (COPIES OF WHICH ARE ATTACHED), ALL OF THE TERMS OF WHICH ARE INCORPORATED BY REFERENCE INTO THIS AWARD AGREEMENT.

1.00 LOSS OF AN OPTION. There are ways in which you may forfeit your options.

[1] IF YOUR DIRECTORSHIP TERMINATES . . .

Normally, your options will expire on the date specified earlier in this Agreement. However, these options may expire earlier than their Expiration Date if your directorship terminates (as defined in the Plan).

[a] If your directorship is terminated by the Company for cause (as defined in the Plan), the options will expire on the date your directorship ends; or

[b] If your directorship terminates because you [i] die or [ii] become disabled (as defined in the Plan), the options will expire no later than 60 months after your directorship terminates; or

[c] If your directorship terminates after you served one full term as a director, the options will expire no later than 60 months after your directorship terminates; or

[d] If your directorship terminates for any other reason, your options will expire no later than 1 year after you terminate.

Note, it is your responsibility to keep track of when your options expire.

[2] IF YOU ENGAGE IN CONDUCT THAT IS HARMFUL TO THE COMPANY (OR SUBSIDIARY) . . .

You also will forfeit any outstanding options and must return to the Company all shares and other amounts you have received through the Plan if, without our consent, you do any of the following within 180 days before and 730 days after your directorship terminates:

[a] You serve (or agree to serve) as an officer, director, consultant or employee of any proprietorship, partnership or corporation or become the owner of a business or a member of a partnership that competes with any portion of the Company's (or a Subsidiary's) business with which you have been involved anytime within five years before your directorship terminates or render any service (including, advertising business consulting) to entities that compete with any portion of the Company's (or a Subsidiary's) business with which you have been involved anytime within five years before your directorship terminates;

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

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

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

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

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

[g] You engaged in conduct that the Committee reasonably concludes would have given rise to a termination of your directorship for cause (as defined in the Plan) had it been discovered before your directorship terminated.

2.00 BUY OUT/CANCELLATION OF OPTIONS BY COMPANY. We may decide at any time to buy out your options. This may happen without your consent and at any time. If we decide to buy out your options, we will pay you the difference between the value of options that are exercisable (or vested) at that time and that are being bought out and the Exercise Price associated with those options. However, no payment will be made for any cancelled options that are not vested (and not exercisable) on the cancellation date.

3.00 AMENDMENT/TERMINATION. We may amend or terminate the Plan at any time.

# # #

You must sign this Agreement; if you do not, your options will be cancelled. By signing this Agreement you acknowledge that these options is granted under and is subject to the terms and conditions described in this Agreement and in the Plan.

OPTIONEE/GRANTEE

THE SCOTTS COMPANY

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(date signed)  
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(date signed)  
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DATE OF THIS AGREEMENT: -----