

change in the corporate respondent such as dissolution, assignment sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

VIII

It is further ordered that, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon request, respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five (5) days notice to respondent, with respondent's counsel present, and without restraint or interference, to interview officers, employees, or agents of respondent.

AGREEMENT TO HOLD SEPARATE

In the matter of The Scotts Company, a corporation.

[File No. 951-0056]

This Agreement to Hold Separate ("Hold Separate") is by and between the Scotts Company ("Scotts"), a corporation organized, existing, and doing business under and by virtue of the laws of Ohio, with its office and principal place of business at 14111 Scottslawn Road, Marysville, Ohio 43041 and the Federal Trade Commission ("the Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively the "Parties").

Premises

Whereas, on January 26, 1995, Scotts entered into an Agreement and Plan of Merger with Stern's Miracle-Gro Products, Inc. ("Miracle-Gro") to acquire all of the voting securities of Miracle-Gro in exchange for voting securities of Scotts (hereinafter the "Acquisition"); *Whereas*, Scotts is a leading producer and marketer of consumer lawn care products, including consumer water soluble fertilizer under the Peters brand name;

Whereas, Miracle-Gro, with its principal office and place of business located at 800 Port Washington Blvd., Port Washington, New York 11050 is the leading marketer of water soluble fertilizer in the United States;

Whereas, the Commission is now investigating the Acquisition to determine whether it would violate any of the statutes enforced by the Commission;

Whereas, if the Commission accepts the Agreement Containing Consent Order ("Consent Order"), the Commission must

place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules;

Whereas, the Commission is concerned that if an understanding is not reached, preserving the status quo ante of the Peters Consumer Water Soluble Fertilizer Business (as defined in Paragraph I of the Consent Order) and Miracle-Gro during the period prior to the final acceptance of the Consent Order by the Commission (after the 60-day public comment period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy;

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Peters Consumer Water Soluble Fertilizer Business, the Peters Business, or Miracle-Gro and the Commission's right to have the Peters Consumer Water Soluble Fertilizer Business, the Peters Business, and Miracle-Gro continue as viable competitors;

Whereas, the Commission is concerned that the exchange of competitively sensitive information between persons operating and managing Miracle-Gro, the Peters Business, and the Peters Consumer Water Soluble Fertilizer Business may lessen the competitive viability of any divestiture if the Commission accepts the proposed Consent Order and makes it final;

Whereas, the purposes of the Hold Separate and the Consent Order are:

1. To preserve the Peters Consumer Water Soluble Fertilizer Business, the Peters Business, and Miracle-Gro as viable, independent businesses pending the Commission's final approval of the Consent Order and the divestiture of a viable and ongoing enterprise,

2. To remedy any anticompetitive effects of the Acquisition,

3. To preserve the Peters Consumer Water Soluble Fertilizer Business, the Peters Business, and Miracle-Gro as ongoing and competitive entities engaged in the same business in which they are presently employed until the Commission gives final approval to the Consent Order and the divestiture is achieved, and

4. To protect the competitive viability of Miracle-Gro, the Peters Business, and the Peters Consumer Water Soluble Fertilizer Business by preventing the exchange of competitively sensitive information among persons managing or operating those businesses;

Whereas, Scotts' entering into this Hold Separate shall in no way be construed as an admission by Scotts that the Acquisition is illegal;

Whereas, Scotts understands that no act or transaction contemplated by this Hold Separate shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Hold Separate;

Now, Therefore, the parties agree, upon the understanding that the Commission has not yet determined whether the acquisition will

be challenged, and in consideration of the Commission's agreement that it will not seek further relief from Scotts with respect to the Acquisition if the Consent Order is made final, except that the Commission may exercise any and all rights to enforce this Hold Separate, the Consent Order to which it is annexed and made a part thereof and the Order, once it becomes final, and in the event that the required divestiture is not accomplished, to appoint a trustee to seek divestiture of the Peters Consumer Water Soluble Fertilizer Business or the Peters Business pursuant to the Consent Order, as follows:

1. Scotts agrees to execute and be bound by the Consent Order.

2. To ensure the complete independence and viability of the Peters Consumer Water Soluble Fertilizer Business, the Peters Business, and Miracle-Gro and to assure that no competitive information is exchanged between Miracle-Gro and either the Peters Consumer Water Soluble Fertilizer Business or the Peters Business, Scotts shall hold Miracle-Gro separate and apart as it is presently constituted, from the date this Hold Separate is accepted until the earlier of the completion of the divestiture obligations required by the Consent Order or three (3) days after the Commission withdraws its acceptance of the Consent Order pursuant to § 2.34 of the Commission's rules, on the following terms and conditions:

a. Except as required by law, and except to the extent that necessary information is exchanged in defending investigations or litigation, obtaining legal advice, or complying with this Hold Separate or the Consent Order, Scotts (including, but not limited to, any officer, director, employee, or agent of Scotts) shall not receive or have access to, or the use of, any material confidential information of Miracle-Gro or the activities of the board of directors of Miracle-Gro (the "Miracle-Gro Board") not in the public domain that relates to Water Soluble Fertilizer, nor shall Miracle-Gro (including, but not limited to, any officer, director, employee or agent of Miracle-Gro) receive or have access to, or the use of, any material confidential information of Scotts or the activities of the board of directors of Scotts (the "Scotts Board") not in the public domain that relates to Water Soluble Fertilizer; provided, however, after the Consent Order is made final, Scotts and Miracle-Gro may exchange information concerning Water Soluble Fertilizer sold outside the United States. Scotts may receive on a regular basis from Miracle-Gro aggregate financial and other information necessary to allow Scotts to file financial reports, tax returns, personnel reports, and reports with the Securities and Exchange Commission. Any such information that is obtained pursuant to this subparagraph shall be used only for the purpose set forth in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to Scotts from sources other than Miracle-Gro or the Miracle-Gro Board and includes but is not limited to customer lists, price lists, prices, marketing methods, advertising plans,