

**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): March 24, 2005 (March 18, 2005)

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 43041
(Address of principal executive offices) (Zip Code)

(937) 644-0011
(Registrant's telephone number, including area code)

Not applicable
(Former name or former address, if changed since last report)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

EXPLANATORY NOTE

This Current Report on Form 8-K, dated March 24, 2005 (this “Form 8-K”), is being filed by The Scotts Miracle-Gro Company, an Ohio corporation (“Scotts Miracle-Gro” or the “Registrant”), as the successor to The Scotts Company, an Ohio corporation (“Scotts” or the “Predecessor”), following consummation of the Restructuring Merger (as defined and described in this Form 8-K) which was undertaken to effect the restructuring of Scotts’ corporate structure into a holding company structure. Prior to the Restructuring Merger, Scotts Miracle-Gro had engaged in no activities other than those incident to the restructuring. Upon consummation of the Restructuring Merger, the entire class of Scotts Miracle-Gro Common Shares (as defined in this Form 8-K) became registered under Section 12(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), in accordance with Rule 12g-3 under the Exchange Act.

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Item 1.01. Entry into a Material Definitive Agreement.

On March 18, 2005 (the “Effective Time”), Scotts consummated the restructuring of Scotts’ corporate structure into a holding company structure by merging Scotts into a newly-created, wholly-owned, second-tier Ohio limited liability company subsidiary, The Scotts Company LLC (“Scotts LLC”), pursuant to the Agreement and Plan of Merger, dated as of December 13, 2004 (the “Merger Agreement”), by and among Scotts, Scotts LLC and Scotts Miracle-Gro. This merger is referred to in this Form 8-K as the “Restructuring Merger.” The Merger Agreement has previously been filed as Exhibit 2.1 to Scotts’ Current Report on Form 8-K, dated February 1, 2005 and filed with the Securities and Exchange Commission (the “SEC”) on February 2, 2005 (File No. 1-13292).

As a result of the Restructuring Merger, each of Scotts’ common shares, without par value (the “Scotts Common Shares”), issued and outstanding immediately prior to the Effective Time of the Restructuring Merger was automatically converted into one fully paid and nonassessable common share, without par value, of Scotts Miracle-Gro (the “Scotts Miracle-Gro Common Shares”). Scotts Miracle-Gro is the public company successor to Scotts.

Following the consummation of the Restructuring Merger, Scotts LLC is the successor to Scotts and is a direct, wholly-owned subsidiary of Scotts Miracle-Gro, the new parent holding company.

Treatment of Scotts’ Senior and Subordinated Credit Facilities

The Second Amended and Restated Credit Agreement, dated as of October 22, 2003, among Scotts; Hyponex Corporation, Miracle Garden Care Limited, OM Scott International Investments Ltd., Scotts Australia Pty. Ltd., Scotts Canada, Ltd., Scotts Holdings Limited, Scotts Manufacturing Company, Scotts-Sierra Horticultural Products Company, Scotts-Sierra Investments, Inc., Scotts Temecula Operations, LLC, Scotts Treasury EEIG, The Scotts Company (UK) Ltd. and other subsidiaries of Scotts who are also borrowers from time to time; the lenders party thereto; Citicorp North America, Inc., as Syndication Agent; JPMorgan Chase Bank, as Administrative Agent; and other Agents identified therein (as amended, the “Credit Agreement”), contains a provision which specifically permitted Scotts to consummate the holding company restructuring. The Credit Agreement, which covers Scotts’ \$700.0 million multi-currency revolving credit commitment and Scotts’ \$400.0 million term loan facility, has previously been filed as Exhibit 4(p) to Scotts’ Annual Report on Form 10-K for the fiscal year ended September 30, 2003 (File No. 1-13292).

As permitted by the Credit Agreement, Scotts Miracle-Gro assumed all of the obligations and liabilities of Scotts under the Credit Agreement pursuant to the terms of a Joinder Agreement, dated as of March 18, 2005, among Scotts Miracle-Gro, Scotts and JPMorgan Chase Bank, N.A. (formerly known as JPMorgan Chase Bank), as Administrative Agent (the “Joinder Agreement”). The Joinder Agreement is filed with this Form 8-K as Exhibit 4.1. As of the Effective Time of the Restructuring Merger, \$373.9 million was outstanding under the revolving credit commitment and \$398.0 million was outstanding under the term loan facility.

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In addition, Scotts LLC, as successor by merger to Scotts, became a subsidiary guarantor of Scotts Miracle-Gro's obligations under the Credit Agreement pursuant to the terms of an Acknowledgment and Confirmation, dated as of March 18, 2005, between Scotts LLC and JPMorgan Chase Bank, N.A. (formerly known as JPMorgan Chase Bank), as Administrative Agent (the "Acknowledgment and Confirmation"). By virtue of the Acknowledgment and Confirmation, Scotts LLC agreed that, as successor by merger to Scotts, it remained a party to the Borrower and Domestic Subsidiary Guarantee and Collateral Agreement, dated as of December 4, 1998 (the "Guarantee and Collateral Agreement"), which governs the guarantee by the subsidiary guarantors of the obligations of the borrowers under the Credit Agreement, and that all of the liens and security interests granted thereunder by Scotts, and the perfection and priority of each, continued in full force and effect. The Guarantee and Collateral Agreement and the prior Acknowledgement and Confirmation of Guarantee and Collateral Agreements and Mortgages, dated as of October 22, 2003, are filed with this Form 8-K as Exhibits 10.1 and 10.2, respectively. The Acknowledgment and Confirmation is filed with this Form 8-K as Exhibit 10.3.

Finally, Scotts Miracle-Gro became a guarantor of, and pledged substantially all of its assets to secure, the obligations of the borrowers under the Credit Agreement, pursuant to the terms of an Assumption Agreement, dated as of March 18, 2005, given by Scotts Miracle-Gro in favor of JPMorgan Chase Bank, N.A. (formerly known as JPMorgan Chase Bank), as Administrative Agent (the "Assumption Agreement"). By virtue of the Assumption Agreement, Scotts Miracle-Gro became a party to the Guarantee and Collateral Agreement. The Assumption Agreement is filed with this Form 8-K as Exhibit 10.4.

The Indenture, dated as of October 8, 2003, among Scotts; the subsidiaries of Scotts identified as Guarantors therein; and U.S. Bank National Association, as Trustee (the "Base Indenture"), as amended by the Supplemental Indenture, dated as of October 15, 2004, between Smith & Hawken, Ltd., as a guaranteeing subsidiary, and U.S. Bank National Association, as Trustee (the "First Supplemental Indenture" and, together with the Base Indenture, the "Indenture"), also contains a provision which specifically permitted Scotts to consummate the holding company restructuring. The Base Indenture has previously been filed as Exhibit 4(n) to Scotts' Annual Report on Form 10-K for the fiscal year ended September 30, 2003 (File No. 1-13292). The First Supplemental Indenture, which added Smith & Hawken, Ltd. as a subsidiary guarantor under the Indenture, is filed with this Form 8-K as Exhibit 4.2.

As permitted by the Indenture, Scotts Miracle-Gro assumed all of the obligations and liabilities of Scotts under the Indenture (including, without limitation, the Series A and Series B 6.625% Senior Subordinated Notes Due 2013 issued thereunder), and Scotts LLC became a subsidiary guarantor of Scotts Miracle-Gro's obligations under the Indenture, in each case pursuant to the terms of a Second Supplemental Indenture, dated as of March 18, 2005 (the "Second Supplemental Indenture"), among Scotts; Scotts Miracle-Gro; Scotts LLC; the other subsidiaries of Scotts Miracle-Gro identified as Guarantors in the Second Supplemental Indenture; and U.S. Bank National Association, as Trustee. The Second Supplemental Indenture is filed with this Form 8-K as Exhibit 4.3.

Treatment of Scotts' Benefit Plans

As of the Effective Time of the Restructuring Merger, Scotts Miracle-Gro assumed The Scotts Company 1992 Long Term Incentive Plan (the "1992 Plan"), The Scotts Company 1996 Stock Option Plan (the "1996 Plan") and The Scotts Company 2003 Stock Option and Incentive Equity Plan (the "2003 Plan" and collectively with the 1992 Plan and the 1996 Plan, the "Stock Plans") as well as all obligations of Scotts under the Stock Plans, including the outstanding options, stock appreciation rights, restricted stock awards and stock units granted pursuant to the Stock Plans.

Each option to purchase Scotts Common Shares granted under one of the Stock Plans, which was outstanding immediately prior to the Effective Time was, by virtue of the Restructuring Merger, converted into and became an option to purchase the same number of Scotts Miracle-Gro Common Shares as the number of Scotts Common Shares which were subject to such option immediately prior to the Effective Time, at the same exercise price per share and upon the same terms and subject to the same conditions as were in effect at the Effective Time.

Each stock appreciation right covering Scotts Common Shares granted under the 2003 Plan, which was outstanding immediately prior to the Effective Time was, by virtue of the Restructuring Merger, converted into and became a stock appreciation right covering the same number of Scotts Miracle-Gro Common Shares as the number of Scotts Common Shares which were subject to such stock appreciation right immediately prior to the Effective Time, at the same exercise price per share and subject to the same terms and conditions as were in effect at the Effective Time.

Each restricted stock award covering Scotts Common Shares granted under the 2003 Plan, which was outstanding immediately prior to the Effective Time was, by virtue of the Restructuring Merger, converted into and became a restricted stock award covering the same number of Scotts Miracle-Gro Common Shares as the number of Scotts Common Shares which were subject to such restricted stock award immediately prior to the Effective Time, subject to the same terms and conditions as were in effect at the Effective Time.

The Scotts Common Shares attributable to accounts of directors of Scotts (who became directors of Scotts Miracle-Gro following the Restructuring Merger) holding stock units, received under the 1996 Plan or the 2003 Plan, immediately prior to the Effective Time were, by virtue of the Restructuring Merger, converted into the same number of Scotts Miracle-Gro Common Shares and those Scotts Miracle-Gro Common Shares are attributable to the accounts of those directors upon the same terms and subject to the same conditions as were in effect at the Effective Time.

As of the Effective Time of the Restructuring Merger, Scotts Miracle-Gro also assumed The Scotts Company Employee Stock Purchase Plan (the "Stock Purchase Plan"), which had been approved by the shareholders of Scotts at the Annual Meeting of Shareholders held on January 27, 2005. As permitted under the terms of the Stock Purchase Plan, effective March 24, 2005, the Board of Directors of Scotts Miracle-Gro amended the Stock Purchase Plan to:

- reflect Scotts Miracle-Gro's assumption of the Stock Purchase Plan by replacing any references in the Stock Purchase Plan to "The Scotts Company" with references to "The Scotts Miracle-Gro Company";
- change the name of the Stock Purchase Plan from "The Scotts Company Employee Stock Purchase Plan" to "The Scotts Miracle-Gro Company Discounted Stock Purchase Plan";
- modify the provisions of the Stock Purchase Plan addressing the determination of the beneficiary of a participant for

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purposes of the Stock Purchase Plan to provide that a participant's beneficiary will be his or her surviving spouse or, if there is no surviving spouse, the deceased participant's estate;

- modify the provisions of the Stock Purchase Plan addressing the implementation of a participant's withholding elections to clarify that a participant's withholding elections will be implemented beginning with the first payroll period having a paycheck date in the offering period for which the election is filed;
- modify the provisions of the Stock Purchase Plan addressing the effect of the termination of a participant's employee-employer relationship so that cash amounts credited to a participant's account during the offering period in which such termination occurs will be used to purchase Scotts Miracle-Gro Common Shares to be credited to the participant's account rather than being returned to the participant; and
- modify the provisions of the Stock Purchase Plan addressing the distribution of cash and Scotts Miracle-Gro Common Shares held in a participant's custodial account to provide that distribution will occur no later than the earlier of (a) 12 full calendar months after the end of each offering period or (b) the beginning of the offering period following the date the participant terminates for any reason.

The Stock Purchase Plan, as so amended, is filed with this Form 8-K as Exhibit 10.5.

Prior to the Restructuring Merger, Scotts maintained a tax-qualified, non-contributory defined pension plan (the "Pension Plan"), eligibility for which and accruals under which were frozen as of December 31, 1997. Benefits under the Pension Plan are supplemented by benefits under The O.M. Scott & Sons Company Excess Benefit Plan (the "Excess Benefit Plan"), which was also frozen as of December 31, 1997. As of the Effective Time of the Restructuring Merger, Scotts LLC assumed the obligations of Scotts under the Pension Plan and the Excess Benefit Plan.

As of the Effective Time of the Restructuring Merger, Scotts also maintained The Scotts Company Retirement Savings Plan (the "RSP"), a tax-qualified, defined contribution profit sharing and 401(k) plan, and The Scotts Company Executive Retirement Plan (the "Executive Retirement Plan"), which provides participants with the opportunity for contributions in excess of Internal Revenue Code limitations for the RSP. As of the Effective Time of the Restructuring Merger, Scotts LLC assumed the obligations of Scotts under the RSP and the Executive Retirement Plan. The Scotts Common Shares attributable to the accounts of participants under the RSP and the Executive Retirement Plan relating to common share units immediately prior to the Effective Time were, by virtue of the Restructuring Merger, converted into the same number of Scotts Miracle-Gro Common Shares and those Scotts Miracle-Gro Common Shares are attributable to the accounts of those participants upon

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the same terms and subject to the same conditions as were in effect at the Effective Time.

As of the Effective Time of the Restructuring Merger, Scotts also maintained The Scotts Company Executive Annual Incentive Plan (the “Executive Incentive Plan”), which provides annual incentive compensation opportunities based on established financial targets and personal goals for the fiscal year. As of the Effective Time of the Restructuring Merger, Scotts LLC assumed the Executive Incentive Plan. The Compensation and Organization Committee of the Scotts Miracle-Gro Board of Directors will oversee the operation of the Executive Incentive Plan.

Section 2 – Financial Information

Item 2.01. Completion of Acquisition or Disposition of Assets. and

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

Please see the discussion in “Item 1.01. Entry into a Material Definitive Agreement” of this Form 8-K under the caption “Treatment of Scotts’ Senior and Subordinated Credit Facilities,” which discussion is incorporated herein by this reference. As discussed therein, as of March 18, 2005, Scotts Miracle-Gro assumed all of the obligations and liabilities of Scotts under the Credit Agreement and the Indenture.

Section 8 – Other Events

Item 8.01. Other Events.

General Information Regarding Restructuring Merger

On March 18, 2005, Scotts consummated the restructuring of Scotts’ corporate structure into a holding company structure by merging Scotts into Scotts LLC pursuant to the Merger Agreement. As a result of the Restructuring Merger, each Scotts Common Share issued and outstanding immediately prior to the Effective Time of the Restructuring Merger was automatically converted into one fully paid and nonassessable Scotts Miracle-Gro Common Share. Scotts Miracle-Gro is the public company successor to Scotts. Following the consummation of the Restructuring Merger, Scotts LLC is the successor to Scotts and is a direct, wholly-owned subsidiary of Scotts Miracle-Gro, the new parent holding company.

The restructuring will not affect the new parent holding company’s management, corporate governance or capital stock structure. Scotts’ directors and officers immediately prior to the Restructuring Merger are the directors and officers of Scotts Miracle-Gro. The articles of incorporation, code of regulations, charters of committees of the Board of Directors, Code of Business Conduct and Ethics and Corporate Governance Principles of Scotts Miracle-Gro are substantially similar to those of Scotts (other than the provisions regarding the name of the corporation and those provisions regarding a previously converted class of preferred shares, which provisions have been eliminated). The articles of incorporation and code of regulations of Scotts Miracle-Gro, as currently in effect, are filed as Exhibits 3.1 through 3.3 to this Form 8-K. The charters of the Audit Committee, the Compensation and Organization Committee, the Governance and Nominating Committee and the Innovation & Technology Committee of the Scotts Miracle-Gro Board of Directors, the Corporate Governance Guidelines of the Scotts

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Miracle-Gro Board of Directors and the Code of Business Conduct and Ethics are posted on Scotts Miracle-Gro's Internet website located at <http://www.investor.scotts.com> and are available in print to any shareholder who requests them from the Corporate Secretary of Scotts Miracle-Gro by writing to The Scotts Miracle-Gro Company, Attention: Corporate Secretary, 14111 Scottslawn Road, Marysville, Ohio 43041.

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

Scotts Miracle-Gro issued a press release on March 21, 2005 announcing the consummation of the Restructuring Merger. The press release is filed with this Form 8-K as Exhibit 99.1 and incorporated herein by this reference.

Description of Capital Stock of Scotts Miracle Gro

In connection with the Restructuring Merger, each Scotts Common Share issued and outstanding immediately prior to the Effective Time was, by virtue of the Restructuring Merger, converted into one fully paid and nonassessable Scotts Miracle-Gro Common Share. Scotts Miracle-Gro is the public company successor to Scotts and the Scotts Miracle-Gro Common Shares are listed on the New York Stock Exchange ("NYSE") under the trading symbol "SMG." The rights of Scotts Miracle-Gro's shareholders following consummation of the Restructuring Merger are the same as the rights of shareholders of Scotts prior to the Restructuring Merger. The articles of incorporation and code of regulations of Scotts Miracle-Gro are substantially identical to those of Scotts (other than the provisions regarding the name of the corporation and those provisions regarding a previously converted class of preferred shares, which provisions have been eliminated).

The following describes the material features and rights of the capital stock of Scotts Miracle-Gro. This summary does not purport to be exhaustive and is qualified in its entirety by reference to applicable Ohio law and Scotts Miracle-Gro's Initial Articles of Incorporation, as amended by the Certificate of Amendment by Shareholders to Articles of Incorporation (collectively, the "Articles of Incorporation") and Scotts Miracle-Gro's Code of Regulations, which are filed as Exhibits 3.1 through 3.3 to this Form 8-K, and incorporated by reference into this Form 8-K.

Generally

The authorized capital stock of Scotts Miracle Gro consists of 100,000,000 common shares, without par value, and 195,000 preferred shares, without par value. As of the Effective Time of the Restructuring Merger, there were 33,339,974 common shares of Scotts Miracle-Gro issued and outstanding and no preferred shares were issued and outstanding.

Common Shares

Holders of Scotts Miracle-Gro Common Shares are entitled to:

- one vote for each Scotts Miracle-Gro Common Share held;

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- receive dividends when and if declared by the Board of Directors of Scotts Miracle-Gro from funds legally available therefor, subject to the rights of holders of preferred shares of Scotts Miracle-Gro, if any, and to restrictions contained in Scotts Miracle-Gro's long-term indebtedness; and
- share ratably in Scotts Miracle-Gro's net assets, legally available to Scotts Miracle-Gro's shareholders in the event of Scotts Miracle-Gro's liquidation, dissolution or winding up, after provision for distribution to the holders of any preferred shares of Scotts Miracle-Gro and payment in full of all amounts required to be paid to creditors or provision for such payment.

Holders of Scotts Miracle-Gro Common Shares have no preemptive, subscription, redemption, conversion or cumulative voting rights. The outstanding Scotts Miracle-Gro Common Shares are fully paid and nonassessable.

Preferred Shares

The Scotts Miracle-Gro Board of Directors is authorized, without further shareholder action, to issue from time to time one or more series of preferred shares and to fix or change the rights, preferences and limitations of each series, including dividend and distribution rights, liquidation rights, preferences and price, redemption rights and price, voting rights, pre-emptive rights, conversion rights and restrictions on issuance of shares.

Anti-Takeover Effects of Articles of Incorporation and Code of Regulations of Scotts Miracle-Gro and the Ohio General Corporation Law

There are provisions in the Articles of Incorporation and Code of Regulations of Scotts Miracle-Gro, and the Ohio Revised Code, that could discourage potential takeover attempts and make attempts by shareholders to change management more difficult. These provisions could adversely affect the market price of the Scotts Miracle-Gro Common Shares.

Classified Board of Directors. The Scotts Miracle-Gro Board of Directors is divided into three classes, with three-year staggered terms. The individuals serving as directors of Scotts immediately prior to the Restructuring Merger are also the directors of Scotts Miracle-Gro following the Restructuring Merger and will serve for the same terms as their terms had been with Scotts. The classification system increases the difficulty of replacing a majority of the directors at any one time and may tend to discourage a third-party from making a tender offer or otherwise attempting to gain control of Scotts Miracle-Gro. It also may maintain the incumbency of the Board of Directors. Under the Ohio General Corporation Law, shareholders may not remove any directors on a classified board of directors without cause.

Limited Shareholder Action by Written Consent. The Ohio General Corporation Law requires that an action by written consent of the shareholders in lieu of a meeting be unanimous, except that the code of regulations may be amended by an action by written consent of holders of shares entitling them to exercise two-thirds of the voting power of the

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corporation or, if the articles of incorporation or code of regulations otherwise provide, such greater or lesser amount, but not less than a majority. This provision may have the effect of delaying, deferring or preventing a tender offer or takeover attempt that a shareholder might consider to be in its best interest.

Control Share Acquisition Act. The Ohio General Corporation Law provides that certain notice and informational filings, and special shareholder meeting and voting procedures, must occur prior to any person's acquisition of an issuer's shares that would entitle the acquirer to exercise or direct the voting power of the issuer in the election of directors within any of the following ranges:

- one-fifth or more but less than one-third of such voting power;
- one-third or more but less than a majority of such voting power;
- a majority or more of such voting power.

The Control Share Acquisition Act does not apply to a corporation if its articles of incorporation or code of regulations so provide. Scotts Miracle-Gro has not opted out of the application of the Control Share Acquisition Act.

Merger Moratorium Statute. Chapter 1704 of the Ohio Revised Code generally addresses a wide range of business combinations and other transactions (including mergers, consolidations, combinations, asset sales, loans, disproportionate distributions of property and disproportionate issuances or transfers of shares or rights to acquire shares) between an Ohio corporation and an "Interested Shareholder" who, alone or with others, may exercise or direct the exercise of at least 10% of the voting power of the corporation in the election of directors. The Merger Moratorium Statute prohibits such transactions between the corporation and the Interested Shareholder for a period of three years after a person becomes an Interested Shareholder, unless, prior to such date, the directors approved either the business combination or other transaction or approved the acquisition that caused the person to become an Interested Shareholder.

Following the three-year moratorium period, the corporation may engage in the covered transaction with the Interested Shareholder only if:

- the transaction receives the approval of the holders of shares entitling them to exercise at least two-thirds of the voting power of the corporation in the election of directors and the approval of the holders of a majority of the voting shares held by persons other than an Interested Shareholder; or
- the remaining shareholders receive an amount for their shares equal to the highest of the highest amount paid in the past by the Interested Shareholder for the corporation's shares, the "fair market value" of the shares on the dates specified in the statute or the amount that

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would be due to the shareholders if the corporation were to dissolve.

The Merger Moratorium Statute does not apply to a corporation if its articles of incorporation or code of regulations so provide. Scotts Miracle-Gro has not opted out of the application of the Merger Moratorium Statute.

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:

<u>Exhibit No.</u>	<u>Description</u>
2.1	Agreement and Plan of Merger, dated as of December 13, 2004, by and among The Scotts Company, The Scotts Company LLC and The Scotts Miracle-Gro Company (incorporated herein by reference to Exhibit 2.1 to The Scotts Company's Current Report on Form 8-K, dated February 1, 2005 and filed with the Securities and Exchange Commission on February 2, 2005 (File No. 1-13292))
3.1	Initial Articles of Incorporation of The Scotts Miracle-Gro Company as filed with the Ohio Secretary of State on November 22, 2004
3.2	Certificate of Amendment by Shareholders to Articles of Incorporation of The Scotts Miracle-Gro Company as filed with the Ohio Secretary of State on March 18, 2005
3.3	Code of Regulations of The Scotts Miracle-Gro Company
4.1	Joinder Agreement, dated as of March 18, 2005, among The Scotts Miracle-Gro Company, The Scotts Company and JPMorgan Chase Bank, N.A. (formerly know as JPMorgan Chase Bank), as Administrative Agent
4.2	Supplemental Indenture, dated as of October 15, 2004, between Smith & Hawken, Ltd., as a guaranteeing subsidiary, and U.S. Bank National Association, as Trustee

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<u>Exhibit No.</u>	<u>Description</u>
4.3	Second Supplemental Indenture, dated as of March 18, 2005, among The Scotts Company; The Scotts Miracle-Gro Company; The Scotts Company LLC; the other subsidiaries identified as Guarantors therein; and U.S. Bank National Association, as Trustee
10.1	Borrower and Domestic Subsidiary Guarantee and Collateral Agreement, dated as of December 4, 1998, made by The Scotts Company, the Domestic Subsidiary Borrowers identified therein and certain of their Domestic Subsidiaries identified therein in favor of The Chase Manhattan Bank, as Administrative Agent
10.2	Acknowledgement and Confirmation of Guarantee and Collateral Agreements and Mortgages, dated as of October 22, 2003, among The Scotts Company; EG Systems, Inc.; Hyponex Corporation; Miracle-Gro Lawn Products, Inc.; OMS Investments, Inc.; Scotts Manufacturing Company; Scotts Products Co.; Scotts Professional Products Co.; Scotts-Sierra Crop Protection Company; Scotts-Sierra Horticultural Products Company; Scotts-Sierra Investments, Inc.; Scotts Temecula Operations, LLC; Swiss Farm Products, Inc.; and JPMorgan Chase Bank, as Administrative Agent
10.3	Acknowledgment and Confirmation, dated as of March 18, 2005, between The Scotts Company LLC (successor by merger to The Scotts Company) and JPMorgan Chase Bank, N.A. (formerly known as JPMorgan Chase Bank), as Administrative Agent
10.4	Assumption Agreement, dated as of March 18, 2005, given by The Scotts Miracle-Gro Company in favor of JPMorgan Chase Bank, N.A. (formerly known as JPMorgan Chase Bank), as Administrative Agent
10.5	The Scotts Miracle-Gro Company Discounted Stock Purchase Plan
99.1	Press Release issued by The Scotts Miracle-Gro Company on March 21, 2005

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: March 24, 2005

By: /s/ Christopher L. Nagel

Printed Name: Christopher L. Nagel

Title: Executive Vice President and
Chief Financial Officer

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Current Report on Form 8-K
Dated March 24, 2005

The Scotts Miracle-Gro Company

<u>Exhibit No.</u>	<u>Description</u>
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4.3	Second Supplemental Indenture, dated as of March 18, 2005, among The Scotts Company; The Scotts Miracle-Gro Company; The Scotts Company LLC; the other subsidiaries identified therein as Guarantors; and U.S. Bank National Association, as Trustee
10.1	Borrower and Domestic Subsidiary Guarantee and Collateral Agreement, dated as of December 4, 1998, made by The Scotts Company, the Domestic Subsidiary Borrowers identified therein and certain of their Domestic Subsidiaries identified therein in favor of The Chase Manhattan Bank, as Administrative Agent
10.2	Acknowledgement and Confirmation of Guarantee and Collateral Agreements and Mortgages, dated as of October 22, 2003, among The Scotts Company; EG Systems, Inc.; Hyponex Corporation; Miracle-Gro Lawn Products, Inc.; OMS Investments, Inc.; Scotts Manufacturing Company; Scotts Products Co.; Scotts Professional Products Co.; Scotts-Sierra Crop Protection Company; Scotts-Sierra

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10.5	The Scotts Miracle-Gro Company Discounted Stock Purchase Plan
99.1	Press Release issued by The Scotts Miracle-Gro Company on March 21, 2005



www.state.oh.us/sos

e-mail: busserv@sos.state.oh.us

Prescribed by J. Kenneth Blackwell
Ohio Secretary of State
Central Ohio: (614) 466-3910
Toll Free: 1-877-SOS-FILE (1-877-767-3453)

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INITIAL ARTICLES OF INCORPORATION

(For Domestic Profit or Non-Profit)
Filing Fee \$125.00

THE UNDERSIGNED HEREBY STATES THE FOLLOWING:

(CHECK ONLY ONE(1) BOX)

- (1) [X] Articles of Incorporation Profit (113-ARF) ORC 1701
(2) [] Articles of Incorporation Non-Profit (114-ARN) ORC 1702
(3) [] Articles of Incorporation Profession (170-ARP) ORC 1785

Complete the general information in this section for the box checked above.

FIRST: Name of Corporation The Scotts Miracle-Gro Company
SECOND: Location Marysville Union
(City) (County)
Effective Date (Optional)
Date specified can be no more than 90 days after date of filing. If a date is specified, the date must be a date on or after the date of filing.

[X] Check here if additional provisions are attached

Complete the information in this section if box (2) or (3) is checked above. Completing this section is optional if box (1) is checked.

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

Complete the information in this section if box (1) or (3) is checked.

FOURTH: The number of shares which the corporation is authorized to have outstanding (Please state if shares are common or preferred and their par value if any)

1,500

none

(No. of Shares)

(Type)

(Par Value)

(Refer to instructions if needed)

Completing the information in this section is optional

FIFTH: The following are the names and addresses of the individuals who are to serve as initial Directors.

(Name)

(Street)

NOTE: P.O. Box Addresses are NOT acceptable.

(City)

(State)

(Zip Code)

(Name)

(Street)

NOTE: P.O. Box Addresses are NOT acceptable.

(City)

(State)

(Zip Code)

(Name)

(Street)

NOTE: P.O. Box Addresses are NOT acceptable.

(City)

(State)

(Zip Code)

REQUIRED

Must be authenticated (signed) by an authorized representative

/s/ Joan C. Makley

11/22/04

Authorized Representative

Date

(See Instructions)

Joan C. Makley

(Print Name)

Authorized Representative

Date

(Print Name)

Authorized Representative

Date

(Print Name)

ADDITIONAL PROVISIONS TO THE
ARTICLES OF INCORPORATION OF
THE SCOTTS MIRACLE-GRO COMPANY

FOURTH: The authorized number of shares of the corporation shall be One Thousand and Five Hundred (1,500), consisting of One Thousand (1,000) common shares, each without par value, and Five Hundred (500) preferred shares, each without par value.

The directors of the corporation are authorized to adopt amendments to the Restated Articles of Incorporation in respect of any unissued preferred shares and thereby to fix or change, to the fullest extent now or hereafter permitted by Ohio law: the division of such shares into series and the designation and authorized number of shares of each series; the dividend or distribution rights; dividend rate; liquidation rights, preferences and price; redemption rights and price; sinking fund requirements; voting rights; pre-emptive rights; conversion rights; restrictions on issuance of shares; and such other rights, preferences and limitations as shall not be inconsistent with this Article FOURTH.

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

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

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

NINTH: Notwithstanding any provision of the Ohio Revised Code requiring for any purpose the vote, consent, waiver or release of the holders of shares of the corporation entitling them to exercise two-thirds or any other proportion of the voting power of the corporation or of any class or classes thereof, such action, unless expressly otherwise provided by statute, may be taken by the vote, consent, waiver or release of the holders of the shares entitling them to exercise not less than a majority of the voting power of the corporation or of such class or classes; provided, however, that the affirmative vote of the holders of shares entitling them to exercise not less than two-thirds of the voting power of the corporation, or two-thirds of the voting power of any class or classes of shares of the corporation which entitle the holders thereof to vote in respect of any such matter as a class, shall be required to adopt:

- (1) A proposed amendment to this Article NINTH;
- (2) An agreement of merger or consolidation providing for the proposed merger or consolidation of the corporation with or into one or more other corporations and requiring shareholder approval;
- (3) A proposed combination or majority share acquisition involving the issuance of shares of the corporation and requiring shareholder approval;
- (4) A proposal to sell, exchange, transfer or otherwise dispose of all, or substantially all, the assets, with or without the goodwill, of the corporation; or
- (5) A proposed dissolution of the corporation.



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CERTIFICATE OF AMENDMENT BY
SHAREHOLDERS OR MEMBERS
(Domestic)
Filing Fee \$50.00

(CHECK ONLY ONE(1) BOX)

(1) Domestic for Profit o Amended (122-AMAP) PLEASE READ INSTRUCTIONS [X] Amendment (125-AMDS) (2) Domestic Non-Profit o Amended (126-AMAN) o Amendment (128-AMD)

Complete the general information in this section for the box checked above.

Name of Corporation The Scotts Miracle-Gro Company
Charter Number 1501530
Name of Officer James Hagedorn
Title Chairman, President and Chief Executive Officer

[X] Please check if additional provisions are attached.

The above named Ohio corporation, does hereby certify that:

o A meeting of the o shareholders o directors (non-profit amended articles only)

o members was duly called and held on (Date)

at which meeting a quorum was present in person or by proxy, based upon the quorum present, an affirmative vote was cast which entitled them to exercise % as the voting power of the corporation.

[X] In a writing signed by all of the [X] shareholders o directors (non-profit amended articles only)
o members who would be entitled to the notice of a meeting or such other proportion not less than a majority as the articles of regulations or bylaws permit.

Clause applies if amended box is checked.

Resolved, that the following amended articles of incorporation be and the same are hereby adopted to supercede and take the place of the existing articles of incorporation and all amendments thereto.

**All of the following information must be completed if an amended box is checked.
If an amendment box is checked, complete the areas that apply.**

FIRST: The name of the corporation is: _____

SECOND: The place in the state of Ohio where its principal office is located is in the City of:

(city, village or township) (county)

THIRD: The purposes of the corporation are as follows:

FOURTH: The number of shares which the corporation is authorized to have outstanding is: 100,195,000
(Does not apply to box (2))

REQUIRED Must be authenticated (signed) by an authorized representative (See Instructions)	_____	_____
	/s/ James Hagedorn	March 18, 2005
	Authorized Representative	Date
	James Hagedorn, Chairman,	
	(Print Name) President and Chief Executive Officer	
	_____	_____
	_____	_____
	Authorized Representative	Date

	(Print Name)	

**ADDITIONAL PROVISIONS TO THE
CERTIFICATE OF AMENDMENT BY SHAREHOLDERS
TO
THE ARTICLES OF INCORPORATION OF
THE SCOTTS MIRACLE-GRO COMPANY
(Ohio Charter Number 1501530)**

ARTICLE FOURTH CONTINUED:

The authorized shares of the corporation, being One Hundred Million, One Hundred and Ninety-Five Thousand (100,195,000), consist of One Hundred Million (100,000,000) common shares, each without par value, and One Hundred and Ninety-Five Thousand (195,000) preferred shares, each without par value.

The directors of the corporation are authorized to adopt amendments to the Articles of Incorporation in respect of any unissued preferred shares and thereby to fix or change, to the fullest extent now or hereafter permitted by Ohio law: the division of such shares into series and the designation and authorized number of shares of each series; the dividend or distribution rights; dividend rate; liquidation rights, preferences and price; redemption rights and price; sinking fund requirements; voting rights; pre-emptive rights; conversion rights; restrictions on issuance of shares; and such other rights, preferences and limitations as shall not be inconsistent with this Article FOURTH.

**CODE OF REGULATIONS
OF
THE SCOTTS MIRACLE-GRO COMPANY**

CODE OF REGULATIONS
OF
THE SCOTTS MIRACLE-GRO COMPANY
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CODE OF REGULATIONS

OF

THE SCOTTS MIRACLE-GRO COMPANY

ARTICLE ONE

MEETINGS OF SHAREHOLDERS

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

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

SECTION 1.03. *Place of Meetings.* Meetings of shareholders may be held either within or outside the State of Ohio. Meetings of shareholders may be held in any manner or place determined by the Board of Directors and permitted by Ohio law.

SECTION 1.04. *Notice of Meetings.*

(A) Written notice stating the time, place, if any, and purposes of a meeting of the shareholders, and any other matters related to the conduct of the meeting required by Ohio law to be specified, shall be given by personal delivery, by mail or by any other means of delivery or communication permitted by Ohio law. Any such notice shall be given not less than seven nor more than sixty days before the date of the meeting, (1) to every shareholder of record entitled to notice of the meeting, (2) by or at the direction of the chairman of the board, the president or the secretary. If mailed or sent by a delivery service permitted by Ohio law, the notice shall be sent to the shareholder at the shareholder's address as it appears on the records of the corporation. If transmitted by another means of communications in the manner permitted by Ohio law, the notice shall be transmitted to the address furnished by the shareholder for such transmissions. Notice of adjournment of a meeting need not be given if the time and place, if any, to which it is adjourned and any other matters related to the conduct of the adjourned meeting required by Ohio law to be specified, shall be fixed and announced at such meeting. In the event of a transfer of shares after the record date for determining the shareholders who are entitled to receive notice of a meeting of shareholders, it shall not be necessary to give notice to the transferee. Nothing herein contained shall prevent the setting of a record date in the manner provided by law, the Articles or the Regulations for the determination of shareholders who are entitled to receive notice of or to vote at any meeting of shareholders or for any purpose required or permitted by law.

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

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

prior to or at, the commencement of the meeting, shall be deemed to be a waiver by such shareholder of notice of such meeting.

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

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

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

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

SECTION 1.10. *Proxies.* At meetings of the shareholders, any shareholder of record entitled to vote thereat may be represented and may vote by proxy or proxies appointed by an instrument in writing signed by such shareholder or appointed in any other manner permitted by Ohio law. Any such instrument in writing or record of any such appointment shall be filed with or received by the secretary of the meeting before the person holding such proxy shall be allowed to vote thereunder. No appointment of a proxy is valid after the expiration of eleven months after it is made unless the writing or other communication which appoints such proxy specifies the date on which it is to expire or the length of time it is to continue in force.

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

ARTICLE TWO

DIRECTORS

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

SECTION 2.02. *Number and Classification of Directors and Term of Office.*

(A) Until changed pursuant to Article FOURTH of the Amended Articles of Incorporation, by the amendment of the Regulations, by the adoption of new regulations or by action of the directors pursuant

to subsection (C) hereof, the number of directors of the corporation shall be nine, divided into three classes, each of which shall consist of not less than three directors nor more than five directors as may be determined by the directors or as may be required by the provisions of Section 2(c) of Article FOURTH of the Amended Articles of Incorporation. The number of directors in each class shall be, to the greatest extent possible, uniform. The election of each class of directors shall be a separate election. At the 1995 annual meeting of shareholders an election shall be held to elect three persons to serve as directors for three years and until their successors are elected, an election shall be held to elect three persons to serve as directors for two years and until their successors are elected and an election shall be held to elect three persons to serve as directors for one year and until their successors are elected.

(B) At each annual meeting of shareholders after the 1995 annual meeting, directors shall be elected to serve for terms of three years, so that the term of office of one class of directors shall expire in each year.

(C) The directors may change the number of directors and may fill any vacancy that is created by an increase in the number of directors; *provided, however*, that the directors may not reduce the number of directors to less than three or increase the number of directors to more than twelve.

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

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

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

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

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

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

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

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

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

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

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

SECTION 2.10. *Executive and Other Committees.* The directors may create an executive committee or any other committee of directors, to consist of one or more directors (subject to any other requirements as to the number of directors serving on a committee that may be imposed by law or the rules and regulations of the Securities and Exchange Commission or any other regulatory authority), and may authorize the delegation to such executive committee or other committees, of any of the authority of the directors, however conferred, other than that of filling vacancies among the directors or in the executive committee or in any other committee of the directors.

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

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

SECTION 2.11. *Compensation.* Directors shall be entitled to receive as compensation for services rendered and expenses incurred as directors, such amounts as the directors may determine.

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

ARTICLE THREE

OFFICERS

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

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

SECTION 3.03. *Duties of the Chairman of the Board.* The chairman of the board, if there shall be such an officer, shall preside at all meetings of the directors and of the shareholders. He shall perform such other duties and exercise such other powers as the directors shall from time to time assign to him.

SECTION 3.04. *Duties of the Chief Executive Officer.* The chief executive officer of the corporation shall have, subject to the control of the directors, general supervision and management over the business of the corporation and over its officers and employees. The chief executive officer shall perform such other duties and exercise such other powers as the directors may from time to time assign to him.

SECTION 3.05. *Duties of the President.* The president of the corporation shall have, subject to the control of the directors and, if there be one, the chief executive officer, general and active supervision and management over the business of the corporation and over its officers and employees. The president shall perform such other duties and exercise such other powers as the directors may from time to time assign to him.

SECTION 3.06. *Duties of the Vice Presidents.* Each vice president shall perform such duties and exercise such powers as may be assigned to him from time to time by the chairman of the board or the president. In the absence of the chairman of the board or the president, the duties of the chairman of the board or the president shall be performed and his powers may be exercised by such vice president as shall be designated by the chairman of the board or the president, or failing such designation, such duties shall be performed and such powers may be exercised by each vice president in the order of their earliest election to that office, subject in any case to review and superseding action by the chairman of the board or the president.

SECTION 3.07. *Duties of the Secretary.* The secretary shall have the following powers and duties:

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

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

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

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

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

(F) He shall have charge of the stock books and ledgers of the corporation and shall cause the stock and transfer books to be kept in such manner as to show at any time the number of shares of

the corporation of each class issued and outstanding, the names (alphabetically arranged) and the addresses of the holders of record of such shares, the number of shares held by each holder and the date as of which each became such holder of record.

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

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

SECTION 3.08. *Duties of the Treasurer.* The treasurer shall have the following powers and duties:

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

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

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

(D) He shall render to the board of directors, the chairman of the board or the president, whenever requested, a statement of the financial condition of the corporation and of all his transactions as treasurer, and render a full financial report at the annual meeting of the shareholders, if called upon to do so.

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

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

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

ARTICLE FOUR

SHARES

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

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

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

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

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

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

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

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

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

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

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

ARTICLE FIVE

INDEMNIFICATION AND INSURANCE

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

manner he reasonably believed to be in or not opposed to the best interests of the corporation, and with respect to any criminal matter, to have had no reasonable cause to believe his conduct was unlawful, and the termination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, rebut such presumption.

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

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

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

SECTION 5.03. *Indemnification for Expenses.* Anything contained in the Regulations or elsewhere to the contrary notwithstanding, to the extent that an officer or director of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 5.01, or in defense of any claim, issue or matter therein, he shall be promptly indemnified by the corporation against expenses (including, without limitation, attorneys' fees, filing fees, court reporters' fees and transcript costs) actually and reasonably incurred by him in connection therewith.

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

receipt of such notification such person shall have the right to petition the Court of Common Pleas of Union County, Ohio or the court in which such action or suit was brought, if any, to review the reasonableness of such determination.

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

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

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

SECTION 5.06. *Article FIVE Not Exclusive.* The indemnification provided by this Article FIVE shall not be exclusive of, and shall be in addition to, any other rights to which any person seeking indemnification may be entitled under the Articles or the Regulations or any agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be an officer or director of the corporation and shall inure to the benefit of the heirs, executors, and administrators of such a person.

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

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

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

(B) References to an "other enterprise" shall include employee benefit plans; references to a "fine" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director,

officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the corporation” within the meaning of that term as used in this Article FIVE.

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

ARTICLE SIX

MISCELLANEOUS

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

SECTION 6.02. *Action by Shareholders or Directors Without a Meeting.* Anything contained in the Regulations to the contrary notwithstanding, any action which may be authorized or taken at a meeting of the shareholders or of the directors or of a committee of the directors, as the case may be, may be authorized or taken without a meeting with the affirmative vote or approval of, and in a writing or writings signed by, all the shareholders who would be entitled to notice of a meeting of the shareholders held for such purpose, or all the directors, or all the members of such committee of the directors, respectively, which writings shall be filed with or entered upon the records of the corporation.

JOINDER AGREEMENT

JOINDER AGREEMENT, dated as of March 18, 2005, entered into by THE SCOTTS MIRACLE-GRO COMPANY, an Ohio corporation (the "New Borrower"), relating to the Second Amended and Restated Credit Agreement, dated as of October 22, 2003 (as amended by the First Amendment, dated as of August 13, 2004, and the Second Amendment, dated as of November 5, 2004, the "Credit Agreement") by and among The Scotts Company (the "Existing Borrower"), certain subsidiaries of the Existing Borrower from time to time party thereto, the lenders from time to time party thereto, and JPMorgan Chase Bank, N.A. (formerly known as JPMorgan Chase Bank), as administrative agent (in such capacity, the "Administrative Agent"). Capitalized terms used but not defined herein shall have the meanings given such terms in the Credit Agreement.

WITNESSETH:

WHEREAS, concurrently with the execution of this Joinder Agreement, the Existing Borrower will effect a corporate reorganization, as permitted by subsection 7.3(d) of the Credit Agreement;

WHEREAS, pursuant to subsection 7.3(d)(i) of the Credit Agreement, the Existing Borrower has elected that the New Borrower will assume and agree to perform all covenants, agreements, rights, obligations and liabilities of the Existing Borrower under the Credit Agreement and the other Loan Documents;

NOW, THEREFORE, in consideration of the premises, the parties hereto hereby agree as follows:

1. The New Borrower hereby acknowledges that it has received and reviewed a copy of the Credit Agreement and the other Loan Documents, and shall assume and agree to perform all covenants, agreements, rights, obligations and liabilities of the Existing Borrower under the Credit Agreement and the other Loan Documents from and after the date hereof.

2. The New Borrower represents and warrants that the representations and warranties contained in Section 4 of the Credit Agreement as they relate to such New Borrower are true and correct on the date hereof.

3. From and after the date hereof, all references in the Credit Agreement to the defined terms "Scotts" and "Borrower" shall refer to the New Borrower.

4. The address, taxpayer identification number and jurisdiction of incorporation of the New Borrower is set forth in Annex I to this Joinder Agreement.

5. THIS JOINDER AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, each of the undersigned has caused this Joinder Agreement to be duly executed and delivered by its proper and duly authorized officer as of the day and year first above written.

THE SCOTTS MIRACLE-GRO COMPANY

By: /s/ James Hagedorn
Name: James Hagedorn
Title: Chairman, President and Chief Executive Officer

ACKNOWLEDGED AND AGREED TO:

THE SCOTTS COMPANY

By: /s/ Edward R. Claggett
Name: Edward R. Claggett
Title: Vice President

JPMORGAN CHASE BANK, N.A. (formerly known as JPMorgan Chase Bank), as Administrative Agent

By: /s/ Randolph Cates
Name: Randolph Cates
Title: Vice President

SUPPLEMENTAL INDENTURE

SUPPLEMENTAL INDENTURE (this “*Supplemental Indenture*”) dated as of October 15, 2004, among Smith & Hawken, Ltd. (the “*Guaranteeing Subsidiary*”), a subsidiary of The Scotts Company (or its successor), a corporation organized under the laws of Ohio (the “*Company*”), and U.S. Bank National Association, as trustee under the indenture referred to below (the “*Trustee*”).

WITNESSETH

WHEREAS, the Company has heretofore executed and delivered to the Trustee an indenture (the “*Indenture*”), dated as of October 8, 2003, providing for the issuance of an unlimited aggregate principal amount of 6.625% Senior Subordinated Notes due 2013 (the “*Notes*”);

WHEREAS, the Indenture provides that under certain circumstances the Guaranting Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which the Guaranting Subsidiary shall unconditionally guarantee all of the Company’s Obligations under the Notes and the Indenture on the terms and conditions set forth herein (the “*Subsidiary Guarantee*”); and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Guaranting Subsidiary and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

1. *Capitalized Terms*. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

2. *Agreement to Guarantee*. The Guaranting Subsidiary hereby agrees as follows:

(a) Along with all Guarantors named in the Indenture, to jointly and severally Guarantee to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of the Indenture, the Notes or the obligations of the Company hereunder or thereunder, that:

(i) the principal of and interest on the Notes and Registration Default Damages, if any, will be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if

lawful, and all other obligations of the Company to the Holders or the Trustees hereunder or thereunder will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and

- (ii) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors shall be jointly and severally obligated to pay the same immediately.
- (b) The obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or the Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Company, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor.
- (c) The following is hereby waived: diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest, notice and all demands whatsoever.
- (d) This Subsidiary Guarantee shall not be discharged except by complete performance of the obligations contained in the Notes and the Indenture.
- (e) If any Holder or the Trustee is required by any court or otherwise to return to the Company, the Guarantors, or any Custodian, Trustee, liquidator or other similar official acting in relation to either the Company or the Guarantors, any amount paid by either to the Trustee or such Holder, this Subsidiary Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.
- (f) The Guarantoring Subsidiary shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby.
- (g) As between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 of the Indenture for the purposes of this Subsidiary Guarantee, notwithstanding any stay,

injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Article 6 of the Indenture, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of this Subsidiary Guarantee.

(h) The Guarantors shall have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Guarantee.

(i) The obligations hereunder shall be subject to the subordination provisions of the Indenture.

3. *Execution and Delivery.* Each Guaranteeing Subsidiary agrees that the Subsidiary Guarantees shall remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Subsidiary Guarantee.

4. *Guaranteeing Subsidiary May Consolidate, Etc. on Certain Terms.*

(a) The Guaranteeing Subsidiary may not consolidate with or merge with or into (whether or not such Guarantor is the surviving Person) another corporation, Person or entity whether or not affiliated with such Guarantor unless:

(i) subject to Section 11.05 of the Indenture, the Person formed by or surviving any such consolidation or merger (if other than a Guarantor) unconditionally assumes all the obligations of such Guarantor, pursuant to a supplemental indenture in form and substance reasonably satisfactory to the Trustee, under the Notes, the Indenture, the Registration Rights Agreement and the Subsidiary Guarantee on the terms set forth herein or therein; and

(ii) immediately after giving effect to such transaction, no Default or Event of Default exists.

(b) In case of any such consolidation, merger, sale or conveyance and upon the assumption by the successor Person, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the Subsidiary Guarantee endorsed upon the Notes and the due and punctual performance of all of the covenants and conditions of the Indenture to be performed by the Guarantor, such successor Person shall succeed to and be substituted for the Guarantor with the same effect as if it had been named herein as a Guarantor. Such successor Person thereupon may cause to be signed any or all of the Subsidiary Guarantees to be endorsed upon all of the Notes issuable hereunder which theretofore shall

not have been signed by the Company and delivered to the Trustee. All the Subsidiary Guarantees so issued shall in all respects have the same legal rank and benefit under the Indenture as the Subsidiary Guarantees theretofore and thereafter issued in accordance with the terms of the Indenture as though all of such Subsidiary Guarantees had been issued at the date of the execution hereof.

- (c) Except as set forth in Articles 4 and 5 of the Indenture, and notwithstanding clauses (a) and (b) above, nothing contained in the Indenture or in any of the Notes shall prevent any consolidation or merger of a Guarantor with or into the Company or another Guarantor, or shall prevent any sale or conveyance of the property of a Guarantor as an entirety or substantially as an entirety to the Company or another Guarantor.

5. *Releases.*

- (a) In the event of a sale or other disposition of all of the assets of any Guarantor, by way of merger, consolidation or otherwise, or a sale or other disposition of all to the capital stock of any Guarantor, then such Guarantor (in the event of a sale or other disposition, by way of merger, consolidation or otherwise, of all of the capital stock of such Guarantor) or the corporation acquiring the property (in the event of a sale or other disposition of all or substantially all of the assets of such Guarantor) will be released and relieved of any obligations under its Subsidiary Guarantee; *provided* that the Net Proceeds of such sale or other disposition are applied in accordance with the applicable provisions of the Indenture, including without limitation Section 4.10 of the Indenture. Upon delivery by the Company to the Trustee of an Officers' Certificate and an Opinion of Counsel to the effect that such sale or other disposition was made by the Company in accordance with the provisions of the Indenture, including without limitation Section 4.10 of the Indenture, the Trustee shall execute any documents reasonably required in order to evidence the release of any Guarantor from its obligations under its Subsidiary Guarantee.
- (b) Any Guarantor not released from its obligations under its Subsidiary Guarantee shall remain liable for the full amount of principal of and interest on the Notes and for the other obligations of any Guarantor under the Indenture as provided in Article 11 of the Indenture.

6. *No Recourse Against Others.* No past, present or future director, officer, employee, incorporator or stockholder of the Guaranteeing Subsidiary, as such, shall have any liability for any obligations of the Company or any Guaranteeing Subsidiary under the Notes, any Subsidiary Guarantees, the Registration Rights Agreement, the Indenture or this Supplemental Indenture or for any claim based on, in respect of, or by reason of, such

obligations or their creation. Each Holder of the Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

7. NEW YORK LAW TO GOVERN. SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

8. *Counterparts*. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

9. *Effect of Headings*. The Section headings herein are for convenience only and shall not affect the construction thereof.

10. *The Trustee*. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed and attested, all as of the date first above written.

Dated: October 15, 2004

SMITH & HAWKEN, LTD

By: /s/ Paul Crawley

Name: Paul Crawley

Title: Chief Financial Officer

U.S. BANK NATIONAL ASSOCIATION
as Trustee

By: /s/ Cauna M. Silva

Name: Cauna M. Silva

Title: Vice President

SECOND SUPPLEMENTAL INDENTURE

THIS SECOND SUPPLEMENTAL INDENTURE (this "*Second Supplemental Indenture*") dated as of March 18, 2005, is among The Scotts Company, an Ohio corporation (the "*Company*"), The Scotts Miracle-Gro Company, an Ohio corporation (the "*Holding Company*"), The Scotts Company LLC, an Ohio limited liability company (the "*Guaranteeing Subsidiary*"), the subsidiary guarantors named on the signature pages hereto (collectively, the "*Guarantors*") and U.S. Bank National Association, as trustee under the Indenture (as defined below) (the "*Trustee*").

WITNESSETH

WHEREAS, the Company and the Guarantors have heretofore executed and delivered to the Trustee and the Trustee has heretofore executed and delivered an indenture, dated as of October 8, 2003, as amended by that certain Supplemental Indenture, dated as of October 15, 2004 (as so amended, the "*Indenture*"), providing for the issuance of an unlimited aggregate principal amount of 6.625% Senior Subordinated Notes due 2013 (the "*Notes*");

WHEREAS, the Company desires to restructure its corporate structure into a holding company structure (the "*Restructuring*"), as permitted by Section 5.01(b) of the Indenture;

WHEREAS, in connection with the Restructuring, the Company has incorporated the Holding Company as a new, wholly owned direct subsidiary of the Company, and the Holding Company has in turn formed the Guaranteeing Subsidiary as a new, wholly owned direct subsidiary of the Holding Company and a second-tier subsidiary of the Company;

WHEREAS, to effectuate the Restructuring, the Company, the Holding Company and the Guaranteeing Subsidiary have executed and delivered an Agreement and Plan of Merger, dated December 13, 2004, pursuant to which the Company will be merged with and into the Guaranteeing Subsidiary (the "*Merger*"), with the Guaranteeing Subsidiary surviving the Merger as a wholly owned first-tier subsidiary of the Holding Company;

WHEREAS, immediately upon the effective time of the Merger (the "*Effective Time*"), each of the Company's common shares will be converted automatically into one common share of the Holding Company, and the Guaranteeing Subsidiary will be the successor to the Company;

WHEREAS, pursuant to this Second Supplemental Indenture, the Holding Company shall assume and agree to perform all of the covenants, agreements, rights, obligations and liabilities of the Company under the Notes and the Indenture as of the Effective Time;

WHEREAS, pursuant to this Second Supplemental Indenture, the Guaranteeing Subsidiary shall unconditionally guarantee all of the Holding Company's obligations under the Notes and the Indenture (the "*Subsidiary Guarantee*") as of the Effective Time; and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Second Supplemental Indenture.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

1. *Capitalized Terms.* Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

2. *Assignment of Rights and Obligations under the Notes and Indenture.* Pursuant to Section 5.01(b) of the Indenture, as of the Effective Time, (a) the Holding Company hereby assumes and agrees to perform and discharge all covenants, agreements, rights, obligations and liabilities of the Company under and with respect to the Notes and the Indenture; (b) the Holding Company shall succeed to, and be substituted for, the Company and may exercise every right and power of the Company under and with respect to the Notes and the Indenture with the same effect as if the Holding Company had been named as the Company therein; and (c) all references in the Notes and the Indenture to the defined term "Company" shall refer to the Holding Company.

3. *Agreement to Guarantee.* The Guaranteeing Subsidiary hereby agrees as follows as of the Effective Time:

- (a) Along with all Guarantors named in the Indenture, to jointly and severally Guarantee to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of the Indenture, the Notes or the obligations of the Holding Company hereunder or thereunder, that:
- (i) the principal of and interest on the Notes and Registration Default Damages, if any, will be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other obligations of the Holding Company to the Holders or the Trustees hereunder or thereunder will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and
 - (ii) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. Failing payment when due of any amount so guaranteed or any performance so guaranteed for

whatever reason, the Guarantors shall be jointly and severally obligated to pay the same immediately.

- (b) The obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or the Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Holding Company, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor.
- (c) The following is hereby waived: diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Holding Company, any right to require a proceeding first against the Holding Company, protest, notice and all demands whatsoever.
- (d) This Subsidiary Guarantee shall not be discharged except by complete performance of the obligations contained in the Notes and the Indenture.
- (e) If any Holder or the Trustee is required by any court or otherwise to return to the Holding Company, the Guarantors, or any Custodian, Trustee, liquidator or other similar official acting in relation to either the Holding Company or the Guarantors, any amount paid by either to the Trustee or such Holder, this Subsidiary Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.
- (f) The Guaranteeing Subsidiary shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby.
- (g) As between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 of the Indenture for the purposes of this Subsidiary Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Article 6 of the Indenture, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of this Subsidiary Guarantee.
- (h) The Guarantors shall have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Guarantee.

(i) The obligations hereunder shall be subject to the subordination provisions of the Indenture.

4. *Execution and Delivery.* Each Guaranting Subsidiary agrees that the Subsidiary Guarantees shall remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Subsidiary Guarantee.

5. *Guaranting Subsidiary May Consolidate, Etc. on Certain Terms.*

- (a) The Guaranting Subsidiary may not consolidate with or merge with or into (whether or not such Guarantor is the surviving Person) another corporation, Person or entity whether or not affiliated with such Guarantor unless:
- (i) subject to Section 11.05 of the Indenture, the Person formed by or surviving any such consolidation or merger (if other than a Guarantor) unconditionally assumes all the obligations of such Guarantor, pursuant to a supplemental indenture in form and substance reasonably satisfactory to the Trustee, under the Notes, the Indenture, the Registration Rights Agreement and the Subsidiary Guarantee on the terms set forth herein or therein; and
 - (ii) immediately after giving effect to such transaction, no Default or Event of Default exists.
- (b) In case of any such consolidation, merger, sale or conveyance and upon the assumption by the successor Person, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the Subsidiary Guarantee endorsed upon the Notes and the due and punctual performance of all of the covenants and conditions of the Indenture to be performed by the Guarantor, such successor Person shall succeed to and be substituted for the Guarantor with the same effect as if it had been named herein as a Guarantor. Such successor Person thereupon may cause to be signed any or all of the Subsidiary Guarantees to be endorsed upon all of the Notes issuable hereunder which theretofore shall not have been signed by the Holding Company and delivered to the Trustee. All the Subsidiary Guarantees so issued shall in all respects have the same legal rank and benefit under the Indenture as the Subsidiary Guarantees theretofore and thereafter issued in accordance with the terms of the Indenture as though all of such Subsidiary Guarantees had been issued at the date of the execution hereof.
- (c) Except as set forth in Articles 4 and 5 of the Indenture, and notwithstanding clauses (a) and (b) above, nothing contained in the Indenture or in any of the Notes shall prevent any consolidation or merger

of a Guarantor with or into the Holding Company or another Guarantor, or shall prevent any sale or conveyance of the property of a Guarantor as an entirety or substantially as an entirety to the Holding Company or another Guarantor.

6. *Releases.*

- (a) In the event of a sale or other disposition of all of the assets of any Guarantor, by way of merger, consolidation or otherwise, or a sale or other disposition of all to the capital stock of any Guarantor, then such Guarantor (in the event of a sale or other disposition, by way of merger, consolidation or otherwise, of all of the capital stock of such Guarantor) or the corporation acquiring the property (in the event of a sale or other disposition of all or substantially all of the assets of such Guarantor) will be released and relieved of any obligations under its Subsidiary Guarantee; *provided* that the Net Proceeds of such sale or other disposition are applied in accordance with the applicable provisions of the Indenture, including without limitation Section 4.10 of the Indenture. Upon delivery by the Holding Company to the Trustee of an Officers' Certificate and an Opinion of Counsel to the effect that such sale or other disposition was made by the Holding Company in accordance with the provisions of the Indenture, including without limitation Section 4.10 of the Indenture, the Trustee shall execute any documents reasonably required in order to evidence the release of any Guarantor from its obligations under its Subsidiary Guarantee.
- (b) Any Guarantor not released from its obligations under its Subsidiary Guarantee shall remain liable for the full amount of principal of and interest on the Notes and for the other obligations of any Guarantor under the Indenture as provided in Article 11 of the Indenture.

7. *No Recourse Against Others.* No past, present or future director, officer, employee, incorporator or stockholder of the Guaranteeing Subsidiary, as such, shall have any liability for any obligations of the Holding Company or any Guaranteeing Subsidiary under the Notes, any Subsidiary Guarantees, the Registration Rights Agreement, the Indenture or this Supplemental Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of the Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

8. NEW YORK LAW TO GOVERN. SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

9. *Counterparts.* The parties may sign any number of copies of this Second Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

10. *Effect of Headings.* The Section headings herein are for convenience only and shall not affect the construction thereof.

11. *The Trustee.* The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Second Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Company, the Guarantors, the Holding Company and the Guaranteeing Subsidiary.

[Remainder of page left blank intentionally; signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Second Supplemental Indenture to be duly executed and attested, all as of the date first above written.

Dated as of March 18, 2005

THE SCOTTS COMPANY

By: /s/ James Hagedorn
Name: James Hagedorn
Title: Chairman, President and Chief Executive Officer

By: /s/ Michael P. Kelty
Name: Michael P. Kelty
Title: Executive Vice President

THE SCOTTS MIRACLE-GRO COMPANY

By: /s/ James Hagedorn
Name: James Hagedorn
Title: Chairman, President and Chief Executive Officer

By: /s/ Michael P. Kelty
Name: Michael P. Kelty
Title: Executive Vice President

THE SCOTTS COMPANY LLC

By: /s/ James Hagedorn
Name: James Hagedorn
Title: Chairman, President and Chief Executive Officer

By: /s/ Michael P. Kelty
Name: Michael P. Kelty
Title: Executive Vice President

SCOTTS MANUFACTURING COMPANY

By: /s/ Michael P. Kelty
Name: Michael P. Kelty
Title: Executive Vice President

SCOTTS PROFESSIONAL PRODUCTS CO.

By: /s/ Michael P. Kelty
Name: Michael P. Kelty
Title: Executive Vice President

SCOTTS PRODUCTS CO.

By: /s/ Michael P. Kelty
Name: Michael P. Kelty
Title: Executive Vice President

SCOTTS-SIERRA HORTICULTURAL PRODUCTS
COMPANY

By: /s/ Michael P. Kelty
Name: Michael P. Kelty
Title: Executive Vice President

OMS INVESTMENTS, INC.

By: /s/ David M. Aronowitz
Name: David M. Aronowitz
Title: Executive Vice President and Secretary

HYPONEX CORPORATION

By: /s/ Michael P. Kelty
Name: Michael P. Kelty
Title: Executive Vice President

SWISS FARMS PRODUCTS, INC.

By: /s/ David M. Aronowitz
Name: David M. Aronowitz
Title: Executive Vice President and Secretary

SCOTTS TEMECULA OPERATIONS, LLC

By: /s/ Michael P. Kelty

Name: Michael P. Kelty

Title: Executive Vice President

SCOTTS-SIERRA INVESTMENTS, INC.

By: /s/ David M. Aronowitz

Name: David M. Aronowitz

Title: Executive Vice President and Secretary

SCOTTS-SIERRA CROP PROTECTION COMPANY

By: /s/ Michael P. Kelty

Name: Michael P. Kelty

Title: Executive Vice President

MIRACLE-GRO LAWN PRODUCTS, INC.

By: /s/ Michael P. Kelty

Name: Michael P. Kelty

Title: Executive Vice President

EG SYSTEMS, INC. (D/B/A SCOTTS LAWNSERVICE)

By: /s/ Michael P. Kelty

Name: Michael P. Kelty

Title: Executive Vice President

SMITH & HAWKEN, LTD.

By: /s/ Andrew B. Coogle

Name: Andrew B. Coogle

Title: Vice President

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: /s/ Cauna M. Silva

Name: Cauna M. Silva

Title: Vice President

Schedule 1

- (1) SCOTTS MANUFACTURING COMPANY
- (2) SCOTTS PROFESSIONAL PRODUCTS CO.
- (3) SCOTTS PRODUCTS CO.
- (4) SCOTTS-SIERRA HORTICULTURAL PRODUCTS COMPANY
- (5) OMS INVESTMENTS, INC.
- (6) HYPONEX CORPORATION
- (7) SWISS FARMS PRODUCTS, INC.
- (8) SCOTTS TEMECULA OPERATIONS, LLC
- (9) SCOTTS-SIERRA INVESTMENTS, INC.
- (10) SCOTTS-SIERRA CROP PROTECTION COMPANY
- (11) MIRACLE-GRO LAWN PRODUCTS, INC.
- (12) EG SYSTEMS, INC. (D/B/A SCOTTS LAWNSERVICE)
- (13) SMITH & HAWKEN, LTD.

BORROWER AND DOMESTIC SUBSIDIARY
GUARANTEE AND COLLATERAL AGREEMENT

THIS BORROWER AND DOMESTIC SUBSIDIARY GUARANTEE AND COLLATERAL AGREEMENT, dated as of December 4, 1998, made by each of the signatories hereto (together with any other entity that may become a party hereto as provided herein, the "Grantors"), in favor of THE CHASE MANHATTAN BANK, as Administrative Agent (in such capacity, the "Administrative Agent") for the banks and other financial institutions (the "Lenders") from time to time parties to the Credit Agreement, dated as of December 4, 1998 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among The Scotts Company, an Ohio corporation (the "Borrower"), the Subsidiary Borrowers, the Lenders, the Administrative Agent, Credit Lyonnais Chicago Branch, as Co-Documentation Agent, NBD Bank, as Co-Documentation Agent, and Salomon Smith Barney Inc., as Syndication Agent.

WITNESSETH:

WHEREAS, pursuant to the Credit Agreement, the Lenders have severally agreed to make extensions of credit to the Borrower and the Subsidiary Borrowers upon the terms and subject to the conditions set forth therein;

WHEREAS, the Borrower and each Subsidiary Borrower is a member of an affiliated group of companies that includes each other Grantor;

WHEREAS, the proceeds of the extensions of credit under the Credit Agreement will be used in part to enable the Borrower and each Subsidiary Borrower to make valuable transfers to one or more of the other Grantors in connection with the operation of their respective businesses;

WHEREAS, the Borrower, each Subsidiary Borrower and the other Grantors are engaged in related businesses, and each Grantor will derive substantial direct and indirect benefit from the making of the extensions of credit under the Credit Agreement; and

WHEREAS, it is a condition precedent to the obligation of the Lenders to make their respective extensions of credit to the Borrower and any Subsidiary Borrower under the Credit Agreement that the Grantors shall have executed and delivered this Agreement to the Administrative Agent for the ratable benefit of the Lenders;

NOW, THEREFORE, in consideration of the premises and to induce the Administrative Agent and the Lenders to enter into the Credit Agreement and to induce the Lenders to make their respective extensions of credit to the Borrower and each Subsidiary Borrower thereunder, each Grantor hereby agrees with the Administrative Agent, for the ratable benefit of the Lenders, as follows:

SECTION 1. DEFINED TERMS

1.1 Definitions. (a) Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement, and the following terms are used herein as defined in the New York UCC: Certificated Security, Chattel Paper, Documents, Equipment, Farm Products, Instruments and Inventory.

(b) The following terms shall have the following meanings:

“Agreement”: this Borrower and Domestic Subsidiary Guarantee and Collateral Agreement, as the same may be amended, supplemented or otherwise modified from time to time.

“Borrower Obligations”: the collective reference to the unpaid principal of and interest on the Loans and Reimbursement Obligations and all other obligations and liabilities of the Borrower (including, without limitation, interest accruing at the then applicable rate provided in the Credit Agreement after the maturity of the Loans and Reimbursement Obligations and interest accruing at the then applicable rate provided in the Credit Agreement after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) to the Administrative Agent or any Lender (or, in the case of any Lender Hedge Agreement, any Affiliate of any Lender), whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, the Credit Agreement, this Agreement, the other Loan Documents, any Letter of Credit, any Lender Hedge Agreement or any other document made, delivered or given in connection with any of the foregoing, in each case whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to the Administrative Agent or to the Lenders that are required to be paid by the Borrower pursuant to the terms of any of the foregoing agreements).

“Borrower’s Guarantor Obligations”: without duplicating any Borrower Obligations, all obligations and liabilities of the Borrower which may arise under or in connection with this Agreement (including, without limitation, Section 2) or any other Loan Document to which the Borrower is a party, whether on account of guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to the Administrative Agent or to the Lenders that are required to be paid by the Borrower pursuant to the terms of this Agreement or any other Loan Document).

“Collateral”: as defined in Section 4, provided that “Collateral” shall in no event include any present or future property wholly or partially situated in Australia as of the date hereof or at any time following the date hereof.

“Collateral Account”: any collateral account established by the Administrative Agent as provided in Section 6.1 or 6.4.

“Copyrights”: (i) all copyrights arising under the laws of the United States, any other country or any political subdivision thereof, whether registered or unregistered and whether published or unpublished (including, without limitation, those listed in Schedule 6), all registrations and recordings thereof, and all applications in connection therewith, including, without limitation, all registrations, recordings and applications in the United States Copyright Office, and (ii) the right to obtain all renewals thereof.

“Copyright Licenses”: any written agreement naming any Grantor as licensor or licensee (including, without limitation, those listed in Schedule 6), granting any right under any Copyright, including, without limitation, the grant of rights to manufacture, distribute, exploit and sell materials derived from any Copyright.

“Deposit Account”: as defined in the Uniform Commercial Code of any applicable jurisdiction and, in any event, including, without limitation, any demand, time, savings, passbook or like account maintained with a depository institution.

“Foreign Subsidiary”: any Subsidiary organized under the laws of any jurisdiction outside the United States of America.

“Foreign Subsidiary Capital Stock”: the Capital Stock of any Foreign Subsidiary.

“General Intangibles”: all “general intangibles” as such term is defined in Section 9-106 of the New York UCC and, in any event, including, without limitation, with respect to any Grantor, all contracts, agreements, instruments and indentures in any form, and portions thereof, to which such Grantor is a party or under which such Grantor has any right, title or interest or to which such Grantor or any property of such Grantor is subject, as the same may from time to time be amended, supplemented or otherwise modified, including, without limitation, (i) all rights of such Grantor to receive moneys due and to become due to it thereunder or in connection therewith, (ii) all rights of such Grantor to damages arising thereunder and (iii) all rights of such Grantor to perform and to exercise all remedies thereunder, in each case to the extent the grant by such Grantor of a security interest pursuant to this Agreement in its right, title and interest in such contract, agreement, instrument or indenture is not prohibited by such contract, agreement, instrument or indenture without the consent of any other party thereto, would not give any other party to such contract, agreement, instrument or indenture the right to terminate its obligations thereunder, or is permitted with consent if all necessary consents to such grant of a security interest have been obtained from the other parties thereto (it being understood that the foregoing shall not be deemed to obligate such Grantor to obtain such consents); provided, that the foregoing limitation shall not affect, limit, restrict or impair the grant by such Grantor of a security interest pursuant to this Agreement in any Receivable or any money or other amounts due or to become due under any such contract, agreement, instrument or indenture.

“Guarantor Obligations”: with respect to any Guarantor, without duplicating any Subsidiary Borrower Obligations, all obligations and liabilities of such Guarantor which may arise under or in connection with this Agreement (including, without limitation, Section 3) or any other Loan Document to which such Guarantor is a party, in each case whether on account of guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to the Administrative Agent or to the Lenders that are required to be paid by such Guarantor pursuant to the terms of this Agreement or any other Loan Document).

“Guarantors”: the collective reference to each Grantor other than the Borrower. For the avoidance of doubt, notwithstanding any other provision of this Agreement, the parties hereto expressly agree that no Foreign Subsidiary shall be a Guarantor.

“Intellectual Property”: (a) the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including, without limitation, the Copyrights, the Copyright Licenses, the Patents, the Patent Licenses, the Trademarks and the Trademark Licenses, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

“Intercompany Note”: any promissory note evidencing loans made by any Grantor to the Borrower or any of its Subsidiaries.

“Investment Property”: the collective reference to (i) all “investment property” as such term is defined in Section 9-115 of the New York UCC (other than any Foreign Subsidiary Capital Stock) and (ii) whether or not constituting “investment property” as so defined, all Pledged Notes and all Pledged Stock.

“Issuers”: the collective reference to each issuer of any Investment Property.

“Lender Hedge Agreements”: all interest rate swaps, caps or collar agreements or similar arrangements entered into by the Borrower with any Lender (or any Affiliate of any Lender) providing for protection against fluctuations in interest rates, currency exchange rates or commodity prices or the exchange of nominal interest obligations, either generally or under specific contingencies.

“Monsanto Receivables”: all Receivables collected, received and/or held by any Grantor for the benefit of the Monsanto Company in connection with the Roundup Agreement or the Ortho Acquisition.

“New York UCC”: the Uniform Commercial Code as from time to time in effect in the State of New York.

“Obligations”: (i) in the case of the Borrower, the Borrower Obligations and the Borrower’s Guarantor Obligations, (ii) in the case of each Guarantor which is also a Domestic Subsidiary Borrower, its Subsidiary Borrower Obligations, and (iii) in the case of each Guarantor (whether or not a Domestic Subsidiary Borrower), its Guarantor Obligations.

“Patents”: (i) all letters patent of the United States, any other country or any political subdivision thereof, all reissues and extensions thereof and all goodwill associated therewith, including, without limitation, any of the foregoing referred to in Schedule 6, (ii) all applications for letters patent of the United States or any other country and all divisions, continuations and continuations-in-part thereof, including, without limitation, any of the foregoing referred to in Schedule 6, and (iii) all rights to obtain any reissues or extensions of the foregoing.

“Patent License”: all agreements, whether written or oral, providing for the grant by or to any Grantor of any right to manufacture, use or sell any invention covered in whole or in part by a Patent, including, without limitation, any of the foregoing referred to in Schedule 6.

“Pledged Notes”: all promissory notes listed on Schedule 2, all Intercompany Notes at any time issued to any Grantor and all other promissory notes issued to or held by any Grantor (other than promissory notes issued in connection with extensions of trade credit by any Grantor in the ordinary course of business).

“Pledged Stock”: the shares of Capital Stock listed on Schedule 2, together with any other shares, stock certificates, options or rights of any nature whatsoever in respect of the Capital Stock of any Person that may be issued or granted to, or held by, any Grantor while this Agreement is in effect excluding any Foreign Subsidiary Capital Stock.

“Proceeds”: all “proceeds” as such term is defined in Section 9-306(1) of the New York UCC and, in any event, shall include, without limitation, all dividends or other income from the Investment Property, collections thereon or distributions or payments with respect thereto.

“Receivable”: any “account” (as defined in the New York UCC) and any other right to payment for goods sold or leased or for services rendered, whether or not such right is evidenced by an Instrument or Chattel Paper and whether or not it has been earned by performance, except for the Monsanto Receivables and the Sold Receivables.

“Securities Act”: the Securities Act of 1933, as amended.

“Subsidiary Borrower Obligations”: with respect to each Subsidiary Borrower, without duplicating any Guarantor Obligations, the collective reference to the unpaid principal of and interest on the Loans and all other obligations and liabilities of such

Subsidiary Borrower (including, without limitation, interest accruing at the then applicable rate provided in the Credit Agreement after the maturity of the Loans and interest accruing at the then applicable rate provided in the Credit Agreement after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to such Subsidiary Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) to the Administrative Agent or any Lender (or, in the case of any Lender Hedge Agreement, any Affiliate of any Lender), whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, the Credit Agreement, this Agreement, the other Loan Documents, any Letter of Credit, any Lender Hedge Agreement or any other document made, delivered or given in connection with any of the foregoing, in each case whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to the Administrative Agent or to the Lenders that are required to be paid by such Subsidiary Borrower pursuant to the terms of any of the foregoing agreements).

“Trademarks”: (i) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers, and all goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof, or otherwise, and all common-law rights related thereto, including, without limitation, any of the foregoing referred to in Schedule 6, and (ii) the right to obtain all renewals thereof.

“Trademark License”: any agreement, whether written or oral, providing for the grant by or to any Grantor of any right to use any Trademark, including, without limitation, any of the foregoing referred to in Schedule 6.

1.2 Other Definitional Provisions. (a) The words “hereof,” “herein,” “hereto” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section and Schedule references are to this Agreement unless otherwise specified.

(b) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(c) Where the context requires, terms relating to the Collateral or any part thereof, when used in relation to a Grantor, shall refer to such Grantor’s Collateral or the relevant part thereof.

SECTION 2. BORROWER GUARANTEE

2.1 Borrower Guarantee. (a) The Borrower hereby, unconditionally and irrevocably, guarantees to the Administrative Agent, for the ratable benefit of the Lenders and their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by each Subsidiary Borrower when due (whether at the stated maturity, by acceleration or otherwise) of its Subsidiary Borrower Obligations.

(b) Anything herein or in any other Loan Document to the contrary notwithstanding, the maximum liability of the Borrower hereunder and under the other Loan Documents shall in no event exceed the amount which can be guaranteed by the Borrower under applicable federal and state laws relating to the insolvency of debtors (after giving effect to the right of contribution established in Section 2.2).

(c) The guarantee contained in this Section 2 shall remain in full force and effect until all the Subsidiary Borrower Obligations and the obligations of the Borrower under the guarantee contained in this Section 2 shall have been satisfied by payment in full, no Letter of Credit shall be outstanding and the Commitments and Loans shall be terminated, notwithstanding that from time to time during the term of the Credit Agreement each Subsidiary Borrower may be free from any Subsidiary Borrower Obligations.

(d) No payment made by any Subsidiary Borrower, any of the other Guarantors, any other guarantor or any other Person or received or collected by the Administrative Agent or any Lender from any Subsidiary Borrower, any of the other Guarantors, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Subsidiary Borrower Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of the Borrower hereunder which shall, notwithstanding any such payment (other than any payment made by the Borrower in respect of the Subsidiary Borrower Obligations or any payment received or collected from the Borrower in respect of the Subsidiary Borrower Obligations), remain liable for the Subsidiary Borrower Obligations up to the maximum liability of the Borrower hereunder until the Subsidiary Borrower Obligations are paid in full, no Letter of Credit shall be outstanding and the Commitments are terminated.

2.2 No Subrogation. Notwithstanding any payment or payments made by the Borrower hereunder, or any set-off or application of funds of the Borrower by the Administrative Agent or any Lender, the Borrower shall not be entitled to be subrogated to any of the rights of the Administrative Agent or any Lender against the Subsidiary Borrowers or against any collateral security or guarantee or right of offset held by the Administrative Agent or any Lender for the payment of the Subsidiary Borrower Obligations, nor shall the Borrower seek or be entitled to seek any contribution or reimbursement from the Subsidiary Borrowers in respect of payments made by the Borrower hereunder, until all amounts owing to the Administrative Agent and the Lenders by the Subsidiary Borrowers on account of the Subsidiary Borrower Obligations are paid in full and the Commitments and Loans are terminated. If any amount shall be paid to

the Borrower on account of such subrogation rights at any time when all of the Subsidiary Borrower Obligations shall not have been paid in full, such amount shall be held by the Borrower in trust for the Administrative Agent and the Lenders, segregated from other funds of the Borrower, and shall, forthwith upon receipt by the Borrower, be turned over to the Administrative Agent in the exact form received by the Borrower (duly indorsed by the Borrower to the Administrative Agent, if required), to be applied against the Subsidiary Borrower Obligations, whether matured or unmatured, in such order as the Administrative Agent may determine.

2.3 Amendments, etc. with respect to the Subsidiary Borrower Obligations. The Borrower shall remain obligated hereunder notwithstanding that, without any reservation of rights against the Borrower and without notice to or further assent by the Borrower, any demand for payment of any of the Subsidiary Borrower Obligations made by the Administrative Agent or any Lender may be rescinded by the Administrative Agent or such Lender and any of the Subsidiary Borrower Obligations continued, and the Subsidiary Borrower Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by the Administrative Agent or any Lender, and the Credit Agreement and the other Loan Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as the Administrative Agent (or the Majority Facility Lenders, Supermajority Lenders, the Required Lenders or all Lenders, as the case may be) may deem advisable from time to time, and any collateral security, guarantee or right of offset at any time held by the Administrative Agent or any Lender for the payment of the Subsidiary Borrower Obligations may be sold, exchanged, waived, surrendered or released. Neither the Administrative Agent nor any Lender shall have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Subsidiary Borrower Obligations or for the guarantee contained in this Section 2 or any property subject thereto.

2.4 Guarantee Absolute and Unconditional. The Borrower waives any and all notice of the creation, renewal, extension or accrual of any of the Subsidiary Borrower Obligations and notice of or proof of reliance by the Administrative Agent or any Lender upon the guarantee contained in this Section 2 or acceptance of the guarantee contained in this Section 2; the Subsidiary Borrower Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in this Section 2; and all dealings between the Borrower and the Subsidiary Borrowers, on the one hand, and the Administrative Agent and the Lenders, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this Section 2. The Borrower waives diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon the Borrower or the applicable Subsidiary Borrower with respect to the Subsidiary Borrower Obligations. The Borrower understands and agrees that the guarantee contained in this Section 2 shall be construed as a continuing, absolute and unconditional guarantee of payment without regard to (a) the validity or enforceability of the Credit Agreement or any other Loan Document,

any of the Subsidiary Borrower Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by the Administrative Agent or any Lender, (b) any defense, set-off or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by any Subsidiary Borrower or any other Person against the Administrative Agent or any Lender, or (c) any other circumstance whatsoever (with or without notice to or knowledge of the Borrower or any Subsidiary Borrower) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Subsidiary Borrowers for the Subsidiary Borrower Obligations, or of the Borrower under the guarantee contained in this Section 2, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against the Borrower, the Administrative Agent or any Lender may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against the Subsidiary Borrowers or any other Person or against any collateral security or guarantee for the Subsidiary Borrower Obligations or any right of offset with respect thereto, and any failure by the Administrative Agent or any Lender to make any such demand, to pursue such other rights or remedies or to collect any payments from the Borrower, any Subsidiary Borrower, or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of the Borrower, any Subsidiary Borrower or any other Person or any such collateral security, guarantee or right of offset, shall not relieve the Borrower of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of the Administrative Agent or any Lender against the Borrower. For the purposes hereof, "demand" shall include the commencement and continuance of any legal proceedings.

2.5 Reinstatement. The guarantee contained in this Section 2 shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Subsidiary Borrower Obligations is rescinded or must otherwise be restored or returned by the Administrative Agent or any Lender upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower, any Subsidiary Borrower or any other Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower, any Subsidiary Borrower or any other Guarantor or any substantial part of its property, or otherwise, all as though such payments had not been made.

2.6 Payments. The Borrower hereby guarantees that payments hereunder will be paid to the Administrative Agent without set-off or counterclaim in Dollars or the applicable Optional Currency or Tranche A Subtranche Currency at the office of the Administrative Agent located at 270 Park Avenue, New York, New York 10017 or at such other place and time specified by the Administrative Agent.

SECTION 3. DOMESTIC SUBSIDIARY GUARANTEE

3.1 Domestic Subsidiary Guarantee. (a) Each of the Guarantors hereby, jointly and severally, unconditionally and irrevocably, guarantees to the Administrative Agent, for the

ratable benefit of the Lenders and their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by the Borrower when due (whether at the stated maturity, by acceleration or otherwise) of the Borrower Obligations and the Borrower's Guarantor Obligations.

(b) [Intentionally Omitted]

(c) [Intentionally Omitted]

(d) Anything herein or in any other Loan Document to the contrary notwithstanding, the maximum liability of each Guarantor hereunder and under the other Loan Documents shall in no event exceed the amount which can be guaranteed by such Guarantor under applicable federal and state laws relating to the insolvency of debtors (after giving effect to the right of contribution established in Section 3.2).

(e) Each Guarantor agrees that the Borrower Obligations and the Borrower's Guarantor Obligations either solely or collectively, may at any time and from time to time exceed the amount of the liability of such Guarantor hereunder without impairing the guarantee contained in this Section 3 or affecting the rights and remedies of the Administrative Agent or any Lender hereunder.

(f) The guarantees contained in this Section 3 shall remain in full force and effect until all the Borrower Obligations and the Borrower's Guarantor Obligations and the obligations of each Guarantor under the guarantees contained in this Section 3 shall have been satisfied by payment in full, no Letter of Credit shall be outstanding and the Commitments and Loans shall be terminated, notwithstanding that from time to time during the term of the Credit Agreement, the Borrower may be free from any Borrower Obligations and any Borrower's Guarantor Obligations.

(g) No payment made by the Borrower, any of the Guarantors, any other guarantor or any other Person or received or collected by the Administrative Agent or any Lender from the Borrower, any of the Guarantors, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Borrower Obligations or the Borrower's Guarantor Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of the Borrower Obligations or the Borrower's Guarantor Obligations or any payment received or collected from such Guarantor in respect of the Borrower Obligations or the Borrower's Guarantor Obligations) remain liable for the Borrower Obligations and the Borrower's Guarantor Obligations up to the maximum liability of such Guarantor hereunder until the Borrower Obligations and the Borrower's Guarantor Obligations are paid in full, no Letter of Credit shall be outstanding and the Commitments and Loans are terminated.

3.2 Right of Contribution. Each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder and which has not paid its proportionate share of such payment. Each Guarantor's right of contribution shall be subject to the terms and conditions of Section 3.3. The provisions of this Section 3.2 shall in no respect limit the obligations and liabilities of any Guarantor to the Administrative Agent and the Lenders, and each Guarantor shall remain liable to the Administrative Agent and the Lenders for the full amount guaranteed by such Guarantor hereunder.

3.3 No Subrogation. Notwithstanding any payment made by any Guarantor hereunder or any set-off or application of funds of any Guarantor by the Administrative Agent or any Lender, no Guarantor shall be entitled to be subrogated to any of the rights of the Administrative Agent or any Lender against the Borrower or any other Guarantor or any collateral security or guarantee or right of offset held by the Administrative Agent or any Lender for the payment of the Borrower Obligations or the Borrower's Guarantor Obligations nor shall any Guarantor seek or be entitled to seek any contribution or reimbursement from the Borrower or any other Guarantor in respect of payments made by such Guarantor hereunder, until all amounts owing to the Administrative Agent and the Lenders by the Borrower on account of the Borrower Obligations and the Borrower's Guarantor Obligations are paid in full, no Letter of Credit shall be outstanding and the Commitments and Loans are terminated. If any amount shall be paid to any Guarantor on account of such subrogation rights at any time when all of the Borrower Obligations and the Borrower's Guarantor Obligations shall not have been paid in full, such amount shall be held by such Guarantor in trust for the Administrative Agent and the Lenders, segregated from other funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be turned over to the Administrative Agent in the exact form received by such Guarantor (duly indorsed by such Guarantor to the Administrative Agent, if required), to be applied against the Borrower Obligations and the Borrower's Guarantor Obligations, whether matured or unmatured, in such order as the Administrative Agent may determine.

3.4 Amendments, etc. with respect to the Borrower Obligations and the Borrower's Guarantor Obligations. Each Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Guarantor and without notice to or further assent by any Guarantor, any demand for payment of any of the Borrower Obligations or the Borrower's Guarantor Obligations made by the Administrative Agent or any Lender may be rescinded by the Administrative Agent or such Lender and any of the Borrower Obligations and the Borrower's Guarantor Obligations continued, and the Borrower Obligations and the Borrower's Guarantor Obligations or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by the Administrative Agent or any Lender, and the Credit Agreement and the other Loan Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as the Administrative Agent (or the Majority Facility Lenders, the

Supermajority Lenders, the Required Lenders or all Lenders, as the case may be) may deem advisable from time to time, and any collateral security, guarantee or right of offset at any time held by the Administrative Agent or any Lender for the payment of the Borrower Obligations or the Borrower's Guarantor Obligations may be sold, exchanged, waived, surrendered or released. Neither the Administrative Agent nor any Lender shall have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Borrower Obligations or the Borrower's Guarantor Obligations or for the guarantee contained in this Section 3 or any property subject thereto.

3.5 Guarantees Absolute and Unconditional. Each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Borrower Obligations or Borrower's Guarantor Obligations and notice of or proof of reliance by the Administrative Agent or any Lender upon any of the guarantees contained in this Section 3 or acceptance of the guarantees contained in this Section 3; the Borrower Obligations and the Borrower's Guarantor Obligations and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in this Section 3; and all dealings between the Borrower and any of the Guarantors, on the one hand, and the Administrative Agent and the Lenders, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this Section 3. Each Guarantor waives diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon the Borrower or any of the Guarantors with respect to the Borrower Obligations and the Borrower's Guarantor Obligations. Each Guarantor understands and agrees that the guarantees contained in this Section 3 shall be construed as a continuing, absolute and unconditional guarantee of payment without regard to (a) the validity or enforceability of the Credit Agreement or any other Loan Document, any of the Borrower Obligations or the Borrower's Guarantor Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by the Administrative Agent or any Lender, (b) any defense, set-off or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by the Borrower or any other Person against the Administrative Agent or any Lender, or (c) any other circumstance whatsoever (with or without notice to or knowledge of the Borrower or such Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Borrower for the Borrower Obligations or the Borrower's Guarantor Obligations, or of such Guarantor under the guarantee contained in this Section 3, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, the Administrative Agent or any Lender may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against the Borrower, any other Guarantor or any other Person or against any collateral security or guarantee for the Borrower Obligations or the Borrower's Guarantor Obligations or any right of offset with respect thereto, and any failure by the Administrative Agent or any Lender to make any such demand, to pursue such other rights or remedies or to collect any payments from the Borrower, any other Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of the Borrower, any other Guarantor or any other Person or any such collateral security,

guarantee or right of offset, shall not relieve any Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of the Administrative Agent or any Lender against any Guarantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

3.6 Reinstatement. The guarantees contained in this Section 3 shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Borrower Obligations or the Borrower's Guarantor Obligations, is rescinded or must otherwise be restored or returned by the Administrative Agent or any Lender upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payments had not been made.

3.7 Payments. Each Guarantor hereby guarantees that payments hereunder will be paid to the Administrative Agent without set-off or counterclaim in Dollars or the applicable Optional Currency or Tranche A Subtranche Currency at the office of the Administrative Agent located at 270 Park Avenue, New York, New York 10017 or at such other place and time specified by the Administrative Agent.

SECTION 4. GRANT OF SECURITY INTEREST

Each Grantor hereby assigns and transfers to the Administrative Agent, and hereby grants to the Administrative Agent, for the ratable benefit of the Lenders, a security interest in, all of the following property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the "Collateral"), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of such Grantor's Obligations:

- (a) all Receivables;
 - (b) all Chattel Paper;
 - (c) all Deposit Account;
 - (d) all Documents;
 - (e) all Equipment;
 - (f) all General Intangibles;
-

(g) all Instruments;

(h) all Intellectual Property;

(i) all Inventory;

(j) all Investment Property;

(k) all books and records pertaining to the Collateral; and

(l) to the extent not otherwise included, all Proceeds and products of any and all of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing.

SECTION 5. REPRESENTATIONS AND WARRANTIES

To induce the Administrative Agent and the Lenders to enter into the Credit Agreement and to induce the Lenders to make their respective extensions of credit to the Borrower and each Subsidiary Borrower thereunder, each Grantor hereby represents and warrants to the Administrative Agent and each Lender that:

5.1 Title; No Other Liens. Except for the security interest granted to the Administrative Agent for the ratable benefit of the Lenders pursuant to this Agreement and the other Liens permitted to exist on the Collateral by the Credit Agreement and as otherwise noted in Section 5.8(a), such Grantor owns each item of the Collateral free and clear of any and all Liens or claims of others, except, with respect to material Intellectual Property, as set forth on Schedule 6 and except that no representation is made as to any other Intellectual Property. No financing statement or other public notice with respect to all or any part of the Collateral is on file or of record in any public office, except such as have been filed in favor of the Administrative Agent, for the ratable benefit of the Lenders, pursuant to this Agreement or as are permitted by the Credit Agreement.

5.2 Perfected First Priority Liens. The security interests granted pursuant to this Agreement (a) upon completion of the filings and other actions specified on Schedule 3 (which, in the case of all filings and other documents referred to on said Schedule, have been delivered to the Administrative Agent in completed and duly executed form) will constitute valid perfected security interests in all of the Collateral (or, with respect to Inventory and Equipment, in Inventory and Equipment kept at the locations set forth on Schedule 5) in favor of the Administrative Agent, for the ratable benefit of the Lenders, as collateral security for such Grantor's Obligations, enforceable in accordance with the terms hereof against all creditors of such Grantor and any Persons purporting to purchase any Collateral from such Grantor (other than Inventory sold by such Grantor in the ordinary course of business), to the extent that perfection or enforceability against third parties is obtainable by completion of the filings and

other actions set forth on Schedule 3 or any similar filings or other actions in other jurisdictions in the United States of America and (b) are prior to all other Liens on the Collateral in existence on the date hereof except for (i) unrecorded Liens permitted by the Credit Agreement which have priority over the Liens on the Collateral by operation of law and (ii) other Liens on the Collateral permitted by the Credit Agreement.

5.3 Chief Executive Office. On the date hereof, such Grantor's jurisdiction of organization and the location of such Grantor's chief executive office or sole place of business are specified on Schedule 4.

5.4 Inventory and Equipment. On the date hereof, the Inventory and the Equipment (other than mobile goods) (except for Inventory and Equipment not material in relation to the Inventory and Equipment of the Borrower and its Domestic Subsidiaries as a whole) are kept at the locations listed on Schedule 5.

5.5 Farm Products. None of the Collateral constitutes, or is the Proceeds of, Farm Products.

5.6 Investment Property. (a) The shares of Pledged Stock pledged by such Grantor hereunder constitute all the issued and outstanding shares of all classes of the Capital Stock of each Issuer, which is a direct or an indirect Domestic Subsidiary of any Grantor, owned by such Grantor.

(b) All the shares of the Pledged Stock have been duly and validly issued and are fully paid and nonassessable.

(c) Each of the Pledged Notes constitutes the legal, valid and binding obligation of the obligor with respect thereto, enforceable in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

(d) Such Grantor is the record and beneficial owner of, and has good and marketable title to, the Investment Property pledged by it hereunder, free of any and all Liens or options in favor of, or claims of, any other Person, except the security interest created by this Agreement and except as permitted under subsection 7.1(k) of the Credit Agreement.

5.7 Receivables. (a) No amount payable to such Grantor under or in connection with any Receivable is evidenced by any Instrument or Chattel Paper which has not been delivered to the Administrative Agent.

(b) None of the obligors on any Receivables is a Governmental Authority.

(c) The amounts represented by such Grantor to the Lenders from time to time as owing to such Grantor in respect of the Receivables will at such times be accurate.

5.8 Intellectual Property. (a) Schedule 6 lists all material United States Intellectual Property owned by such Grantor in its own name on the date hereof. To the knowledge of such Grantor, all material foreign Intellectual Property owned by such Grantor is owned in its own name on the date hereof.

(b) Except as otherwise identified on Schedule 6, on the date hereof, all material Intellectual Property listed on Schedule 6 is valid, unexpired and does not infringe the intellectual property rights of any other Person.

(c) On the date hereof, none of the Intellectual Property listed on Schedule 6 is the subject of any licensing or franchise agreement pursuant to which such Grantor is the licensor or franchisor, other than the Scotts trademark for the franchising of lawn care services to EG Systems, Inc. and the Miracle-Gro trademark for the franchising of tree and shrub services to EG Systems, Inc., which in turn grants local franchises in the United States of America to tree and shrub service operators, respectively.

(d) No final judgment has been rendered by any Governmental Authority which would limit or cancel such Grantor's rights in, any Intellectual Property listed on Schedule 6 in any respect that could reasonably be expected to have a Material Adverse Effect.

(e) No action or proceeding is pending, or, to the knowledge of such Grantor, threatened, on the date hereof (i) seeking to limit or cancel any Intellectual Property listed on Schedule 6 or such Grantor's ownership interest therein, or (ii) which, if adversely determined, would have a material adverse effect on the value of any Intellectual Property listed on Schedule 6.

SECTION 6. COVENANTS

Each Grantor covenants and agrees with the Administrative Agent and the Lenders that, from and after the date of this Agreement until the Obligations shall have been paid in full, no Letter of Credit shall be outstanding and the Commitments and Loans shall have terminated:

6.1 Delivery of Instruments, Certificated Securities and Chattel Paper. If any amount payable under or in connection with any of the Collateral shall be or become evidenced by any Instrument, Certificated Security or Chattel Paper, such Instrument, Certificated Security or Chattel Paper shall be immediately delivered to the Administrative Agent, duly indorsed (including by delivery of related stock or bond powers) in a manner satisfactory to the Administrative Agent, to be held as Collateral pursuant to this Agreement.

6.2 Maintenance of Insurance. (a) Such Grantor will maintain, with financially sound and reputable companies, insurance policies (i) insuring the Inventory and Equipment against loss by fire, explosion, theft and such other casualties as may be reasonably satisfactory to the Administrative Agent and (ii) to the extent requested by the Administrative Agent, insuring such Grantor, the Administrative Agent and the Lenders against liability for personal injury and property damage relating to such Inventory and Equipment, such policies to be in such form and amounts and having such coverage as may be reasonably satisfactory to the Administrative Agent and the Lenders.

(b) All such insurance shall (i) provide that no cancellation, material reduction in amount or material change in coverage thereof shall be effective until at least 30 days after receipt by the Administrative Agent of written notice thereof, (ii) name the Administrative Agent as insured party or loss payee, (iii) if reasonably requested by the Administrative Agent, include a breach of warranty clause and (iv) be reasonably satisfactory in all other respects to the Administrative Agent.

(c) The Borrower shall deliver to the Administrative Agent and the Lenders a report of a reputable insurance broker with respect to such insurance substantially concurrently with each delivery of the Borrower's audited annual financial statements and such supplemental reports with respect thereto as the Administrative Agent may from time to time reasonably request.

6.3 Payment of Obligations. Such Grantor will pay and discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all taxes, assessments and governmental charges or levies imposed upon the Collateral or in respect of income or profits therefrom, as well as all claims of any kind (including, without limitation, claims for labor, materials and supplies) against or with respect to the Collateral, except that no such charge need be paid if the amount or validity thereof is currently being contested in good faith by appropriate proceedings, reserves in conformity with GAAP with respect thereto have been provided on the books of such Grantor and such proceedings could not reasonably be expected to result in the sale, forfeiture or loss of any material portion of the Collateral or any interest therein.

6.4 Maintenance of Perfected Security Interest; Further Documentation. (a) Such Grantor shall maintain the security interest created by this Agreement as a perfected security interest having at least the priority described in Section 5.2 and shall defend such security interest against the claims and demands of all Persons whomsoever.

(b) Such Grantor will furnish to the Administrative Agent and the Lenders from time to time statements and schedules further identifying and describing the assets and property of such Grantor and such other reports in connection therewith as the Administrative Agent may reasonably request, all in reasonable detail.

(c) At any time and from time to time, upon the written request of the Administrative Agent, and at the sole expense of such Grantor, such Grantor will promptly and

duly execute and deliver, and have recorded, such further instruments and documents and take such further actions as the Administrative Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, (i) filing any financing or continuation statements under the Uniform Commercial Code (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby and (ii) in the case of Investment Property, Deposit Accounts and any other relevant Collateral, taking any actions necessary to enable the Administrative Agent to obtain "control" (within the meaning of the applicable Uniform Commercial Code) with respect thereto.

6.5 Changes in Locations, Name, etc. Such Grantor will not, except upon 15 days' prior written notice to the Administrative Agent and delivery to the Administrative Agent of (a) all additional executed financing statements and other documents reasonably requested by the Administrative Agent to maintain the validity, perfection and priority of the security interests provided for herein and (b) if applicable, a written supplement to Schedule 5 showing any additional location at which Inventory or Equipment shall be kept:

- (i) permit any of the Inventory or Equipment to be kept at a location other than those listed on Schedule 5;
- (ii) change its jurisdiction of organization or the location of its chief executive office or sole place of business from that referred to in Section 5.3; or
- (iii) change its name, identity or corporate structure to such an extent that any financing statement filed by the Administrative Agent in connection with this Agreement would become misleading without 45 days prior written notice to the Administrative Agent.

6.6 Notices. Such Grantor will advise the Administrative Agent and the Lenders promptly, in reasonable detail, of:

(a) any Lien (other than security interests created hereby or Liens permitted under the Credit Agreement) on any of the Collateral which would adversely affect the ability of the Administrative Agent to exercise any of its remedies hereunder; and

(b) of the occurrence of any other event which could reasonably be expected to have a material adverse effect on the aggregate value of the Collateral or on the security interests created hereby.

6.7 Investment Property. (a) If such Grantor shall become entitled to receive or shall receive any stock certificate (including, without limitation, any certificate representing a stock dividend or a distribution in connection with any reclassification, increase or reduction of capital or any certificate issued in connection with any reorganization), option or rights in respect of the Capital Stock of any Issuer which is a direct or indirect Domestic Subsidiary of such

Grantor, whether in addition to, in substitution of, as a conversion of, or in exchange for, any shares of the Pledged Stock, or otherwise in respect thereof, such Grantor shall accept the same as the agent of the Administrative Agent and the Lenders, hold the same in trust for the Administrative Agent and the Lenders and deliver the same forthwith to the Administrative Agent in the exact form received, duly indorsed (including by delivery of related stock or bond powers) by such Grantor to the Administrative Agent, if required, together with an undated stock power covering such certificate duly executed in blank by such Grantor to be held by the Administrative Agent, subject to the terms hereof, as additional collateral security for such Grantor's Obligations. Any sums paid upon or in respect of the Investment Property upon the liquidation or dissolution of any Issuer shall be paid over to the Administrative Agent to be held by it hereunder as additional collateral security for the applicable Grantor's Obligations, and in case any distribution of capital shall be made on or in respect of the Investment Property or any property shall be distributed upon or with respect to the Investment Property pursuant to the recapitalization or reclassification of the capital of any Issuer or pursuant to the reorganization thereof, the property so distributed shall, unless otherwise subject to a perfected security interest in favor of the Administrative Agent, be delivered to the Administrative Agent to be held by it hereunder as additional collateral security for such Obligations except to the extent permitted under Subsection 6.3. If any sums of money or property so paid or distributed in respect of the Investment Property shall be received by such Grantor, such Grantor shall, until such money or property is paid or delivered to the Administrative Agent, hold such money or property in trust for the Lenders, segregated from other funds of such Grantor, as additional collateral security for the Obligations.

(b) Without the prior written consent of the Administrative Agent or unless expressly permitted by the Credit Agreement, such Grantor will not (i) vote to enable, or take any other action to permit, any Issuer to issue any stock or other equity securities of any nature or to issue any other securities convertible into or granting the right to purchase or exchange for any stock or other equity securities of any nature of any Issuer, (ii) sell, assign, transfer, exchange, or otherwise dispose of, or grant any option with respect to, the Investment Property or Proceeds thereof (except pursuant to a transaction expressly permitted by the Credit Agreement), (iii) create, incur or permit to exist any Lien or option in favor of, or any claim of any Person with respect to, any of the Investment Property or Proceeds thereof, or any interest therein, except for the security interests created by this Agreement or (iv) enter into any agreement or undertaking restricting the right or ability of such Grantor or the Administrative Agent to sell, assign or transfer any of the Investment Property or Proceeds thereof.

(c) In the case of each Grantor which is an Issuer, such Issuer agrees that (i) it will be bound by the terms of this Agreement relating to the Investment Property issued by it and will comply with such terms insofar as such terms are applicable to it, (ii) it will notify the Administrative Agent promptly in writing of the occurrence of any of the events described in Section 6.7(a) with respect to the Investment Property issued by it and (iii) the terms of Sections 7.3(c) and 7.7 shall apply to it, mutatis mutandis, with respect to all actions that may be required of it pursuant to Section 7.3(c) or 7.7 with respect to the Investment Property issued by it.

6.8 Receivables. (a) Other than in the ordinary course of business consistent with its past practice, such Grantor will not (i) grant any extension of the time of payment of any Receivable, (ii) compromise or settle any Receivable for less than the full amount thereof, (iii) release, wholly or partially, any Person liable for the payment of any Receivable, (iv) allow any credit or discount whatsoever on any Receivable or (v) amend, supplement or modify any Receivable in any manner that could materially adversely affect the value thereof.

(b) Such Grantor will deliver to the Administrative Agent a copy of each material demand, notice or document received by it that questions or calls into doubt the validity or enforceability of more than 5% of the aggregate amount of the then outstanding Receivables.

(c) Anything contained in this Agreement to the contrary notwithstanding, the Grantors, or any of them, shall have the right to enter into one or more Receivables Purchase Facilities, as contemplated by the Credit Agreement, and the Administrative Agent shall execute any and all documents reasonably necessary to release its security interest in the Receivables which become Sold Receivables upon the consummation of such Receivables Purchase Facility(ies).

6.9 Intellectual Property. (a) Such Grantor (either itself or through licensees) will (i) continue to use each material Trademark in the ordinary course of business, (ii) maintain as in the past the quality of products and services offered under such Trademark, (iii) wherever practical, use such Trademark with the appropriate notice of registration if required by applicable Requirements of Law, and (iv) not knowingly do any act whereby such Trademark may become invalidated.

(b) Such Grantor (either itself or through licensees) will not knowingly do any act, or omit to do any act, in Grantor's reasonable business judgment, whereby any material Patent may become forfeited, abandoned or dedicated to the public.

(c) Such Grantor (either itself or through licensees) (i) will, in Grantor's reasonable business judgment, employ each material Copyright and (ii) will not (and will not permit any licensee or sublicensee thereof to) knowingly do any act or knowingly omit to do any act whereby any material portion of the Copyrights may become invalidated or otherwise impaired. Such Grantor will not (either itself or through Licensees) knowingly do any act whereby any material portion of the Copyrights may fall into the public domain.

(d) Such Grantor (either itself or through licensees) will not knowingly use any material Intellectual Property to infringe the intellectual property rights of any other Person.

(e) Such Grantor will notify the Administrative Agent and the Lenders immediately if it knows that any registration relating to any material Intellectual Property may become abandoned or of any final adverse determination in any proceeding in the United States Patent and Trademark Office or any U.S. court regarding such Grantor's ownership of, or the validity of, any material Intellectual Property.

(f) Whenever such Grantor, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any Intellectual Property with the United States Patent and Trademark Office, such Grantor shall report such filing to the Administrative Agent within five Business Days after the last day of the fiscal year in which such filing occurs. Upon request of the Administrative Agent, such Grantor shall execute and deliver, and have recorded, any and all agreements, instruments, documents, and papers as the Administrative Agent may reasonably request to evidence the Administrative Agent's and the Lenders' security interest in any U.S. Trademark and the goodwill and general intangibles of such Grantor relating thereto or represented thereby.

(g) Such Grantor will in its reasonable business judgment including, without limitation, in any proceeding before the United States Patent and Trademark Office, maintain and pursue each application (and obtain the relevant registration) and to maintain each registration of the material Intellectual Property, including, without limitation, filing of applications for renewal, affidavits of use and affidavits of incontestability.

(h) In the event that any material Intellectual Property is infringed, misappropriated or diluted by a third party, such Grantor shall take such actions as such Grantor shall reasonably deem appropriate under the circumstances to protect such Intellectual Property.

SECTION 7. REMEDIAL PROVISIONS

7.1 Certain Matters Relating to Receivables. (a) The Administrative Agent shall have the right after the occurrence and during the continuance of an Event of Default to make test verifications of the Receivables in any manner and through any medium that it reasonably considers advisable, and each Grantor shall furnish all such assistance and information as the Administrative Agent may require in connection with such test verifications. At any time and from time to time, upon the Administrative Agent's request and at the expense of the relevant Grantor, such Grantor shall cause independent public accountants or others satisfactory to the Administrative Agent to furnish to the Administrative Agent reports showing reconciliations, aging and test verifications of, and trial balances for, the Receivables.

(b) The Administrative Agent hereby authorizes each Grantor to collect such Grantor's Receivables, and the Administrative Agent may curtail or terminate said authority at any time after the occurrence and during the continuance of an Event of Default. If required by the Administrative Agent at any time after the occurrence and during the continuance of an Event of Default, any payments of Receivables, when collected by any Grantor, (i) shall be forthwith (and, in any event, within two Business Days) deposited by such Grantor in the exact form received, duly indorsed by such Grantor to the Administrative Agent if required, in a Collateral Account maintained under the sole dominion and control of the Administrative Agent, subject to withdrawal by the Administrative Agent for the account of the Lenders only as provided in Section 7, and (ii) until so turned over, shall be held by such Grantor in trust for the

Administrative Agent and the Lenders, segregated from other funds of such Grantor. Each such deposit of Proceeds of Receivables shall be accompanied by a report identifying in reasonable detail the nature and source of the payments included in the deposit.

(c) At the Administrative Agent's request, each Grantor shall deliver to the Administrative Agent all original and other documents evidencing, and relating to, the agreements and transactions which gave rise to the Receivables, including, without limitation, all original orders, invoices and shipping receipts.

7.2 Communications with Obligors; Grantors Remain Liable. (a) The Administrative Agent in its own name or in the name of others may at any time after the occurrence and during the continuance of an Event of Default communicate with obligors under the Receivables to verify with them to the Administrative Agent's satisfaction the existence, amount and terms of any Receivables.

(b) Upon the written request of the Administrative Agent at any time after the occurrence and during the continuance of an Event of Default, each Grantor shall notify obligors on its Receivables that the Receivables have been assigned to the Administrative Agent for the ratable benefit of the Lenders and that payments in respect thereof shall be made directly to the Administrative Agent.

(c) Anything herein to the contrary notwithstanding, each Grantor shall remain liable under each of its Receivables to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise thereto. Neither the Administrative Agent nor any Lender shall have any obligation or liability under any Receivable (or any agreement giving rise thereto) by reason of or arising out of this Agreement or the receipt by the Administrative Agent or any Lender of any payment relating thereto, nor shall the Administrative Agent or any Lender be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any Receivable (or any agreement giving rise thereto), to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party thereunder, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

7.3 Pledged Stock. (a) Unless an Event of Default shall have occurred and be continuing and the Administrative Agent shall have given notice to the relevant Grantor of the Administrative Agent's intent to exercise its corresponding rights pursuant to Section 7.3(b), each Grantor shall be permitted to receive all cash dividends paid in respect of the Pledged Stock and all payments made in respect of the Pledged Notes, in each case paid in the normal course of business of the relevant Issuer and consistent with past practice, to the extent permitted in the Credit Agreement, to pay and declare dividends to the extent permitted by the Credit Agreement and to exercise all voting and corporate rights with respect to the Investment Property; provided, however, that no vote shall be cast or corporate right exercised or other action taken which, in the

Administrative Agent's reasonable judgment, would impair the Collateral or which would be inconsistent with or result in any violation of any provision of the Credit Agreement, this Agreement or any other Loan Document.

(b) If an Event of Default shall occur and be continuing and the Administrative Agent shall give written notice of its intent to exercise such rights to the relevant Grantor or Grantors, (i) the Administrative Agent shall have the right to receive any and all cash dividends, payments or other Proceeds paid in respect of the Investment Property and make application thereof to the Obligations in such order as the Administrative Agent may determine, and (ii) any or all of the Investment Property shall be registered in the name of the Administrative Agent or its nominee, and the Administrative Agent or its nominee may thereafter exercise (x) all voting, corporate and other rights pertaining to such Investment Property at any meeting of shareholders of the relevant Issuer or Issuers or otherwise and (y) any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to such Investment Property as if it were the absolute owner thereof (including, without limitation, the right to exchange at its discretion any and all of the Investment Property upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate structure of any Issuer, or upon the exercise by any Grantor or the Administrative Agent of any right, privilege or option pertaining to such Investment Property, and in connection therewith, the right to deposit and deliver any and all of the Investment Property with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as the Administrative Agent may determine), all without liability except to account for property actually received by it, but the Administrative Agent shall have no duty to any Grantor to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(c) Each Grantor hereby authorizes and instructs each Issuer of any Investment Property pledged by such Grantor hereunder to (i) comply with any instruction received by it from the Administrative Agent in writing that (x) states that an Event of Default has occurred and is continuing and (y) is otherwise in accordance with the terms of this Agreement, without any other or further instructions from such Grantor, and each Grantor agrees that each Issuer shall be fully protected in so complying, and (ii) unless otherwise expressly permitted hereby, pay any dividends or other payments with respect to the Investment Property directly to the Administrative Agent.

7.4 Proceeds to be Turned Over To Administrative Agent. In addition to the rights of the Administrative Agent and the Lenders specified in Section 7.1 with respect to payments of Receivables, if an Event of Default shall occur and be continuing, all Proceeds received by any Grantor consisting of cash, checks and other near-cash items shall be held by such Grantor in trust for the Administrative Agent and the Lenders, segregated from other funds of such Grantor, and shall, forthwith upon receipt by such Grantor, be turned over to the Administrative Agent in the exact form received by such Grantor (duly indorsed by such Grantor to the Administrative Agent, if required). All Proceeds received by the Administrative Agent hereunder shall be held by the Administrative Agent in a Collateral Account maintained under its sole dominion and control. All Proceeds while held by the Administrative Agent in a Collateral

Account (or by such Grantor in trust for the Administrative Agent and the Lenders) shall continue to be held as collateral security for all the Obligations and shall not constitute payment thereof until applied as provided in Section 7.5.

7.5 Application of Proceeds. At such intervals as may be agreed upon by the Grantors and the Administrative Agent, or, if an Event of Default shall have occurred and be continuing, at any time at the Administrative Agent's election, the Administrative Agent may apply all or any part of Proceeds held in any Collateral Account in payment of the Obligations in such order as the Administrative Agent may elect, and any part of such funds which the Administrative Agent elects not so to apply and deems not required as collateral security for the Obligations shall be paid over from time to time by the Administrative Agent to the Grantors or to whomsoever may be lawfully entitled to receive the same. Any balance of such Proceeds remaining after the Obligations shall have been paid in full, no Letters of Credit shall be outstanding and the Commitments shall have terminated shall be paid over to the Grantors or to whomsoever may be lawfully entitled to receive the same.

7.6 Code and Other Remedies. If an Event of Default shall occur and be continuing, the Administrative Agent, on behalf of the Lenders, may exercise, in addition to all other rights and remedies granted to them in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a secured party under the New York UCC or any other applicable law. Without limiting the generality of the foregoing, the Administrative Agent, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of the Administrative Agent or any Lender or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The Administrative Agent or any Lender shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Grantor, which right or equity is hereby waived and released. Each Grantor further agrees, at the Administrative Agent's request, to assemble the Collateral and make it available to the Administrative Agent at places which the Administrative Agent shall reasonably select, whether at such Grantor's premises or elsewhere. The Administrative Agent shall apply the net proceeds of any action taken by it pursuant to this Section 6.6, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Administrative Agent and the Lenders hereunder, including, without limitation, reasonable attorneys' fees and disbursements, to the payment in whole or in part of the Obligations, in such order as the Administrative Agent may elect, and only after such application

and after the payment by the Administrative Agent of any other amount required by any provision of law, including, without limitation, Section 9-504(1)(c) of the New York UCC, need the Administrative Agent account for the surplus, if any, to any Grantor. To the extent permitted by applicable law, each Grantor waives all claims, damages and demands it may acquire against the Administrative Agent or any Lender arising out of the exercise by them of any rights hereunder. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least 10 days before such sale or other disposition.

7.7 Registration Rights. (a) If the Administrative Agent shall determine to exercise its right to sell any or all of the Pledged Stock pursuant to Section 7.6, and if in the opinion of the Administrative Agent it is necessary or advisable to have the Pledged Stock, or that portion thereof to be sold, registered under the provisions of the Securities Act, the relevant Grantor will cause the Issuer thereof to (i) execute and deliver, and cause the directors and officers of such Issuer to execute and deliver, all such instruments and documents, and do or cause to be done all such other acts as may be, in the opinion of the Administrative Agent, necessary or advisable to register the Pledged Stock, or that portion thereof to be sold, under the provisions of the Securities Act, (ii) use its best efforts to cause the registration statement relating thereto to become effective and to remain effective for a period of one year from the date of the first public offering of the Pledged Stock, or that portion thereof to be sold, and (iii) make all amendments thereto and/or to the related prospectus which, in the opinion of the Administrative Agent, are necessary or advisable, all in conformity with the requirements of the Securities Act and the rules and regulations of the Securities and Exchange Commission applicable thereto. Each Grantor agrees to cause such Issuer to comply with the provisions of the securities or "Blue Sky" laws of any and all jurisdictions which the Administrative Agent shall designate and to make available to its security holders, as soon as practicable, an earnings statement (which need not be audited) which will satisfy the provisions of Section 11(a) of the Securities Act.

(b) Each Grantor recognizes that the Administrative Agent may be unable to effect a public sale of any or all the Pledged Stock, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers which will be obliged to agree, among other things, to acquire such securities for their own account, for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. The Administrative Agent shall be under no obligation to delay a sale of any of the Pledged Stock for the period of time necessary to permit the Issuer thereof to register such securities for public sale under the Securities Act, or under applicable state securities laws, even if such Issuer would agree to do so.

(c) Each Grantor agrees to use its best efforts to do or cause to be done all such other acts as may be necessary to make such sale or sales of all or any portion of the Pledged

Stock pursuant to this Section 7.7 valid and binding and in compliance with any and all other applicable Requirements of Law. Each Grantor further agrees that a breach of any of the covenants contained in this Section 7.7 will cause irreparable injury to the Administrative Agent and the Lenders, that the Administrative Agent and the Lenders have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 6.7 shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred under the Credit Agreement.

7.8 Waiver; Deficiency. Each Grantor waives and agrees not to assert any rights or privileges which it may acquire under Section 9-112 of the New York UCC. Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay its Obligations and the fees and disbursements of any attorneys employed by the Administrative Agent or any Lender to collect such deficiency.

SECTION 8. THE ADMINISTRATIVE AGENT

8.1 Administrative Agent's Appointment as Attorney-in-Fact, etc. (a) Each Grantor hereby irrevocably constitutes and appoints the Administrative Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, each Grantor hereby gives the Administrative Agent the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, to do any or all of the following:

(i) in the name of such Grantor or its own name, or otherwise, take possession of and indorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Receivable or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Administrative Agent for the purpose of collecting any and all such moneys due under any Receivable or with respect to any other Collateral whenever payable;

(ii) in the case of any Intellectual Property, execute and deliver, and have recorded, any and all agreements, instruments, documents and papers as the Administrative Agent may request to evidence the Administrative Agent's and the Lenders' security interest in such Intellectual Property and the goodwill and general intangibles of such Grantor relating thereto or represented thereby;

(iii) pay or discharge taxes and Liens levied or placed on or threatened against the Collateral, effect any repairs or any insurance called for by the terms of this Agreement and pay all or any part of the premiums therefor and the costs thereof;

(iv) execute, in connection with any sale provided for in Section 7.6 or 7.7, any indorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral; and

(v) (1) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to the Administrative Agent or as the Administrative Agent shall direct; (2) ask or demand for, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (3) sign and indorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral; (4) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (5) defend any suit, action or proceeding brought against such Grantor with respect to any Collateral; (6) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Administrative Agent may deem appropriate; (7) assign any Copyright, Patent or Trademark (along with the goodwill of the business to which any such Copyright, Patent or Trademark pertains), throughout the world for such term or terms, on such conditions, and in such manner, as the Administrative Agent shall in its sole discretion determine; and (8) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Administrative Agent were the absolute owner thereof for all purposes, and do, at the Administrative Agent's option and such Grantor's expense, at any time, or from time to time, all acts and things which the Administrative Agent deems necessary to protect, preserve or realize upon the Collateral and the Administrative Agent's and the Lenders' security interests therein and to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

Anything in this Section 8.1(a) to the contrary notwithstanding, the Administrative Agent agrees that it will not exercise any rights under the power of attorney provided for in this Section 8.1(a) unless an Event of Default shall have occurred and be continuing.

(b) If any Grantor fails to perform or comply with any of its agreements contained herein, the Administrative Agent, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement.

(c) The expenses of the Administrative Agent incurred in connection with actions undertaken as provided in this Section 8.1, together with interest thereon at a rate per annum

equal to the highest rate per annum at which interest would then be payable on any category of past due ABR Loans under the Credit Agreement, from the date of payment by the Administrative Agent to the date reimbursed by the relevant Grantor, shall be payable by such Grantor to the Administrative Agent on demand.

(d) Each Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

8.2 Duty of Administrative Agent. The Administrative Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the New York UCC or otherwise, shall be to deal with it in the same manner as the Administrative Agent deals with similar property for its own account. Neither the Administrative Agent, any Lender nor any of their respective officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Administrative Agent and the Lenders hereunder are solely to protect the Administrative Agent's and the Lenders' interests in the Collateral and shall not impose any duty upon the Administrative Agent or any Lender to exercise any such powers. The Administrative Agent and the Lenders shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

8.3 Execution of Financing Statements. Pursuant to Section 9-402 of the New York UCC and any other applicable law, each Grantor authorizes the Administrative Agent to file or record financing statements and other filing or recording documents or instruments with respect to the Collateral without the signature of such Grantor in such form and in such offices as the Administrative Agent determines appropriate to perfect the security interests of the Administrative Agent under this Agreement. A photographic or other reproduction of this Agreement shall be sufficient as a financing statement or other filing or recording document or instrument for filing or recording in any jurisdiction.

8.4 Authority of Administrative Agent. Each Grantor acknowledges that the rights and responsibilities of the Administrative Agent under this Agreement with respect to any action taken by the Administrative Agent or the exercise or non-exercise by the Administrative Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Administrative Agent and the Lenders, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Administrative Agent and the Grantors, the Administrative Agent shall be conclusively presumed to be acting as agent for the

Lenders with full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

SECTION 9. MISCELLANEOUS

9.1 Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with subsection 10.1 of the Credit Agreement.

9.2 Notices. All notices, requests and demands to or upon the Administrative Agent or any Grantor hereunder shall be effected in the manner provided for in subsection 10.2 of the Credit Agreement; provided that any such notice, request or demand to or upon any Guarantor shall be addressed to such Guarantor at its notice address set forth on Schedule 1.

9.3 No Waiver by Course of Conduct; Cumulative Remedies. Neither the Administrative Agent nor any Lender shall by any act (except by a written instrument pursuant to Section 8.1), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of the Administrative Agent or any Lender, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Administrative Agent or any Lender of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Administrative Agent or such Lender would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

9.4 Enforcement Expenses; Indemnification. (a) Each Guarantor agrees to pay or reimburse each Lender and the Administrative Agent for all its costs and expenses incurred in collecting against such Guarantor under the guarantees contained in Section 2 or 3, as applicable, or otherwise enforcing or preserving any rights under this Agreement and the other Loan Documents to which such Guarantor is a party, including, without limitation, the reasonable fees and disbursements of counsel (including the allocated fees and expenses of in-house counsel) to each Lender and of counsel to the Administrative Agent.

(b) Each Guarantor agrees to pay, and to save the Administrative Agent and the Lenders harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable with respect to any of the Collateral or in connection with any of the transactions contemplated by this Agreement.

(c) Each Guarantor agrees to pay, and to save the Administrative Agent and the Lenders harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement to the extent the Borrower would be required to do so pursuant to subsection 10.5 of the Credit Agreement.

(d) The agreements in this Section 9.4 shall survive repayment of the Obligations and all other amounts payable under the Credit Agreement and the other Loan Documents.

9.5 Successors and Assigns. This Agreement shall be binding upon the successors and assigns of each Grantor and shall inure to the benefit of the Administrative Agent and the Lenders and their successors and assigns; provided that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Administrative Agent.

9.6 Set-Off. Each Grantor hereby irrevocably authorizes the Administrative Agent and each Lender at any time and from time to time while an Event of Default shall have occurred and be continuing, without notice to such Grantor or any other Grantor, any such notice being expressly waived by each Grantor, to set-off and appropriate and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by the Administrative Agent or such Lender to or for the credit or the account of such Grantor, or any part thereof in such amounts as the Administrative Agent or such Lender may elect, against and on account of the obligations and liabilities of such Grantor to the Administrative Agent or such Lender hereunder and claims of every nature and description of the Administrative Agent or such Lender against such Grantor, in any currency, whether arising hereunder, under the Credit Agreement, any other Loan Document or otherwise, as the Administrative Agent or such Lender may elect, whether or not the Administrative Agent or any Lender has made any demand for payment and although such obligations, liabilities and claims may be contingent or unmatured. The Administrative Agent and each Lender shall notify such Grantor promptly of any such set-off and the application made by the Administrative Agent or such Lender of the proceeds thereof, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Administrative Agent and each Lender under this Section 9.6 are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Administrative Agent or such Lender may have.

9.7 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

9.8 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such

prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

9.9 Section Headings. The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

9.10 Integration. This Agreement and the other Loan Documents represent the agreement of the Grantors, the Administrative Agent and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent or any Lender relative to subject matter hereof and thereof not expressly set forth or referred to herein or in the other Loan Documents.

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

9.12 Submission To Jurisdiction; Waivers. Each Grantor hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Grantor at its address referred to in Section 9.2 or at such other address of which the Administrative Agent shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

9.13 Acknowledgments. Each Grantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents to which it is a party;

(b) neither the Administrative Agent nor any Lender has any fiduciary relationship with or duty to any Grantor arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Grantors, on the one hand, and the Administrative Agent and Lenders, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Grantors and the Lenders.

9.14 Additional Grantors. Each Domestic Subsidiary Borrower that is required to become a party to this Agreement pursuant to subsection 10.1(b) of the Credit Agreement shall become a Grantor for all purposes of this Agreement upon execution and delivery by such Domestic Subsidiary Borrower of an Assumption Agreement in the form of Annex 1 hereto.

9.15 Releases. (a) At such time as the Loans, the Reimbursement Obligations and the other Obligations shall have been paid in full, the Commitments have been terminated and no Letters of Credit shall be outstanding, the Collateral shall be released from the Liens created hereby, and this Agreement and all obligations (other than those expressly stated to survive such termination) of the Administrative Agent and each Grantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party, and all rights to the Collateral shall revert to the applicable Grantors. At the request and sole expense of any Grantor following any such termination, the Administrative Agent shall deliver to such Grantor any Collateral held by the Administrative Agent hereunder, and execute and deliver to such Grantor such documents as such Grantor shall reasonably request to evidence such termination.

(b) If any of the Collateral shall be sold, transferred or otherwise disposed of by any Grantor in a transaction permitted by the Credit Agreement, then the Administrative Agent, at the request and sole expense of such Grantor, shall execute and deliver to such Grantor all releases or other documents reasonably necessary or desirable for the release of the Liens created hereby on such Collateral. At the request and sole expense of the Borrower, a Subsidiary Guarantor shall be released from its obligations hereunder in the event that all the Capital Stock of such Subsidiary Guarantor shall be sold, transferred or otherwise disposed of in a transaction permitted by the Credit Agreement; provided that the Borrower shall have delivered to the

Administrative Agent, at least ten Business Days prior to the date of the proposed release, a written request for release identifying the relevant Subsidiary Guarantor and the terms of the sale or other disposition in reasonable detail, including the price thereof and any expenses in connection therewith, together with a certification by the Borrower stating that such transaction is in compliance with the Credit Agreement and the other Loan Documents.

9.16 Conflict of Laws. Notwithstanding anything to the contrary herein, in the event that any provision of any pledge, charge or foreign equivalent executed by any Foreign Subsidiary and governed by the laws of the applicable foreign jurisdiction is inconsistent with any corresponding provision in this Agreement, the provision in such pledge, charge or foreign equivalent shall govern.

9.17 WAIVER OF JURY TRIAL. EACH GRANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

IN WITNESS WHEREOF, each of the undersigned has caused this Guarantee and Collateral Agreement to be duly executed and delivered as of the date first above written.

THE CHASE MANHATTAN BANK,
as Administrative Agent

By: /s/ Thomas H. Kozlark
Title: Vice President

THE SCOTTS COMPANY

By: /s/ G. Robert Lucas
Title: Senior Vice President,
General Counsel and Secretary

HYPONEX CORPORATION

By: /s/ Rebecca J. Bruening
Title: Vice President

SCOTTS' MIRACLE-GRO PRODUCTS, INC.

By: /s/ Rebecca J. Bruening
Title: Vice President

SCOTTS-SIERRA HORTICULTURAL PRODUCTS
COMPANY

By: /s/ Rebecca J. Bruening
Title: Vice President

REPUBLIC TOOL & MANUFACTURING CORP.

By: /s/ Rebecca J. Bruening
Title: Vice President



SCOTTS-SIERRA INVESTMENTS, INC.

By: /s/ Rebecca J. Bruening
Title: Vice President

SCOTTS PROFESSIONAL PRODUCTS CO.

By: /s/ Rebecca J. Bruening
Title: Vice President

SCOTTS PRODUCTS CO.

By: /s/ Rebecca J. Bruening
Title: Vice President

OMS INVESTMENTS, INC.

By: /s/ Rebecca J. Bruening
Title: Vice President

MIRACLE-GRO LAWN PRODUCTS, INC.

By: /s/ Rebecca J. Bruening
Title: Vice President

MIRACLE-GRO PRODUCTS LTD.

By: /s/ Rebecca J. Bruening
Title: Vice President

SCOTTS-SIERRA CROP PROTECTION COMPANY

By: /s/ Rebecca J. Bruening
Title: Vice President

OLD FORT FINANCIAL CORP.

By: /s/ Rebecca J. Bruening
Title: Treasurer

EARTHGRO, INC.

By: /s/ Rebecca J. Bruening
Title: Vice President

SANFORD SCIENTIFIC, INC.

By: /s/ Rebecca J. Bruening
Title: Vice President

EG SYSTEMS, INC.

By: /s/ Rebecca J. Bruening

Title: Vice President

ACKNOWLEDGMENT AND CONFIRMATION OF
GUARANTEE AND COLLATERAL AGREEMENTS AND MORTGAGES

ACKNOWLEDGMENT AND CONFIRMATION OF GUARANTEE AND COLLATERAL AGREEMENTS AND MORTGAGES, dated as of October 22, 2003 (this "Acknowledgment"), to:

- (1) the Guarantee and Collateral Agreements;
- (2) Mortgages (together with the Guarantee and Collateral Agreements, the "Security Documents").

WITNESSETH:

WHEREAS, the Borrower, certain subsidiary borrowers, certain Lenders and other banks and financial institutions and JPMorgan Chase Bank, as Administrative Agent are parties to the Amended and Restated Credit Agreement, dated as of December 5, 2000 (as amended, supplemented, amended and restated or otherwise modified prior to the date hereof, the "Credit Agreement"). Concurrently with the execution of this Acknowledgment, the Borrower, the Subsidiary Borrowers, the Lenders and the Administrative Agent will enter into the Second Amended and Restated Credit Agreement, dated as of October 22, 2003 (the "Second Amendment and Restatement").

WHEREAS, each of the parties to each Security Document wishes to acknowledge and confirm that its obligations and its Liens and security interests created under such Security Document continue in full force and effect, unimpaired and undischarged, as provided herein;

WHEREAS, it is a condition precedent to the effectiveness of the Second Amendment and Restatement that the parties hereto shall have executed this Acknowledgment to the Administrative Agent for the benefit of the Lenders.

NOW, THEREFORE, in consideration of the premises contained herein and to induce the Administrative Agent and the Lenders to amend and restate the Credit Agreement pursuant to the Second Amendment and Restatement and to induce the Lenders to make and continue extensions of credit under the Second Amendment and Restatement, each of the signatories hereto hereby agrees with the Administrative Agent, for the benefit of the Lenders, as follows:

1. Unless otherwise defined herein, capitalized terms used herein shall have the respective meanings assigned to them in the Second Amendment and Restatement and the other Loan Documents.
 2. References to the Credit Agreement in the Security Documents shall be references to the Second Amendment and Restatement.
-

3. Each signatory hereto consents to the execution, delivery and performance of the Second Amendment and Restatement in accordance with its terms.

4. Each signatory hereto hereby agrees, with respect to each Security Document to which it is a party, that to the extent permitted by applicable law:

(a) all of its obligations, liabilities and indebtedness under such Security Document shall remain in full force and effect on a continuous basis after giving effect to the Second Amendment and Restatement and this Acknowledgment and its guarantee of the obligations, liabilities and indebtedness of the other Loan Parties under the Credit Agreement (or any predecessor agreement) shall extend to and cover the Term Loans and Revolving Extensions of Credit made under the Second Amendment and Restatement (including the annexes thereto) and interest thereon and fees and expenses and other obligations in respect thereof and in respect of commitments related thereto; and

(b) all of the Liens and security interests created and arising under such Security Document remain in full force and effect on a continuous basis, and the perfected status and priority of each such Lien and security interest continues in full force and effect on a continuous basis, unimpaired, uninterrupted and undischarged, after giving effect to the Second Amendment and Restatement, as collateral security for its obligations, liabilities and indebtedness under the Second Amendment and Restatement (including the annexes thereto) and under its guarantees in the Security Documents.

5. Each signatory hereto hereby agrees, with respect to the Borrower and Domestic Subsidiary Guarantee and Collateral Agreement, dated as of December 4, 1998, among the Borrower, the Domestic Subsidiary Borrowers, certain other Domestic Subsidiaries of the Borrower and the Administrative Agent for the benefit of the Lenders, as amended, supplemented or otherwise amended from time to time, that:

(a) the definition of "Foreign Subsidiary Capital Stock" shall be deleted its entirety and the following definition shall be added to subsection 1.1:

"Foreign Subsidiary Voting Stock": the voting Capital Stock of any Foreign Subsidiary.

(b) the definition of "Foreign Subsidiary" in subsection 1.1 shall be amended such that the following language shall be added following the word "America":

“, except for any such Subsidiary which is a “check-the-box” entity under Regulation section 301.7701-3 of the Code.”

(c) the definition of "Investment Property" in subsection 1.1 shall be substituted for in its entirety by the following:

"Investment Property": the collective reference to (i) all investment property” as such term is defined in Section 9-102(a)(49) of the New York

UCC (other than any Foreign Subsidiary Voting Stock excluded from the definition of “Pledged Stock”) and (ii) whether or not constituting “investment property” as so defined, all Pledged Notes and Pledged Stock.

(d) the definition of “Pledged Stock” in subsection 1.1 shall be amended such that the words “excluding any Foreign Subsidiary Capital Stock” are deleted and the following words shall be substituted in lieu thereof:

“; provided that in no event shall more than 65% of the total outstanding Foreign Subsidiary Voting Stock of any Foreign Subsidiary be required to be pledged hereunder.”

(e) subsection 4(l) shall become a new subsection 4(m) and a new subsection 4(l) shall be added as follows:

(l) notwithstanding the limitation on the inclusion of Foreign Subsidiary Voting Stock in the definition of Investment Property, the remaining 35% of the outstanding Foreign Subsidiary Voting Stock of any Foreign Subsidiary Borrower shall be pledged and subject to a grant of a security interest therein subject to this section 4, provided that such pledge and grant shall only secure the obligations of such Foreign Subsidiary Borrower in its capacity as a borrower under the Second Amendment and Restatement;

(f) Subsection 5.2 shall be substituted for in its entirety by the following:

5.2 Perfected First Priority Liens. The security interests granted pursuant to this Agreement will constitute valid perfected security interests in all of the Collateral in favor of the Administrative Agent, for the ratable benefit of the Lenders, as collateral security for such Grantor’s Obligations, enforceable in accordance with the terms hereof against all creditors of such Grantor and any Persons purporting to purchase any Collateral from such Grantor (other than Inventory sold by such Grantor in the ordinary course of business), to the extent that perfection or enforceability against third parties is obtainable by completion of the filings and other actions set forth on Schedule 3 or any similar filings or other actions in other jurisdictions in the United States of America and are prior to all other Liens on the Collateral which have priority over the Liens on the Collateral by operation of law and other Liens on the Collateral permitted by the Second Amendment and Restatement.

(g) Subsection 5.3 shall be substituted for in its entirety by the following:

5.3 Jurisdiction of Organization. On the date hereof, such Grantor’s jurisdiction of organization and identification number from the jurisdiction of organization (if any) are set forth on Schedule 4. Such Grantor has furnished to the Administrative Agent a certified charter, certificate of

incorporation or other organizational document and long-form good standing certificate as of a date which is recent to the date hereof.

(h) Subsection 5.4 shall be substituted for in its entirety by the following:

5.4 Domestic Subsidiaries. On the date hereof, Schedule 7 sets forth a true and complete list of the Domestic Subsidiaries.

(i) Subsection 5.6(a) shall be substituted for in its entirety by the following:

(a) The shares of the Pledged Stock pledged by such Grantor hereunder constitute all the issued and outstanding shares of all classes of the Capital Stock of each Issuer owned by such Grantor or, in the case of Foreign Subsidiary Voting Stock, if less, 65% of the outstanding Foreign Subsidiary Voting Stock of each relevant Issuer.

(j) Subsection 5.8(c) shall be substituted for in its entirety by the following:

(c) On the date hereof, none of the Intellectual Property listed on Schedule 6 is the subject of any licensing or franchise agreement pursuant to which such Grantor is the licensor or franchisor, other than (i) the Scotts trademark for the franchising of lawn care services to EG Systems, Inc., (ii) the Miracle-Gro trademark for the franchising of tree and shrub care services to EG Systems, Inc., and (iii) the trademark for Ortho Home Defense Foundation Insect Control for the franchising of insect control services, to EG Systems, Inc., which in turn grants to local franchisees in the United States of America to lawn care service, tree and shrub service and insect control service operators, respectively.

(k) Subsection 6.5 shall be deleted in its entirety.

(l) Subsection 8.3 shall be amended such that the following two sentences shall be added immediately prior to the last sentence of such subsection 8.3:

“Each Grantor authorizes the Administrative Agent to use the collateral description “all personal property” in any such financing statements. Each Grantor hereby ratifies and authorizes the filing by the Administrative Agent of any financing statement with respect to the Collateral made prior to the date hereof” and

(m) Schedules 3, 4 and 6 shall be substituted for in their respective entireties with Schedules 3, 4 and 6 to this Acknowledgment and a new schedule shall be added in the form of Schedule 7, as described above in subsection 5(h).

6. Each signatory hereto agrees that it shall take any action reasonably requested by the Administrative Agent in order to confirm or effect the intent of this Acknowledgment.

7. THIS ACKNOWLEDGMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

8. This Acknowledgment may be executed by one or more of the parties hereto on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

9. The Borrower hereby agrees to take any and all action necessary to record Mortgages or amendments thereto on all Mortgaged Properties.

IN WITNESS WHEREOF, the undersigned have caused this Acknowledgment to be executed and delivered by a duly authorized officer on the date first above written.

THE SCOTTS COMPANY

By: /s/ Rebecca J. Bruening
Name: Rebecca J. Bruening
Title: Vice President and Treasurer

EG SYSTEMS, INC.

By: /s/ Rebecca J. Bruening
Name: Rebecca J. Bruening
Title: Vice President and Treasurer

HYPONEX CORPORATION

By: /s/ Rebecca J. Bruening
Name: Rebecca J. Bruening
Title: Vice President and Treasurer

MIRACLE-GRO LAWN PRODUCTS, INC.

By: /s/ Rebecca J. Bruening
Name: Rebecca J. Bruening
Title: Vice President and Treasurer

OMS INVESTMENTS, INC.

By: /s/ Rebecca J. Bruening
Name: Rebecca J. Bruening
Title: Vice President and Treasurer

SCOTTS MANUFACTURING COMPANY

By: /s/ Rebecca J. Bruening
Name: Rebecca J. Bruening
Title: Vice President and Treasurer

SCOTTS PRODUCTS CO.

By: /s/ Rebecca J. Bruening
Name: Rebecca J. Bruening
Title: Vice President and Treasurer

SCOTTS PROFESSIONAL PRODUCTS CO.

By: /s/ Rebecca J. Bruening
Name: Rebecca J. Bruening
Title: Vice President and Treasurer

SCOTTS-SIERRA CROP PROTECTION COMPANY

By: /s/ Rebecca J. Bruening
Name: Rebecca J. Bruening
Title: Vice President and Treasurer

SCOTTS-SIERRA HORTICULTURAL PRODUCTS
COMPANY

By: /s/ Rebecca J. Bruening
Name: Rebecca J. Bruening
Title: Vice President and Treasurer

SCOTTS-SIERRA INVESTMENTS, INC.

By: /s/ Rebecca J. Bruening
Name: Rebecca J. Bruening
Title: Vice President and Treasurer

SCOTTS TEMECULA OPERATIONS, LLC

By: /s/ Rebecca J. Bruening
Name: Rebecca J. Bruening
Title: Vice President and Treasurer

SWISS FARM PRODUCTS, INC.

By: /s/ Rebecca J. Bruening
Name: Rebecca J. Bruening
Title: Vice President and Treasurer

JPMORGAN CHASE BANK, as
Administrative Agent

By: /s/ Randolph Cates

Name: Randolph Cates

Title: Vice President

ACKNOWLEDGMENT AND CONFIRMATION

ACKNOWLEDGMENT AND CONFIRMATION, dated as of March 18, 2005 (this "Acknowledgment"), by THE SCOTTS COMPANY LLC, an Ohio limited liability company and successor by merger to The Scotts Company ("Scotts LLC"), relating to the Security Documents (as defined below), in favor of JPMorgan Chase Bank, N.A. (formerly known as JPMorgan Chase Bank), as administrative agent (in such capacity, the "Administrative Agent") for the banks and other financial institutions (the "Lenders") parties to the Credit Agreement referred to below.

WITNESSETH:

WHEREAS, concurrently with the execution of this Acknowledgment, The Scotts Company (the "Existing Borrower") will effect a corporate reorganization (the "Reorganization"), as permitted by subsection 7.3(d) of the Credit Agreement;

WHEREAS, in connection with the Reorganization, The Scotts Miracle-Gro Company will become the "Borrower" under the Second Amended and Restated Credit Agreement, dated as of October 22, 2003 (as amended by the First Amendment, dated as of August 13, 2004, and the Second Amendment, dated as of November 5, 2004, the "Credit Agreement") by and among the Existing Borrower, certain subsidiaries of the Existing Borrower from time to time party thereto, the Lenders and the Administrative Agent, and each of the other Loan Documents;

WHEREAS, Scotts LLC wishes to acknowledge and confirm that the obligations, liabilities and indebtedness of the Existing Borrower and the Liens and security interests created by the Existing Borrower under each of the Security Documents to which the Existing Borrower is a party (the "Security Documents") continue in full force and effect, unimpaired and undischarged, as provided herein;

WHEREAS, Scotts LLC wishes to acknowledge and confirm that as of, and after the date hereof, it shall be a Guarantor under the Borrower and Domestic Subsidiary Guarantee and Collateral Agreement, dated as of December 4, 1998 (as amended, supplemented or otherwise modified from time to time, the "Guarantee and Collateral Agreement"), made by the Existing Borrower and certain of its Affiliates in favor of the Administrative Agent for the benefit of the Lenders;

WHEREAS, in connection with the Reorganization, the Administrative Agent has requested that Scotts LLC shall have executed this Acknowledgment to the Administrative Agent for the benefit of the Lenders;

NOW, THEREFORE, in consideration of the premises, the parties hereto hereby agree as follows:

1. Unless otherwise defined herein, capitalized terms used herein shall have the respective meanings assigned to them in the Credit Agreement and the other Loan Documents.

2. Scotts LLC, as successor by merger to the Existing Borrower, hereby agrees, with respect to each Security Document, that to the extent permitted by applicable law:

(a) all of its obligations, liabilities and indebtedness under such Security Document shall remain in full force and effect on a continuous basis after giving effect to the Reorganization and this Acknowledgment; and

(b) all of the Liens and security interests created by it and arising under such Security Document remain in full force and effect on a continuous basis, and the perfected status and priority of each such Lien and security interest continues in full force and effect on a continuous basis, unimpaired, uninterrupted and undischarged, after giving effect to the Reorganization and this Acknowledgment, as collateral security for its obligations, liabilities and indebtedness under the Loan Documents.

3. Scotts LLC hereby agrees, that on and after the date hereof, it shall be a Guarantor under the Guarantee and Collateral Agreement.

4. Scotts LLC hereby further agrees that it shall take any action reasonably requested by the Administrative Agent in order to confirm or effect the intent of this Acknowledgment.

5. THIS ACKNOWLEDGMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

6. This Acknowledgment may be executed by one or more of the parties hereto on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Acknowledgment to be duly executed and delivered in New York, New York by their proper and duly authorized officers as of the day and year first above written.

THE SCOTTS MIRACLE-GRO COMPANY

By: /s/ James Hagedorn

Name: James Hagedorn

Title: Chairman, President and Chief Executive Officer

ACKNOWLEDGED AND AGREED TO:

JPMORGAN CHASE BANK, N.A. (formerly known as JPMorgan Chase Bank), as Administrative Agent

By: /s/ Randolph Cates

Name: Randolph Cates

Title: Vice President

ASSUMPTION AGREEMENT

ASSUMPTION AGREEMENT, dated as of March 18, 2005, made by THE SCOTTS MIRACLE-GRO COMPANY, an Ohio corporation, (the "Additional Grantor"), in favor of JPMorgan Chase Bank, N.A. (formerly known as JPMorgan Chase Bank), as administrative agent (in such capacity, the "Administrative Agent") for the banks and other financial institutions (the "Lenders") parties to the Credit Agreement referred to below. Capitalized terms used but not defined herein shall have the meanings given such terms in the Credit Agreement.

WITNESSETH:

WHEREAS, in connection with the Second Amended and Restated Credit Agreement, dated as of October 22, 2003 (as amended by the First Amendment, dated as of August 13, 2004, and the Second Amendment, dated as of November 5, 2004, the "Credit Agreement") by and among The Scotts Company ("Scotts"), certain subsidiaries of Scotts party thereto, the Lenders, and Administrative Agent, Scotts and certain of its Affiliates (other than the Additional Grantor) have entered into the Borrower and Domestic Subsidiary Guarantee and Collateral Agreement, dated as of December 4, 1998 (as amended, supplemented or otherwise modified from time to time, the "Guarantee and Collateral Agreement") in favor of the Administrative Agent for the benefit of the Lenders;

WHEREAS, the Credit Agreement requires the Additional Grantor to become a party to the Guarantee and Collateral Agreement; and

WHEREAS, the Additional Grantor has agreed to execute and deliver this Assumption Agreement in order to become a party to the Guarantee and Collateral Agreement;

NOW, THEREFORE, IT IS AGREED:

1. Guarantee and Collateral Agreement. By executing and delivering this Assumption Agreement, the Additional Grantor, as provided in subsection 7.3(d) of the Credit Agreement, hereby becomes a party to the Guarantee and Collateral Agreement as a Grantor thereunder with the same force and effect as if originally named therein as a Grantor and, without limiting the generality of the foregoing, hereby expressly assumes all obligations and liabilities of a Grantor thereunder. The information set forth in Annex 1-A hereto is hereby added to the information set forth in the Schedules to the Guarantee and Collateral Agreement. The Additional Grantor hereby represents and warrants that each of the representations and warranties contained in Section 5 of the Guarantee and Collateral Agreement is true and correct on and as the date hereof (after giving effect to this Assumption Agreement) as if made on and as of such date.

2. Governing Law. **THIS ASSUMPTION AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

IN WITNESS WHEREOF, the undersigned has caused this Assumption Agreement to be duly executed and delivered as of the date first above written.

THE SCOTTS MIRACLE-GRO COMPANY

By: /s/ James Hagedorn

Name: James Hagedorn

Title: Chairman, President and Chief Executive Officer

THE SCOTTS MIRACLE-GRO COMPANY
DISCOUNTED STOCK PURCHASE PLAN

1.00 PURPOSE

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

2.00 DEFINITIONS

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

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

Beneficiary. The person who has the right to receive (or exercise) any Plan benefits (or rights) that are unpaid (or unexercised) when the Participant dies.

Board. The Company's Board of Directors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.00 PARTICIPATION

3.01 Enrollment.

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

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

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

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

3.02 Duration of Election to Participate.

Subject to the terms of the Plan:

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

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

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

4.00 ADMINISTRATION

4.01 Committee Duties.

[1] The Committee is responsible for administering the Plan and has all powers appropriate and necessary to that purpose. Consistent with the Plan's objectives, the Committee may adopt, amend and rescind rules and regulations relating to the Plan, to the extent appropriate to protect the Company's interests and has complete discretion to make all other decisions necessary or advisable for the administration and interpretation of the Plan. Any action by the Committee will be final, binding and conclusive for all purposes and upon all persons. The Committee is granted all powers appropriate and necessary to administer the Plan.

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

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

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

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

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

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

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

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

[h] Apply all Plan rules and procedures.

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

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

5.00 OFFERING

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

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

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

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

6.00 PURCHASE OF SHARES

6.01 Purchase.

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

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

6.02 Remaining Available Shares.

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

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

6.03 Delivery of Shares; Participants' Custodial Accounts.

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

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

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

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

transaction is completed, the custodian will credit the purchased shares of Stock to the Custodial Account to which was credited the Stock with respect to which the noncash dividend was distributed.

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

7.00 TERMINATION/DISTRIBUTION OF CUSTODIAL ACCOUNTS

7.01 Effect of Termination on Election to Participate.

A Participant who Terminates will be deemed to have withdrawn from the Plan. Any cash amounts credited to his or her Plan Account for the Offering Period during which the Termination occurs will be used to purchase shares of Stock to be credited to his or her Plan Account. No shares of Stock will be purchased for that Participant for any Offering Period after the Offering Period during which he or she terminates.

7.02 Distribution of Custodial Accounts.

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

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

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

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

8.00 MERGER, CONSOLIDATION OR SIMILAR EVENT

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

9.00 AMENDMENT, MODIFICATION AND TERMINATION OF PLAN

9.01 Amendment, Modification, Termination of Plan. The Plan will automatically terminate after all available shares have been sold. Also, the Board may terminate, suspend or amend the Plan at any time without shareholder approval except to the extent that shareholder approval is required to satisfy applicable requirements imposed by [1] Rule 16b-3 under the Act, or any successor rule or regulation, [2] applicable requirements of the Code or [3] any securities exchange, market or other quotation system on or through on which the Company's securities are listed or traded. Also, no Plan amendment may [4] result in the loss of a Committee member's status as a "non-employee director" as defined in Rule 16b-3 under the Act, or any successor rule or regulation, with respect to any employee benefit plan of the Company, [5] cause the Plan to fail to meet requirements imposed by Rule 16b-3 or [6] without the consent of the affected Member adversely affect any Purchase Right issued before the amendment, modification or termination. However, nothing in this section will restrict the Committee's right to exercise the discretion retained in Section 4.00.

9.02 Effect of Plan Termination.

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

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

10.00 MISCELLANEOUS

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

10.02 Beneficiary. If a Participant dies, the deceased Participant's Beneficiary will be his or her surviving spouse or, if there is no surviving spouse, the deceased Participant's estate.

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

- [1] Interfering with or limiting the right of any Employer to terminate any Participant's employment at any time; or
- [2] Conferring on any Participant or Employee any right to continue as an Employee.

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

10.05 Indemnification. Each individual who is or was a member of the Committee or of the Board will be indemnified and held harmless by the Company against and from any loss, cost, liability or expense that may be imposed upon or reasonably incurred by him or her in connection with or resulting from any claim, action, suit or proceeding to which he or she may be made a party or in which he or she may be involved by reason of any action taken or failure to take action under the Plan as a Committee member and against and from any and all amounts paid, with the Company's approval, by him or her in settlement of any matter related to or arising from the Plan as a Committee member or paid by him or her in satisfaction of any judgment in any action, suit or proceeding relating to or arising from the Plan against him or her as a Committee member, but only if he or she gives the Company an opportunity, at its own expense, to handle and defend the matter before he or she undertakes to handle and defend it in his or her own behalf. The right of indemnification described in this section is not exclusive and is independent of any other rights of indemnification to which the individual may be entitled under the Company's organizational documents, by contract, as a matter of law or otherwise. The foregoing right of indemnification is not exclusive and is independent of any other rights of indemnification to which the person may be entitled under the Company's organizational documents, by contract, as a matter of law or otherwise.

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

10.07 Requirements of Law. The availability of Purchase Rights and the issuance of shares of Stock will be subject to all applicable laws, rules and regulations and to all required approvals of any governmental agencies or national securities exchange, market

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

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

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

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

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

The Scotts Miracle-Gro Company

Scotts Announces Name Change to The Scotts Miracle-Gro Company; Adopts New Holding Company Structure

Name change coincides with the start of spring and the 2005 growing season

MARYSVILLE, Ohio (March 21, 2005) – The Scotts Company today changed its name to The Scotts Miracle-Gro Company (NYSE: SMG) in order to raise the visibility of its key brands and more easily explain the scope of its business mission.

“The Miracle-Gro name is one of the best known consumer brands in the world and is synonymous with gardening,” said Jim Hagedorn, chairman and chief executive officer. “By combining the Scotts and Miracle-Gro, names we are more clearly defining ourselves as a branded consumer products company to investors and others who may not be as familiar with our industry.”

The name change was approved in January by shareholders, along with the creation of a new holding company structure, which also became effective today. That structure now gives ScottsMiracle-Gro more flexibility to grow in future years and provides better legal protection to the Company’s businesses and brands. As part of the restructuring, publicly owned ScottsMiracle-Gro will be designated as the parent company of The Scotts Company, LLC.

From an operational perspective, The Scotts Company will continue to conduct business with its suppliers, retailers and consumers. However, corporate matters – including Finance, Legal, Strategic Planning and outreach to the financial community, the media and community organizations – will be conducted by ScottsMiracle-Gro.

Shareholders of The Scotts Company were granted an equal number of shares in the new ScottsMiracle-Gro. The company’s ticker symbol, SMG, is unchanged. There were no other material issues related to the changes that affect shareholders.

To celebrate both the name change and the start of spring, Hagedorn is scheduled to ring the closing bell today at The New York Stock Exchange. Additionally, to promote the benefits of green spaces to communities and the environment, the Company today began construction of a series of community gardens it will build in cities across the country as part of its partnership with Keep America Beautiful.

The first garden is being built in Orlando, Fla. Others will be built throughout the spring in Atlanta, Ga.; Norfolk, Va.; Long Island, NY and Columbus, Ohio.

“There is no better time than the start of spring to adopt this name change and to remind people about the ways that healthy lawns and beautiful gardens impact our lives every day,” Hagedorn added. “We have said for years that we believe there is no better business to be in than ours. As we enter the peak of another growing season, that statement has never been more true.”

About Scotts Miracle-Gro

With more than \$2 billion in worldwide sales and more than 6,000 associates, The Scotts Miracle-Gro Company, through its wholly-owned subsidiary, The Scotts Company, LLC, is the world’s largest marketer of branded consumer products for lawn and garden care, with products for professional horticulture as well. The Company’s brands are the most recognized in the industry. In the U.S., the Company’s Scotts®, Miracle-Gro® and Ortho® brands are market-leading in their categories, as is the consumer Roundup® brand, which is marketed in North America and most of Europe exclusively by Scotts and owned by Monsanto. The Company also owns Smith & Hawken, a leading brand of garden-inspired products that includes pottery, watering equipment, gardening tools, outdoor furniture and live goods. In Europe, Scotts’ brands include Weedol®, Pathclear®, Evergreen®, Levington®, Miracle-Gro®, KB®, Fertiligene® and Substral®. For additional information, visit us at www.scotts.com.

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