than physical or mental illness) after reasonable notice of that failure; (b) misconduct that materially injures the Company or any subsidiary or affiliate; (c) conviction of, or entering into a plea of nolo contendere to, a felony; or (d) breach of any written covenant or agreement with the Company or any subsidiary or affiliate.

In order to receive benefits under the Executive Severance Plan, each Participant must execute a participation agreement (the "Participation Agreement"), the form of which was approved by the Compensation Committee, and, upon termination, must execute a release agreement in favor of the Company. The Participation Agreement provides for the following severance benefits in the event a Participant's employment is terminated involuntarily without Cause or the Participant resigns for "Good Reason":

- a continuation of base salary, in accordance with the Company's normal payroll practices, for a period of 24 months after the date of termination (the "Severance Period");
- a prorated bonus for the plan year in which the termination occurs, to be paid if earned at the time the Company pays annual bonus awards generally; and
- each month during the Severance Period that the Participant is eligible for COBRA, an amount equal to the excess of the then COBRA premium charged by the Company to terminated employees over the premium charged to active employees (the "Benefits Offset Payment").

All other benefits to which the Participant has a vested right as of the effective date of termination will be paid or provided according to the provisions of the plans or programs governing such benefits. In addition to the foregoing, in the event termination occurs within two years following a "Change in Control" (as defined in the Executive Severance Plan), the Participant will also receive a payment equal to twice the Participant's target bonus opportunity.

The Participation Agreement defines "Good Reason" as the existence of one or more of the following conditions without the Participant's consent: (a) a material diminution in total direct compensation at target (meaning the sum of base salary, target bonus opportunity and the grant date value of long-term awards), other than as a result of (i) an across-the-board reduction for executives at the Participant's level or (ii) a reduction in total direct compensation at target as a result of the Participant being in a performance improvement or disciplinary plan; or (b) a material diminution in authority, duties or responsibilities. Under the terms of the Participation Agreement, Good Reason exists only if the Company fails to cure the event giving rise to Good Reason within 30 days after receiving notice thereof from the Participant.

Each Participant has executed a Participation Agreement and, therefore, is eligible to receive benefits under the Executive Severance Plan.

Baker Separation Agreement

Mr. Baker served as the Company's President and Chief Operating Officer from October 1, 2008 until his resignation effective October 28, 2010. Prior to his resignation, Mr. Baker served pursuant to the terms of an employment agreement that was executed on September 10, 2008 and amended on December 10, 2009 (as amended, the "Baker Agreement"). On November 3, 2010, Scotts LLC executed a Separation Agreement and Release of All Claims (Baker Separation Agreement) with Mr. Baker. The Baker Separation Agreement, which superseded the Baker Agreement, addressed the payments and benefits to which Mr. Baker was entitled in connection with his resignation.

Pursuant to the terms of the Baker Separation Agreement, Scotts LLC provided Mr. Baker with a lump sum payment of $5,025,000 (less applicable taxes) on November 24, 2010. In addition, the vesting date for the 103,700 NSOs granted to Mr. Baker on October 8, 2008, which were scheduled to vest on September 30, 2011, was changed to October 28, 2010. All other equity awards that had not vested as of October 28, 2010 were forfeited. The Baker Separation Agreement did not supersede or nullify the Employee Confidentiality, Noncompetition, Nonsolicitation Agreement previously executed by Mr. Baker on September 29, 2008, which remains in full force and effect as modified by the Baker Separation Agreement.