

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) October 15, 2008 (October 8, 2008)

**The Scotts Miracle-Gro Company**

(Exact name of registrant as specified in its charter)

Ohio

(State or other jurisdiction  
of incorporation)

1-13292

(Commission  
File Number)

31-1414921

(IRS Employer  
Identification No.)

14111 Scottslawn Road, Marysville, Ohio

(Address of principal executive offices)

43041

(Zip Code)

(937) 644-0011

(Registrant's telephone number, including area code)

Not Applicable

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

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

- 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))

**Item 5.02 — Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

Amendment to The Scotts Company LLC Executive Retirement Plan; Approval of Retention Awards and Form of Retention Award Agreement

On October 8, 2008, the Compensation and Organization Committee (the “Committee”) of the Board of Directors of The Scotts Miracle-Gro Company (the “Company”) approved the Sixth Amendment (the “Sixth Amendment”) to The Scotts Company LLC Executive Retirement Plan (as so amended, the “ERP”). The ERP is a non-qualified deferred compensation plan. The Sixth Amendment authorizes The Scotts Company LLC, a wholly-owned subsidiary of the Company (“Scotts LLC”), and affiliates of Scotts LLC, including the Company, to grant retention awards under the ERP to employees of Scotts LLC and its affiliates in amounts as determined in the sole discretion of Scotts LLC or the applicable affiliate of Scotts LLC. The foregoing description of the Sixth Amendment is qualified in its entirety by reference to the full text of the Sixth Amendment, a copy of which is filed as Exhibit 10.1.7 to this Current Report on Form 8-K and incorporated herein by reference. Copies of the amended and restated ERP and each of the previous five amendments thereto were filed as exhibits to the Company’s Registration Statement on Form S-8 filed on October 9, 2008 (Registration No. 333-153925).

Subsequent to its approval of the Sixth Amendment to the ERP, the Committee approved the granting of retention awards (“Retention Awards”) to each of the following executive officers of the Company: David C. Evans, Executive Vice President and Chief Financial Officer; Barry W. Sanders, Executive Vice President, North America; Denise S. Stump, Executive Vice President, Global Human Resources; Michael C. Lukemire, Executive Vice President, Global Technologies and Operations; and Vincent C. Brockman, Executive Vice President, General Counsel and Secretary. Each Retention Award will be effective as of the business day immediately following the day on which the “trading window” is next open in accordance with the terms of The Scotts Miracle-Gro Company and Subsidiaries Insider Trading Policy. Consistent with the terms of the ERP, each executive officer to whom a Retention Award is allocated will have the right, as of the effective date of the Retention Award, to elect an investment fund, including a Company stock fund, against which the Retention Award will be benchmarked.

The Retention Awards approved by the Committee with respect to the executive officers identified above, as well as the retention award approved with respect to Claude Lopez (described below), each in the amount of \$1,000,000, reflect the Committee’s belief that retaining the institutional knowledge and overall talent possessed by the Company’s key executive officers puts the Company in the best position to ensure that it continues to successfully achieve both its short and long-term goals during challenging economic times. The Retention Awards serve to further the Company’s stated objective to retain the necessary leadership talent to sustain and expand upon its unique competencies and capabilities.

Each Retention Award will be granted subject to the terms of an Executive Retirement Plan Retention Award Agreement (the “Retention Award Agreement”), a form of which the Committee approved prior to its approval of the individual Retention Awards. The Retention Award Agreement provides that each executive officer’s interest in the Retention Award vests as follows:

- One hundred percent on the third anniversary of the effective date of the Retention Award Agreement (the “Award Date”), provided the executive officer remains an employee of Scotts LLC or one of its affiliates on such third anniversary.
- One hundred percent if a change of control of the Company occurs prior to the third anniversary of the Award Date, and the executive officer’s employment with Scotts LLC and its affiliates is subsequently terminated “without cause” or the executive officer resigns for “good reason,” in each case as defined in the Retention Award Agreement or, if applicable, the executive officer’s employment agreement with Scotts LLC or its affiliate.

- Pro rata if, prior to the third anniversary of the Award Date, the executive officer's employment with Scotts LLC and its affiliates is terminated due to the executive officer's death, disability, or retirement.
- Pro rata if, prior to the third anniversary of the Award Date, Scotts LLC decides not to renew the executive officer's employment agreement, if applicable, and, after the employment agreement has expired, the executive officer's employment with Scotts LLC and its affiliates is terminated without cause or the executive officer resigns for good reason.
- No vesting if, prior to the third anniversary of the Award Date, the executive officer's employment with Scotts LLC and its affiliates terminates or is terminated under circumstances not otherwise described above.

The Retention Award is subject to forfeiture if the executive officer is terminated for cause at any time or the executive officer engages in certain actions prohibited by the Retention Award Agreement within 180 days before or 730 days after the executive officer's employment is terminated for any reason. In the event of forfeiture, the executive officer must repay any amount previously distributed from the executive officer's Retention Award account under the ERP.

The Retention Award Agreement provides for distribution of the Retention Award, to the extent vested, to the executive officer as follows: (a) one-fourth of the vested Retention Award account balance in a single sum on the third anniversary of the Award Date; (b) one-third of the remaining vested Retention Award account balance in a single sum on the fourth anniversary of the Award Date; and (c) at the executive officer's election (to be made as of the Award Date), the remaining vested Retention Award account balance in a single sum on (i) the fifth anniversary of the Award Date or (ii) the latest to occur of (x) the fifth anniversary of the Award Date, (y) the date on which the executive officer's employment with Scotts LLC and its affiliates is terminated, or (z) a date specified by the executive officer, which may not be later than the date the executive officer attains age 65. Distributions will be paid in cash to the extent the vested Retention Award account is benchmarked against an investment fund other than the Company stock fund. To the extent the vested Retention Award account is benchmarked against the Company stock fund, distributions will be made in whole common shares of the Company, plus cash for any fractional share.

The foregoing description of the terms and conditions of the Retention Award Agreement is qualified in its entirety by reference to the full text of the form of Retention Award Agreement, a copy of which is included as Exhibit 10.2 to this Current Report on Form 8-K and incorporated herein by reference.

Finally, on October 8, 2008, the Committee approved the granting of a restricted stock unit award (the "RSU Award") to Claude Lopez, the Company's Executive Vice President, International, and Chief Marketing Officer. Mr. Lopez is a French citizen and therefore not eligible to participate in the ERP; accordingly, the RSU Award is not subject to the terms of the ERP. The RSU Award will be governed by the terms of the Company's Amended and Restated 2006 Long-Term Incentive Plan, and will be granted pursuant to an award agreement that will contain terms and conditions substantially similar to those approved by the Committee in the form of Retention Award Agreement, including terms and conditions relating to vesting, forfeiture and distribution. The RSU Award will be effective on the same day as the Retention Awards. A copy of the Company's Amended and Restated 2006 Long-Term Incentive Plan, effective as of October 30, 2007, was filed as Exhibit 10(r)(2) to the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 2007, filed on November 29, 2007 (File No. 1-13292).

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

(a) Financial statements of businesses acquired:

Not applicable.

(b) Pro forma financial information:

Not applicable.

(c) Shell company transactions:

Not applicable.

(d) Exhibits:

<u>Exhibit No.</u>	<u>Description</u>	<u>Location</u>
10.1.1	The Scotts Company Executive Retirement Plan, executed on November 19, 1998 and effective as of January 1, 1999	Incorporated herein by reference to the Registration Statement on Form S-8 of The Scotts Miracle-Gro Company (the “Registrant”) filed on October 9, 2008 (File No. 333-153925) [Exhibit 4.4]
10.1.2	First Amendment to The Scotts Company Executive Retirement Plan, executed as of December 23, 1998 and effective as of January 1, 1999	Incorporated herein by reference to the Registrant’s Registration Statement on Form S-8 filed on October 9, 2008 (File No. 333-153925) [Exhibit 4.5]
10.1.3	Second Amendment to The Scotts Company Executive Retirement Plan, executed as of January 14, 2000 and effective as of January 1, 2000	Incorporated herein by reference to the Registrant’s Registration Statement on Form S-8 filed on October 9, 2008 (File No. 333-153925) [Exhibit 4.6]
10.1.4	Third Amendment to The Scotts Company Executive Retirement Plan, executed as of December 1, 2002 and effective as of January 1, 2003	Incorporated herein by reference to the Registrant’s Registration Statement on Form S-8 filed on October 9, 2008 (File No. 333-153925) [Exhibit 4.7]
10.1.5	Fourth Amendment to The Scotts Company Executive Retirement Plan, executed as of May 5, 2004 and effective as of January 1, 2004	Incorporated herein by reference to the Registrant’s Registration Statement on Form S-8 filed on October 9, 2008 (File No. 333-153925) [Exhibit 4.8]

<u>Exhibit No.</u>	<u>Description</u>	<u>Location</u>
10.1.6	Fifth Amendment to The Scotts Company Executive Retirement Plan, executed as of May 6, 2005 and effective as of March 18, 2005 (amended the name of the plan to be The Scotts Company LLC Executive Retirement Plan)	Incorporated herein by reference to the Registrant's Registration Statement on Form S-8 filed on October 9, 2008 (File No. 333-153925) [Exhibit 4.9]
10.1.7	Sixth Amendment to The Scotts Company LLC Executive Retirement Plan, executed and effective as of October 8, 2008	Filed herewith
10.2	Form of Executive Retirement Plan Retention Award Agreement to be entered into between The Scotts Company LLC and each of David C. Evans, Barry W. Sanders, Denise S. Stump, Michael C. Lukemire and Vincent C. Brockman	Filed herewith
10.3	The Scotts Miracle-Gro Company Amended and Restated 2006 Long-Term Incentive Plan, effective as of October 30, 2007	Incorporated herein by reference to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 30, 2007 (File No. 1-13292) [Exhibit 10(r)(2)]

SIGNATURE

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

THE SCOTTS MIRACLE-GRO COMPANY

Dated: October 15, 2008

By: /s/ David C. Evans

Printed Name: David C. Evans

Title: Executive Vice President and Chief Financial  
Officer

## INDEX TO EXHIBITS

Current Report on Form 8-K  
Dated October 15, 2008

### The Scotts Miracle-Gro Company

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<u>Exhibit No.</u>	<u>Description</u>	<u>Location</u>
10.2	Form of Executive Retirement Plan Retention Award Agreement to be entered into between The Scotts Company LLC and each of David C. Evans, Barry W. Sanders, Denise S. Stump, Michael C. Lukemire and Vincent C. Brockman	Filed herewith
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**SIXTH AMENDMENT  
TO  
THE SCOTTS COMPANY LLC  
EXECUTIVE RETIREMENT PLAN**

**WHEREAS**, The Scotts Company LLC (the “Company”) sponsors the Scotts Company LLC Executive Retirement Plan (the “Plan”); and

**WHEREAS**, the Company desires to amend the Plan to create a retention award account pursuant to which the Company can grant retention awards to Plan participants; and

**WHEREAS**, this Committee has been authorized to administer the Plan and to amend, modify or terminate the Plan.

**NOW THEREFORE**, effective as of October 8, 2008, the Plan is amended as follows:

**FIRST:** The second sentence of the definition of the term “Account” contained in Section II of the Plan is amended to read as follows:

A Participant’s Account shall consist, as applicable, of a Deferred Executive Incentive Pay Account, a Deferred Compensation Account, a Matching Account, a Retirement Account, a Transitional Contributions Account and a Retention Award Account.

**SECOND:** Section II of the Plan is amended by adding the following definition in its appropriate alphabetical location:

“Retention Award” means an award allocable to a Participant’s Retention Award Account in accordance with Section IV.D.(6). The designation of the Participants who receive a Retention Award and the amount of each Retention Award shall be determined by the Employer in its sole discretion. Each Retention Award shall be evidenced by a written agreement between the Employer and the Participant. The written agreement shall set forth the terms and conditions governing the Retention Award and shall be consistent with the applicable terms of the Plan.

**THIRD:** The second sentence of Section IV.A. of the Plan is amended to read as follows:

A Participant’s Account shall consist of a Deferred Executive Incentive Pay Account, a Deferred Compensation Account, a Matching Account, a Retirement Account, a Transitional Contributions Account and a Retention Award Account.

**FOURTH:** The following new paragraph (6) is added at the end of Section IV.D. of the Plan:

(6) Retention Awards. The Employer shall allocate an amount equal to the Participant’s Retention Award, if any, to the Participant’s Retention Award Account.

**FIFTH:** The first and second sentences of Section V.A. of the Plan are amended to read as follows:

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Amounts credited to a Participant's Account (other than the Retention Award Account) shall be distributed to the Participant when administratively practicable after termination of employment or a date specified by the Participant. The time of distribution (except with respect to the Retention Award Account) shall be elected by the Participant in the Executive Incentive Pay Deferral Election and Compensation Deferral Election delivered to the Administrative Committee at the time the applicable deferral election is made.

SIXTH: Section V.A. of the Plan is further amended by adding the following provision as the second paragraph thereof:

Amounts credited to a Participant's Retention Award Account shall be distributed to the Participant in accordance with the written agreement evidencing the Participant's Retention Award.

SEVENTH: Section V.B. of the Plan is amended to read as follows:

Method of Distribution. Amounts credited to a Participant's Account (other than the Retention Award Account) shall be distributed to the Participant either in a single lump sum payment or in substantially equal annual installments over a period less than ten (10) years. Amounts credited to a Participant's Retention Award Account shall be distributed to the Participant in accordance with the written agreement between the Employer and the Participant evidencing the Participant's Retention Award. To the extent that an Account is distributed in installment payments, the undisbursed portions of such Account shall continue to be credited with Additions in accordance with the applicable provisions of Section IV.H. In addition, if, as of any business day after the date described in Section V.A., the amount allocated to a Participant's Account (other than the Retention Award Account) is less than \$5,000, the Administrative Committee shall pay such amount to the Participant and reduce the balance of his Account (other than the Retention Award Account) to zero. The method of distribution shall be elected by the Participant in the Executive Incentive Pay Deferral Election or Compensation Deferral Election delivered to the Administrative Committee at the time the applicable deferral election is made or, in the case of distributions from the Retention Award Account, in accordance with the written agreement evidencing the Participant's Retention Award. Distributions of amounts credited to Investment Funds other than the Company Stock Fund shall be made in cash. Distributions of amounts credited to the Company Stock Fund shall be distributed in the greatest whole number of common shares of The Scotts Miracle-Gro Company which can be distributed based on the amount credited to the Company Stock Fund (after any applicable withholding), plus cash for any fractional share.

EIGHTH: Section V.E. of the Plan is amended by adding the following sentence at the end thereof:

This Section V.E. shall not apply to the Participant's Retention Award Account.

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**IN WITNESS WHEREOF**, the Administrative Committee, acting on behalf of the Company, has caused this Sixth Amendment to be executed on this 8th day of October, 2008, to be effective as of that same date.

**THE SCOTTS COMPANY LLC**

By: /s/ Arnold W. Donald

Print Name: Arnold W. Donald

Title: Member of the Administrative Committee

**EXECUTIVE RETIREMENT PLAN  
RETENTION AWARD AGREEMENT**

THIS EXECUTIVE RETIREMENT PLAN RETENTION AWARD AGREEMENT (this "Agreement") between The Scotts Company LLC (the "Company") and \_\_\_\_\_ (the "Participant") is made pursuant and subject to the provisions of the Company's Executive Retirement Plan, as amended (the "Plan"). Each capitalized term that is used in this Agreement and that is not defined in this Agreement has the same meaning as the definition set forth in the Plan.

**1. Retention Award Account Credit.** Pursuant to the Plan, the Company, on November \_\_\_\_, 2008 (the "Award Date"), allocated One Million Dollars (\$1,000,000) to the Participant's Retention Award Account.

**2. Earnings Benchmarks.** The Participant's Retention Award Account shall be credited or debited with Additions in accordance with the Plan based on the Investment Funds that the Participant selects, in accordance with the terms of the Plan, as earnings benchmarks for the Retention Award Account.

**3. Vesting.** Subject to the provisions of paragraphs 3(e) and 3(f), the Participant's interest in the Retention Award Account shall be vested and nonforfeitable ("Vested") as provided in the following paragraphs 3(a), 3(b), 3(c), and 3(d):

(a) *Continued Service.* The Participant's interest in the Retention Award Account shall be one hundred percent (100%) Vested on the third anniversary of the Award Date provided the Participant does not have a Separation from Service (as defined in paragraph 5) after the Award Date and before the third anniversary of the Award Date.

(b) *Change of Control.* The Participant's interest in the Retention Award Account shall be one hundred percent (100%) Vested on the date the Participant has a Separation from Service if (i) there is a Change of Control (as defined in paragraph 5) before the third anniversary of the Award Date, (ii) the Participant does not have a Separation from Service after the Award Date and before the Change of Control, and (iii) the Participant has a Separation from Service after the Change of Control on account of a termination by the Company or an Affiliate (as defined in paragraph 5) without Cause or on account of the resignation of the Participant with Good Reason. For purposes of this Agreement, the terms "Cause" and "Good Reason" shall have the same meanings as the definitions set forth in the \_\_\_\_\_, 200\_, Employment Agreement between the Company and the Participant (the "Employment Agreement").

(c) *Death, Disability or Retirement.* The Participant shall be Vested in a *pro rata* amount of the Retention Award Account on the date the Participant has a Separation from Service if (i) the Participant has a Separation from Service before the third anniversary of the Award Date on account of the Participant's death, Disability or Retirement and (ii) the Participant does not have a Separation from Service after the Award Date and before the date of the Separation from Service on account of death, Disability or Retirement. In that event, the *pro*

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*rata* amount of the Retention Award Account that is Vested shall be determined by multiplying the balance credited to the Retention Award Account on the date of such Separation from Service by a fraction, the numerator of which is the number of whole calendar months elapsed from the Award Date until the date of such Separation from Service and the denominator of which is thirty-six (36). For purposes of this Agreement, the term “Retirement” means the Participant’s voluntary Separation from Service after the Participant has attained age sixty-two (62) or after the Participant has attained age fifty-five (55) and completed at least one hundred twenty (120) months of employment with the Company and its Affiliates since the Participant’s most recent date of employment with the Company or an Affiliate. For purposes of this Agreement, the term “Disability” means that the Participant is, by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, receiving income replacement benefits for a period of at least three months under an accident and health plan covering employees of the Company or its Affiliates.

(d) *Nonrenewal of Employment Agreement.* The Participant shall be Vested in a *pro rata* amount of the Retention Award Account on the date the Participant has a Separation from Service if (i) the Employment Agreement terminates before the third anniversary of the Award Date because the Company gives written notice of its decision not to renew or extend the term of the Employment Agreement, (ii) the Participant does not have a Separation from Service after the Award Date and before the expiration of the term of the Employment Agreement and (iii) such Separation from Service occurs after the expiration of the term of the Employment Agreement and on account of a termination by the Company or an Affiliate without Cause or on account of the resignation of the Participant with Good Reason. (For the avoidance of doubt, the terms “Cause” and “Good Reason” shall have the same meanings as the definitions set forth in the Employment Agreement without regard to the expiration of the term of the Employment Agreement.) In that event, the *pro rata* amount of the Retention Award Account that is Vested shall be determined by multiplying the balance credited to the Retention Award Account on the date of such Separation from Service by a fraction, the numerator of which is the number of whole calendar months elapsed from the Award Date until the date of such Separation from Service and the denominator of which is thirty-six (36).

(e) *Forfeiture.* Notwithstanding the preceding paragraphs 3(a), 3(b), 3(c), and 3(d) and notwithstanding any provision of the Plan, the Participant’s interest in the Retention Award Account shall be forfeited (and no amount shall be payable under the Plan with respect to the Retention Award Account) if the Participant has a Separation from Service on account of a termination by the Company or an Affiliate with Cause, or if the Participant, without the Company’s written consent, does any of the following within 180 days before and 730 days after a Separation from Service:

(i) The Participant serves (or agrees to serve) as an officer, director, manager, consultant, or employee of any proprietorship, partnership, corporation, or other entity, or becomes the owner of a business or a member of a partnership, limited liability company, or other entity, that competes with any portion of the Company’s (or any Affiliate’s) business with which the Participant had been involved at any time within five years before the Separation from Service or renders any service (including, without limitation, advertising or business consulting)

to one or more entities that compete with any portion of the Company's (or any Affiliate's) business with which the Participant had been involved at any time within five years before such Separation from Service;

(ii) The Participant refuses or fails to consult with, supply information to, or otherwise cooperate with the Company or any Affiliate after having been requested to do so;

(iii) The Participant deliberately engages in any action that the Company concludes has caused, or is reasonably likely to cause, substantial harm to the interests of the Company or any Affiliate;

(iv) The Participant, on behalf of the Participant or on behalf of any other person, partnership, association, corporation, limited liability company, or other entity, solicits or in any manner attempts to influence or induce any employee of the Company or any Affiliate to leave the Company's or any Affiliate's employment, or uses or discloses to any person, partnership, association, corporation, limited liability company, or other entity any information obtained while an employee of the Company or any Affiliate concerning the names and addresses of the Company's or any Affiliate's employees;

(v) The Participant discloses confidential and proprietary information relating to the Company's or any Affiliate's business affairs ("Trade Secrets"), including technical information, product information and formulae, processes, business and marketing plans, strategies, customer information, and other information concerning the Company's or any Affiliate's products, promotions, development, financing, expansion plans, business policies and practices, salaries and benefits, and other types of information considered by the Company or any Affiliate to be proprietary and confidential and in the nature of Trade Secrets;

(vi) The Participant fails to return all property (other than the Participant's 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 the Participant produced or received or that otherwise were submitted to the Participant in the course of the Participant's employment with the Company or any Affiliate; or

(vii) The Participant engages in conduct that the Company reasonably concludes would have given rise to a termination with Cause had it been discovered before the Participant's Separation from Service.

(f) *Repayment Obligation.* Notwithstanding paragraphs 3(a), 3(b), 3(c), and 3(d) and notwithstanding any provision of the Plan, if the Participant's interest in the Retention Award Account is forfeited pursuant to paragraph 3(e), the Participant shall be liable to the Company for the repayment of any amount previously distributed to the Participant from the Retention Award Account. The Participant must repay any such amount to the Company in a single cash payment within ten (10) days of the Participant's receipt of a written demand for repayment.

Except as provided in paragraphs 3(a), 3(b), 3(c), and 3(d) (but subject to paragraphs 3(e) and 3(f)), the Participant's interest in the Retention Award Account shall be forfeited (and no amount shall be payable under the Plan with respect to the Retention Award Account), on the date that the Participant has a Separation from Service.

**4. Distributions.** The Retention Award Account, to the extent Vested, shall be distributed as follows:

(a) *Scheduled Distributions.*

(i) One-fourth (1/4<sup>th</sup>) of the Vested Retention Award Account balance shall be distributed to the Participant in a single sum on the third anniversary of the Award Date.

(ii) One-third (1/3<sup>rd</sup>) of the remaining Vested Retention Award Account balance shall be distributed to the Participant in a single sum on the fourth anniversary of the Award Date.

(iii) The remaining Vested Retention Award Account balance shall be distributed to the Participant in accordance with the Retention Award Distribution Election Form (the "Election Form") executed by the Participant. In accordance with the Election Form, the remaining Vested Retention Award Account balance shall be paid in a single sum on (A) the fifth anniversary of the Award Date or (B) upon the latest to occur of (x) the fifth anniversary of the Award Date, (y) the date on which the Participant has a Separation from Service, or (z) a specified date (which shall not be later than the date the Participant attains age sixty-five (65)).

If a distribution is payable under this paragraph 4(a) on a specified date, the distribution shall be made on that date or within ninety (90) days after that date. If a distribution is payable under clause (iii)(B) of this paragraph 4(a) on account of the Participant's Separation from Service, the payment shall be made within ninety (90) days after the date that is six months after the Separation from Service.

(b) *Separation After Change of Control.* Paragraph 4(a) to the contrary notwithstanding, the entire Vested Retention Award Account balance shall be distributed to the Participant in a single sum within ninety (90) days after the date that is six months after the Participant has a Separation from Service if the Separation from Service occurs after a Change of Control and before the second anniversary of the Change of Control.

(c) *Participant's Death.* If any portion of the Vested Retention Award Account balance has not been distributed to the Participant on the date of the Participant's death, the remaining Vested Retention Award Account balance shall be distributed to the Participant's Beneficiary in a single sum as soon as practicable (but in any event within ninety (90) days) after the Participant's death.

Distributions shall be paid in cash to the extent that the Vested Retention Award Account is benchmarked against one or more Outside Investment Funds. To the extent that the Vested

Retention Award Account is benchmarked against the Company Stock Fund, distributions shall be in the greatest whole number of common shares of The Scotts Miracle-Gro Company which can be distributed based on the amount of the Vested Retention Award Account benchmarked against the Company Stock Fund (after any applicable withholding), plus cash for any fractional share.

**5. Other Definitions.** For purposes of this Agreement, the following terms have the meanings provided below:

(a) *Affiliate*. “Affiliate” means any business organization or legal entity that, directly or indirectly, controls, is controlled by, or is under common control with, the Company. For purposes of this definition, control (including the terms controlling, controlled by, and under common control with) includes the possession, direct or indirect, of the power to vote 50% or more of the voting equity securities, membership interests or other voting interests, or to direct or cause the direction of the management and policies of, such business organization or other legal entity, whether through the ownership of equity securities, membership interests, or other voting interests, by contract, or otherwise.

(b) *Board*. “Board” means the Board of Directors of the Corporation.

(c) *Change of Control*. “Change of Control” means the occurrence of any of the following:

(i) Board Composition. Individuals who, as of July 1, 2008, constitute the Board (the “Incumbent Board”) cease, within a 12-month period, for any reason (other than death) to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to such date whose appointment, election, or nomination for election by the Corporation’s shareholders, was endorsed by at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board; or

(ii) Stock Acquisition. (A) One or more acquisitions, by any individual, entity or group (within the meanings of Treas. Reg. §§ 1.409A-3(i)(5)(v)(B) and (vi)(D)) (a “Person”), of 30% or more of the then outstanding voting securities of the Corporation (the “Outstanding Voting Securities”), during any 12-month period ending on the date of the most recent acquisition by that Person; or (B) an acquisition that results in ownership by a Person of either (y) shares representing more than 50% of the total fair market value of the Corporation’s then outstanding stock (the “Outstanding Stock”) or (z) shares representing more than 50% of the then Outstanding Voting Securities; provided, however, that for purposes of this clause 5(c)(ii), the following acquisitions of shares of the Corporation shall not be taken into account in the determination of whether a Change of Control has occurred: (1) any acquisition directly from the Corporation; (2) any cash acquisition by the Corporation or an Affiliate; (3) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Corporation or an Affiliate; (4) an acquisition by a Person that prior to the acquisition had already acquired more shares than necessary to satisfy the applicable 30% or 50% threshold; or



(5) any acquisition by the Hagedorn Partnership, L.P. or any party related to the Hagedorn Partnership, L.P., as determined by the Committee.

(iii) Business Combination. Consummation of a reorganization, merger, or consolidation of the Corporation (a "Business Combination"), in each case, that results in either a change in ownership contemplated in subparagraph (B) of clause 5(c)(ii) above or a change in the Incumbent Board contemplated by clause 5(c)(i) above; or

(iv) Sale or Disposition of Assets. One or more Persons acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such Persons) assets from the Corporation that have a total gross fair market value equal to more than 40% of the total gross fair market value of all of the assets of the Corporation (without regard to liabilities of the Corporation or associated with such assets) immediately before such acquisition or acquisitions; provided that such sale or disposition is not to:

- (A) a shareholder of the Corporation (immediately before the asset transfer) in exchange for or with respect to the Corporation's Outstanding Stock;
- (B) an entity, 50% or more of the total value or voting power of which is owned, directly or indirectly, by the Corporation;
- (C) a Person that owns, directly or indirectly, 50% or more of the total value or voting power of all the Outstanding Stock of the Corporation; or
- (D) an entity, at least 50% of the total value or voting power of which is owned, directly or indirectly, by a Person described in paragraph (iv)(C) above.

Except as otherwise specifically provided in clause 5(iv)(A) above, a Person's status is determined immediately after the transfer.

(d) *Committee*. "Committee" means the Compensation and Organization Committee of the Corporation's Board of Directors.

(e) *Corporation*. "Corporation" means The Scotts Miracle-Gro Company.

(f) *Separation from Service*. "Separation from Service" means the Participant's termination of employment with the Company and its Affiliates for any reason. A termination of employment will occur when the Participant and the Company and its Affiliates reasonably anticipate that (i) no further services will be performed by the Participant after a certain date, or (ii) the level of bona fide services which the Participant is expected to perform for the Company and its Affiliates, as an employee or otherwise, as of a certain date is expected to permanently decrease to a level equal to twenty (20) percent or less of the average level of services performed by the Participant during the immediately preceding thirty-six (36) month period (or the Participant's entire period of service if less than thirty-six (36) months). Further, for purposes of this Agreement, a termination of employment is deemed to occur on the first date following six months after a Participant is first on a military leave, sick leave, or other bona fide

leave of absence. Such six month period may be extended if the Participant retains a right to reemployment with the Company or its Affiliates under applicable statute or contract. Notwithstanding the foregoing, where a leave of absence is due to a medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than six months and where such impairment causes the Participant to be unable to perform the duties of the Participant's position of employment or any substantially similar position of employment with the Company or its Affiliates, a twenty-nine (29) month period of absence may be substituted for such six month period. Whether there has been a termination of employment will be determined by the Committee or any delegate of the Committee, taking into account all of the facts and circumstances at the time of the termination of employment in accordance with the guidelines described in IRC Regulation Section 1.409-1(h).

**6. Conflicts.** In the event of any conflict between the provisions of the Plan as in effect on the Award Date and the provisions of this Agreement, the provisions of the Plan shall govern.

**7. Participant Bound by Plan.** The Participant acknowledges that a copy of the Plan has been made available to the Participant and agrees to be bound by all of the terms and provisions thereof.

**8. No Right to Continued Service.** This Agreement does not confer upon the Participant any right with respect to continuance of employment or service with the Company or an Affiliate; nor shall it interfere with the right of the Company or an Affiliate to terminate the Participant's employment or service with or without Cause at any time.

**9. Binding Effect.** Subject to the terms and conditions stated above and in the Plan, this Agreement shall be binding upon and inure to the benefit of the legatees, distributees, and personal representatives of the Participant and the successors of the Company.

**10. Entire Agreement.** This Agreement and the Plan set forth all of the terms and conditions of the Retention Award.

IN WITNESS WHEREOF, the Participant has signed this Agreement and the Company has caused this Agreement to be signed by its duly authorized officer.

**THE SCOTTS COMPANY LLC**

By \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**[NAME OF PARTICIPANT]**

\_\_\_\_\_

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