UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of report (Date of earliest event reported): September 27, 2011

Fortune Brands Home & Security, Inc.

(Exact Name of Registrant as Specified in its Charter)

Delaware	**1-35166**	**62-1411546**
(State or Other Jurisdiction of Incorporation)	**(Commission File Number)**	**(IRS Employer Identification No.)**

520 Lake Cook Road
Deerfield, IL 60015
(Address of Principal Executive Offices) (Zip Code)

847-484-4400
(Registrant's telephone number, including area code)

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

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

INFORMATION TO BE INCLUDED IN THE REPORT

Item 1.01. Entry into a Material Definitive Agreement.

On September 27, 2011, Fortune Brands Home & Security, Inc. (the "Company"), a wholly-owned subsidiary of Fortune Brands, Inc. ("Fortune Brands"), entered into a Separation and Distribution Agreement in connection with the anticipated spin-off of the Company from Fortune Brands (the "Spin-off"). Also in connection with the Spin-off, on September 28, 2011, the Company and Fortune Brands entered into a Tax Allocation Agreement and an Employee Matters Agreement. It is anticipated that the Spin-off will be effectuated through the distribution by Fortune Brands of all of the outstanding shares of common stock of the Company (the "Distribution").

A description of the Separation and Distribution Agreement, the Tax Allocation Agreement and the Employee Matters Agreement is included in the section entitled "Certain Relationships and Related Party Transactions—Agreements with Fortune Brands, Inc." in the Information Statement filed as an exhibit to Amendment No. 5 to the Company's Registration Statement on Form 10 and is incorporated herein by reference. Copies of the Separation and Distribution Agreement, the Tax Allocation Agreement and the Employee Matters Agreement are attached hereto as Exhibits 2.1, 10.1 and 10.2, respectively.

Item 3.03. Material Modification to Rights of Security Holders.

The disclosure in Item 5.03 of this Current Report on Form 8-K is incorporated herein by reference.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangement of Certain Officers.

(d) On September 27, 2011, the Board of Directors of the Company (the "Board") increased the size of the Board from seven to eight directors and elected John Morikis as a Class I member of the Board, each effective December 1, 2011. Mr. Morikis will serve on the Board for a term continuing until the Company's 2012 annual meeting of stockholders. On September 30, 2011, the Company issued a press release announcing Mr. Morikis' election, a copy of which is attached as Exhibit 99.1.

The Board determined that Mr. Morikis is independent under the rules of the New York Stock Exchange and the Company's Corporate Governance Principles. Effective December 1, 2011, Mr. Morikis will serve on the Audit Committee of the Board.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On September 27, 2011, the Board approved the Restated Certificate of Incorporation of the Company (the "Restated Charter"). The Company's sole stockholder, Fortune Brands, also approved the Restated Charter on September 27, 2011. The Restated Charter became effective on September 27, 2011.

On September 27, 2011, the Board approved the Amended and Restated Bylaws of the Company (the "Restated Bylaws"). Pursuant to the terms of the Board's approval, the Restated Bylaws became effective on September 27, 2011.

A description of the material provisions of the Restated Charter and the Restated Bylaws can be found in the section entitled "Description of Our Capital Stock" in the Information Statement attached as Exhibit 99.1 to the Company's Amendment No. 5 to Registration Statement on Form 10 filed with the Securities and Exchange Commission on August 26, 2011. Copies of the Restated Charter and the Restated Bylaws are attached hereto as Exhibits 3.1 and 3.2, respectively, and are incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits:

Exhibit No.	Description
2.1	Separation and Distribution Agreement, dated as of September 27, 2011, between Fortune Brands, Inc. and Fortune Brands Home & Security, Inc.+
3.1	Restated Certificate of Incorporation of Fortune Brands Home & Security, Inc., dated September 27, 2011.
3.2	Amended and Restated Bylaws of Fortune Brands Home & Security, Inc., dated September 27, 2011.
10.1	Tax Allocation Agreement, dated as of September 28, 2011, between Fortune Brands, Inc. and Fortune Brands Home & Security, Inc.
10.2	Employee Matters Agreement, dated as of September 28, 2011, between Fortune Brands, Inc. and Fortune Brands Home & Security, Inc.
99.1	Press Release of Fortune Brands Home & Security, Inc., dated September 30, 2011.

+ The Company agrees to furnish supplementally a copy of any omitted schedule to the Securities and Exchange Commission upon request.

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.

FORTUNE BRANDS HOME & SECURITY, INC.
(Registrant)

By /s/ Lauren S. Tashma
Name: Lauren S. Tashma
Title: Assistant Secretary

Date: September 30, 2011

EXHIBIT INDEX

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SEPARATION AND DISTRIBUTION AGREEMENT

by and between

FORTUNE BRANDS, INC.

and

FORTUNE BRANDS HOME & SECURITY, INC.

Dated as of September 27, 2011

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Exhibit B	Form of Employee Matters Agreement
Exhibit C	Form of H&S Amended and Restated Bylaws
Exhibit D	Form of H&S Restated Certificate of Incorporation
Exhibit E	Form of Indemnification Agreement
Exhibit F	Form of Initial H&S Certificate of Incorporation
Exhibit G	Form of Studio Use Agreement
Exhibit H	Form of Tax Allocation Agreement
Exhibit I	Form of Transition Services Agreement (Beam to H&S)
Exhibit J	Form of Transition Services Agreement (H&S to Beam)

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Schedule 1.1(C)	H&S Financial Instruments
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SEPARATION AND DISTRIBUTION AGREEMENT

This SEPARATION AND DISTRIBUTION AGREEMENT is made as of September 27, 2011 by and between Fortune Brands, Inc., a Delaware corporation ("**Fortune Brands**"), and Fortune Brands Home & Security, Inc., a Delaware corporation ("**H&S**"), and, as of the date hereof, a wholly-owned subsidiary of Fortune Brands.

WHEREAS, Fortune Brands, through the H&S Subsidiaries (as hereinafter defined) and the Transferred Subsidiaries (as hereinafter defined), is engaged in the business of designing, manufacturing and selling home and security products, as described more fully in the Form 10 Registration Statement (as hereinafter defined) (the "**Transferred Business**");

WHEREAS, the board of directors of Fortune Brands (the "**Fortune Board**") has determined that it would be advisable and in the best interests of Fortune Brands and its stockholders for Fortune Brands to contribute to H&S (i) 100% of the ownership interests of the Transferred Subsidiaries (as hereinafter defined) and (ii) the Transferred Business Assets (as hereinafter defined);

WHEREAS, the Fortune Board has determined that it would be advisable and in the best interests of Fortune Brands and its stockholders for Fortune Brands to distribute on a *pro rata* basis to the holders of shares of Fortune Brands' common stock, par value $3.125 per share ("**Fortune Brands Shares**"), without any consideration being paid by the holders of such Fortune Brands Shares, all of the outstanding shares of H&S common stock, par value $0.01 per share ("**H&S Shares**"), owned by Fortune Brands as of the Distribution Date (as hereinafter defined);

WHEREAS, it is the intention of the parties hereto that the Contribution, Conversion and Distribution (as defined herein) qualify as a reorganization within the meaning of Sections 355 and 368(a)(1)(D) of the Internal Revenue Code of 1986 (the "**Code**");

WHEREAS, it is the intention of the parties hereto that the Distribution qualify as tax-free to Fortune Brands under Section 361(c) of the Code and that, except for cash received in lieu of any fractional H&S Shares, the Distribution qualify as tax-free to Fortune Brands stockholders under Section 355(a) of the Code; and

WHEREAS, it is appropriate and desirable to set forth the principal transactions required to effect the Contribution and Distribution and certain other agreements that will govern the relationship of Fortune Brands and H&S following the Distribution.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto hereby agree as follows:

ARTICLE I
DEFINITIONS

SECTION 1.1 Definitions. As used in this Agreement, the following terms shall have the meanings set forth in this Section 1.1:

"1700 Insurance" means 1700 Insurance Company Ltd., a limited liability company organized under the laws of Bermuda and, as of the date hereof, a wholly-owned subsidiary of Fortune Brands.

"Action" means any action, claim, demand, suit, arbitration, inquiry, subpoena, discovery request, proceeding or investigation by or before any arbitral body or any court, grand jury or other Governmental Authority.

"Affiliate" means, with respect to any Person, any other Person that, at the time of determination, directly or indirectly Controls, is Controlled by or is under common Control with such Person. After the Distribution, H&S and Fortune Brands shall not be deemed to be under common Control for purposes hereof due solely to the fact that H&S and Fortune Brands have common stockholders.

"Agent" means Wells Fargo Shareowner Services, the distribution agent appointed by Fortune Brands to distribute H&S Shares pursuant to the Distribution.

"**Agreement**" means this Separation and Distribution Agreement, as the same may be amended from time to time in accordance with its terms.

"Assumed Actions" means those Actions (a) in which any Fortune Brands Party or any of its Affiliates is a defendant or the party against whom the claim or investigation is directed and (b) that primarily relate to the H&S Business, including those Actions listed on Schedule 1.1(A).

"Beam" has the meaning set forth in Section 3.1(a).

"Canada FinCo" means Fortune Brands Finance Canada Ltd., a corporation incorporated federally and extra-provincially registered in Ontario and, as of the date hereof, a wholly-owned subsidiary of Fortune Brands.

"**Claims Administration**" means the processing of claims made under Policies, including the reporting of claims to the insurance carrier, management and defense of claims and providing for appropriate releases upon settlement of claims.

"**Claims Made Policies**" has the meaning set forth in Section 8.1(b).

"Code" has the meaning set forth in the Recitals.

"**Confidential Information**" means any of the following:

(a) any information that is competitively sensitive material or otherwise of value to any Fortune Brands Party or H&S Party and not generally known to the public, including product planning information, marketing strategies, plans, consumer or customer relationships, consumer or customer profiles, sales estimates, business plans and internal performance results relating to the past, present or future business activities of any Fortune Brands Party or H&S Party or the consumers, customers, clients or suppliers of any of the foregoing;

(b) any scientific or technical information, design, process, procedure, formula or improvement that is commercially valuable and secret in the sense that its confidentiality affords any Fortune Brands Party or H&S Party a competitive advantage over its competitors; or

(c) any confidential or proprietary concepts, ideas, know-how, concepts, methods, processes, formulae, documentation, reports, data, specifications, computer software, source code, object code, flow charts, databases, inventions, trade secrets or other proprietary information, whether or not patentable or copyrightable.

Confidential Information includes all documents, inventions, substances, engineering and laboratory notebooks, drawings, diagrams, computer programs and data, specifications, bills of material, equipment, prototypes and models and any other tangible manifestation (including data in computer or other digital format) of the foregoing.

"**Contract**" means any written or oral contract, agreement, lease, license, sublicense, commitment, understanding, arrangement, assignment or indemnity, including any amendment thereto, invoice, purchase order, bid and quotation.

"Contribution" has the meaning set forth in Section 3.1(e).

"**Contribution Agreement**" means the agreement in the form of Exhibit A pursuant to which the Transferred Business Assets will or have been contributed to H&S.

"**Control**" means, as to any Person, the direct or indirect power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by Contract or otherwise; and the terms "Controlled by" and "under common Control" have correlative meanings.

"Conversion" has the meaning set forth in Section 3.1(f).

"Conveyancing Instruments" has the meaning set forth in Section 3.8.

"CPR" has the meaning set forth in Section 12.2(b).

"Dispute" has the meaning set forth in Section 12.2(a).

"Distribution" has the meaning set forth in Section 4.3.

"Distribution Date" means the date determined by the Fortune Board in accordance with Section 4.1 as the date as of which the Distribution will be effected.

"**Effective Time**" has the meaning set forth in Section 4.3.

"**Employee Contract**" means any Contract between a Party and a current or former employee of any Party.

"**Employee Matters Agreement**" means the Employee Matters Agreement to be entered into between Fortune Brands and H&S, the form of which is attached hereto as Exhibit B.

"Exchange Act" means the Securities Exchange Act of 1934.

"Expenses" means any and all expenses incurred in connection with investigating, defending or asserting any claim, action, suit or proceeding incident to any matter indemnified against hereunder (including court filing fees, court costs, arbitration fees or costs, witness fees and reasonable fees and disbursements of legal counsel, investigators, expert witnesses, consultants, accountants and other professionals).

"FBIC" means Fortune Brands International Corporation, a Delaware corporation and, as of the date hereof, a wholly-owned subsidiary of Fortune Brands.

"**FIFO Basis**" means, with respect to the payment of Unrelated Claims pursuant to the same Shared Policy, the payment in full of each successful claim (regardless of whether a Fortune Brands Insured Party or an H&S Insured Party is the claimant) in the order in which such successful claim is approved by the insurance carrier, until the limit of the applicable Shared Policy is met.

"**Foreign Cash**" means cash and cash equivalents of H&S Parties incorporated outside the U.S., including all such cash or cash equivalents temporarily on deposit in any account held by a U.S. H&S Party.

"**Form 10 Registration Statement**" means the registration statement on Form 10 filed by H&S with the SEC to effect the registration of the H&S Shares under the Exchange Act (including all amendments or supplements thereto, in each case filed with the SEC prior to the Distribution Date).

"**Form S-8 Registration Statement**" means the registration statement on Form S-8, as amended and supplemented, including all documents incorporated by reference, to effect the registration under the Securities Act of H&S Shares subject to stock-based awards granted to current and former officers, employees, directors and consultants of the Fortune Brands Parties and the H&S Parties pursuant to the Employee Matters Agreement.

"**Former Business**" means any corporation, partnership, entity, division, business unit or business within the definition of Rule 11-01(d) of Regulation S-X (in each case, including any assets and liabilities comprising the same) that has been sold, conveyed, assigned, transferred or otherwise disposed of or divested (in whole or in part) or the operations, activities or production of which has been discontinued, abandoned, completed or otherwise terminated (in whole or in part).

"**Fortune Board**" has the meaning set forth in the Recitals.

"**Fortune Brands**" has the meaning set forth in the first paragraph of this Agreement.

"**Fortune Brands Business**" means all businesses and operations of the Fortune Brands Parties, other than the H&S Business, including any Former Businesses owned, in whole or in part, or operated, in whole or in part, by any of the Fortune Brands Parties.

"**Fortune Brands Financial Instruments**" means all credit facilities, guaranties, foreign currency forward exchange Contracts, letters of credit and similar instruments that are not primarily related to the H&S Business under which any H&S Party has any primary, secondary, contingent, joint, several or other Liability, including those set forth on Schedule 1.1(B).

"**Fortune Brands Indemnified Parties**" has the meaning set forth in Section 10.2.

"Fortune Brands Insured Party" means any Fortune Brands Party that is a named insured, additional named insured or insured under any Shared Policy.

"**Fortune Brands Liabilities**" means, without duplication, (a) all Liabilities of the Fortune Brands Parties to the extent based upon or arising out of the Fortune Brands Business, (b) all Liabilities of the H&S Parties to the extent based upon or arising out of the Fortune Brands Business and (c) all Liabilities based upon or arising out of the Fortune Brands Financial Instruments.

"**Fortune Brands Parties**" means Fortune Brands and its Subsidiaries (including those formed or acquired after the date hereof), other than the H&S Parties.

"**Fortune Brands Shares**" has the meaning set forth in the Recitals.

"**Governmental Approvals and Consents**" means any notices, reports or other filings to be made with or to, or any consents, registrations, approvals, permits, clearances or authorizations to be obtained from, any Governmental Authority.

"**Governmental Authority**" means any U.S. federal, state or local, or any supra-national or non-U.S. government, political subdivision, governmental, regulatory or administrative authority, instrumentality, agency body or commission, self-regulatory organization or any court, tribunal or judicial or arbitral body.

"**H&S**" has the meaning set forth in the first paragraph of this Agreement.

"**H&S Balance Sheet**" means the unaudited condensed consolidated balance sheet of H&S as of June 30, 2011 included in the Information Statement.

"**H&S Board**" means the board of directors of H&S.

"**H&S Business**" means all businesses and operations of the H&S Parties, including any Former Businesses owned, in whole or in part, or operated, in whole or in part, by any of the H&S Parties.

"**H&S Amended and Restated Bylaws**" means the amended and restated bylaws of H&S, the form of which is attached hereto as Exhibit C.

"**H&S Credit Facility**" means a $1,000,000,000 (one billion dollar) credit facility to be entered into by H&S and one or more Third Parties.

"**H&S Equity Interests**" means the equity interests of H&S prior to the Conversion.

"**H&S Financial Instruments**" means all credit facilities, guaranties, foreign currency forward exchange Contracts, letters of credit and similar instruments primarily related to the H&S Business under which any Fortune Brands Party has any primary, secondary, contingent, joint, several or other Liability, including those set forth on Schedule 1.1(C).

"**H&S Indemnified Parties**" has the meaning set forth in Section 10.3.

"**H&S Insured Party**" means any H&S Party that is a named insured, additional named insured or insured under any Shared Policy.

"**H&S Liabilities**" means, without duplication, (a) all Liabilities of the H&S Parties to the extent based upon or arising out of the H&S Business or the Transferred Business Assets, (b) all Liabilities of the Fortune Brands Parties to the extent based upon or arising out of the H&S Business or the Transferred Business Assets, (c) all Liabilities based upon or arising out of the H&S Financial Instruments and (d) all outstanding Liabilities included on the H&S Balance Sheet or in the notes thereto and all other Liabilities that are of a nature or type that would have resulted in such Liabilities being included as Liabilities on a consolidated balance sheet of H&S, or the notes thereto, as of the Effective Time (were such balance sheet and notes to be prepared) on a basis consistent with the determination of the nature and type of Liabilities included on the H&S Balance Sheet; it being understood that to the extent the amount of any Liability included on the H&S Balance Sheet or the notes thereto was an estimate thereof, the actual amount of such Liability (rather than the estimated amount) shall be deemed to be an H&S Liability for purposes of clause (d).

"**H&S Parties**" means H&S, the H&S Subsidiaries, the Transferred Subsidiaries and any other Subsidiary of H&S (including those formed or acquired after the date hereof).

"**H&S Restated Certificate of Incorporation**" means the restated certificate of incorporation of H&S, the form of which is attached hereto as Exhibit D.

"**H&S Shares**" has the meaning set forth in the Recitals.

"**H&S Short-Term Note**" means a $500,000,000 (five hundred million dollar) short-term note (a) to be entered into by H&S and a Third Party on the Distribution Date and (b) with respect to which H&S's obligations are to be guaranteed by Fortune Brands.

"**H&S Subsidiaries**" means, collectively, Fortune Brands Storage and Security LLC, MasterBrand Cabinets, Inc., Moen Incorporated, Simonton Holdings, Inc., Therma-Tru Corp. and each Subsidiary of any of the foregoing.

"**Indemnification Agreement**" means the Indemnification Agreement, dated as of September 14, 2011, between Fortune Brands and H&S, the form of which is attached hereto as Exhibit E.

"**Indemnified Party**" has the meaning set forth in Section 10.5(a).

"**Indemnifying Party**" has the meaning set forth in Section 10.5(a).

"**Indemnity Reduction Amounts**" has the meaning set forth in Section 10.5(a).

"**Information**" has the meaning set forth in Section 11.1(a).

"**Information Statement**" means the information statement included in the Form 10 Registration Statement, which information statement is to be sent by Fortune Brands to its stockholders in connection with the Distribution (as the same may be amended or supplemented prior to the Distribution Date).

"**Initial H&S Certificate of Incorporation**" means the initial certificate of incorporation of H&S, the form of which is attached hereto as Exhibit F.

"**Intercompany Agreements**" means any Contract, other than this Agreement, any agreement or amendment thereto contemplated by Section 6.2 and the Transaction Agreements, between one or more of the Fortune Brands Parties, on the one hand, and one or more of the H&S Parties, on the other hand, entered into prior to the Distribution.

"**IRS**" means the Internal Revenue Service.

"**Liabilities**" means any and all debts, liabilities and obligations, absolute or contingent, matured or unmatured, liquidated or unliquidated, accrued or unaccrued, known or unknown, whenever arising, including all costs and expenses relating thereto, and including those debts, liabilities and obligations arising under any law, rule, regulation, Action, threatened Action, order or consent decree of any Governmental Authority or any award of any arbitrator of any kind, and those arising under any Contract.

"**Losses**" means any and all losses, costs, obligations, liabilities, settlement payments, awards, judgments, fines, penalties, damages, deficiencies or other charges.

"**LTIP Shares**" has the meaning set forth in Section 2.1(c).

"**Marks**" has the meaning set forth in Section 6.7.

"**Material Transaction Agreements**" means the Conveyancing Instruments, the Employee Matters Agreement, the Indemnification Agreement, the Tax Allocation Agreement and the Transition Services Agreements.

"**Mediation Request**" has the meaning set forth in Section 12.2(b).

"**NYSE**" means the New York Stock Exchange.

"**Occurrence Basis Policies**" has the meaning set forth in Section 8.1(b).

"**Out-of-Pocket Expenses**" means expenses involving a payment to a Third Party (other than an employee of the party making the payment).

"**Party**" means a Fortune Brands Party or an H&S Party, as applicable.

"**Person**" means any individual, corporation, partnership, joint venture, limited liability company, entity, association, joint-stock company, trust, unincorporated organization or Governmental Authority.

"**Policies**" means all insurance policies, insurance Contracts and claim administration Contracts of any kind of the Fortune Brands Parties and their predecessors which were or are in effect at any time at or prior to the Effective Time (other than insurance policies, insurance Contracts and claim administration Contracts established in contemplation of the Distribution to cover only the H&S Parties after the Effective Time), including primary, excess and umbrella, commercial general liability, fiduciary liability, product liability, automobile, aircraft, property and casualty, business interruption, directors and officers liability, employment practices liability, workers' compensation, crime, errors and omissions, special accident, cargo and employee dishonesty insurance policies and captive insurance company arrangements, together with all rights, benefits and privileges thereunder.

"**Prime Rate**" means the rate that JPMorgan Chase Bank, N.A. (or any successor thereto or other major money center commercial bank agreed to by the parties hereto) announces from time to time as its prime lending rate, as in effect from time to time.

"**Privilege**" has the meaning set forth in Section 11.9(a).

"**Privileged Information**" has the meaning set forth in Section 11.9(a).

"**Procedure**" has the meaning set forth in Section 12.2(b).

"**Record Date**" means 5:00 p.m. Central Time on the date determined by the Fortune Board as the record date for the Distribution.

"**Related Claims**" means a claim or claims against a Shared Policy made by one or more H&S Insured Parties, on the one hand, and one or more Fortune Brands Insured Parties, on the other hand, filed in connection with Losses suffered by either an H&S Insured Party or a Fortune Brands Insured Party, as the case may be, arising out of the same underlying transaction or series of transactions or event or series of events that have also given rise to Losses suffered by a Fortune Brands Insured Party or an H&S Insured Party, as the case may be, which Losses are the subject of a claim or claims by such Fortune Brands Insured Party or H&S Insured Party, as the case may be, against a Shared Policy.

"**Representatives**" means, with respect to any Person, any of such Person's directors, officers, employees, agents, consultants, advisors, accountants, attorneys and representatives.

"**SEC**" means the United States Securities and Exchange Commission.

"**Securities Act**" means the Securities Act of 1933.

"**Shared Contract**" has the meaning set forth in Section 6.2(a).

"**Shared Policies**" has the meaning set forth in Section 8.1(b).

"**Sidley**" has the meaning set forth in Section 11.10(a).

"**Special Dividend**" means a dividend to be paid in cash by H&S to Fortune Brands in an aggregate amount equal to $500,000,000 (five hundred million dollars).

"**Studio Use Agreement**" means the Studio Use Agreement to be entered into between Fortune Brands and H&S, the form of which is attached hereto as Exhibit G.

"**Subsidiary**" means, when used with reference to any Person, any corporation or other organization whether incorporated or unincorporated of which at least a majority of the securities or interests having by the terms thereof ordinary voting power to elect at least a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or Controlled by such Person; provided, however, that no corporation or other organization that is not directly or indirectly wholly-owned by any other Person shall be a Subsidiary of such other Person unless such other Person Controls, or has the right, power or ability to Control, that Person. After the Distribution, Fortune Brands and H&S shall not be deemed to be under common Control for purposes hereof due solely to the fact that Fortune Brands and H&S have common stockholders.

"**Tax**" and "**Taxes**" shall have the meaning set forth in the Tax Allocation Agreement.

"**Tax Allocation Agreement**" means the Tax Allocation Agreement to be entered into between Fortune Brands and H&S, the form of which is attached hereto as Exhibit H.

"**Third Party**" means a Person that is not an Affiliate of any party hereto.

"**Third-Party Claim**" has the meaning set forth in Section 10.6(a).

"**Third-Party Consents**" means any consent, approval or authorization to be obtained from any Person that is not a Governmental Authority.

"**Transaction Agreements**" means the Conveyancing Instruments, the Employee Matters Agreement, the Indemnification Agreement, the Studio Use Agreement, the Tax Allocation Agreement and the Transition Services Agreements.

"**Transferred Business**" has the meaning set forth in the Recitals.

"**Transferred Business Assets**" means, collectively, the assets set forth on Schedule 1.1(D).

"**Transferred Subsidiaries**" means FBIC, 1700 Insurance and Canada FinCo.

"**Transition Services Agreements**" means the Transition Services Agreements to be entered into between Fortune Brands and H&S, the forms of which are attached hereto as Exhibit I and Exhibit J.

"**Unrelated Claim**" means any claim against a Shared Policy that is not a Related Claim.

"**U.S. Cash Dividend**" means a dividend to be paid in cash by H&S to Fortune Brands in an amount equal to the aggregate amount of cash and cash equivalents held by the U.S. H&S Parties in their respective United States bank accounts as of 11:58 p.m. New York City time on the Distribution Date. For the avoidance of doubt, "U.S. Cash Dividend" shall exclude (i) any cash or cash equivalents held in or under any insurance related accounts or any employee benefit plans, trusts or accounts and (ii) any Foreign Cash.

"**U.S. H&S Parties**" means each of the H&S Parties that has been organized under the laws of the United States or any state thereof.

SECTION 1.2 Interpretation. (a) For purposes of this Agreement

(i) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation;"

(ii) the word "or" is not exclusive;

(iii) the words "herein," "hereunder," "hereof," "hereby," "hereto" and words of similar import shall be deemed to be references to this Agreement as a whole and not to any particular Section or other provision hereof; and

(iv) relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding" and "through" means "through and including."

(b) In this Agreement, unless the context clearly indicates otherwise:

(i) words used in the singular include the plural and words used in the plural include the singular;

(ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement;

(iii) reference to any Person's "Affiliates" shall be deemed to mean such Person's Affiliates following the Distribution;

(iv) reference to any gender includes the other gender;

(v) reference to any Article, Section, Exhibit or Schedule means such Article or Section of, or such Exhibit or Schedule to, this Agreement, as the case may be;

(vi) reference to any agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and by this Agreement;

(vii) reference to any law (including statutes and ordinances) means such law (including all rules and regulations promulgated thereunder) as amended, modified, codified or reenacted, in whole or in part, and in effect at the time of determining compliance or applicability;

(viii) accounting terms used herein shall have the meanings ascribed to them by Fortune Brands and its Subsidiaries, including H&S, in its and their internal accounting and financial policies and procedures in effect immediately prior to the date of this Agreement;

(ix) if there is any conflict between the provisions of this Agreement and a Transaction Agreement, the provisions of such Transaction Agreement shall control unless explicitly stated otherwise therein;

(x) any portion of this Agreement obligating a party to take any action or refrain from taking any action, as the case may be, shall mean that such party shall also be obligated to cause its relevant Subsidiaries to take such action or refrain from taking such action, as the case may be; and

(xi) unless otherwise specified in this Agreement, all references to dollar amounts herein shall be in respect of lawful currency of the United States.

(c) The titles to Articles and headings of Sections contained in this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of or to affect the meaning or interpretation of this Agreement, and this Agreement and the Transaction Agreements shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

(d) The Exhibits and Schedules shall be construed with and as an integral part of this Agreement to the same extent as if the same had been set forth verbatim herein.

ARTICLE II
ACTIONS PRIOR TO THE SEPARATION AND DISTRIBUTION

In order to effect the transactions contemplated by Articles III and IV, the Fortune Brands Parties and the H&S Parties shall take the following actions prior to the Distribution:

SECTION 2.1 SEC and Other Securities Filings.

(a) H&S and Fortune Brands shall use their respective commercially reasonable efforts to cause the Form 10 Registration Statement and the Form S-8 Registration Statement to become effective as soon as reasonably practicable. As soon as practicable after the Form 10 Registration Statement becomes effective, Fortune Brands shall mail the Information Statement to the holders of record of Fortune Brands Shares.

(b) Fortune Brands and H&S shall take all such action as may be necessary or appropriate under state and foreign securities or "blue sky" laws in connection with the transactions contemplated by this Agreement.

(c) Fortune Brands and H&S shall seek to have approved an application for the listing on the NYSE, subject to official notice of issuance, of the H&S Shares and the shares of H&S common stock, par value $0.01 per share, that are subject to issuance under the H&S 2011 Long-Term Incentive Plan (the "**LTIP Shares**").

(d) Fortune Brands shall give the NYSE notice of the Record Date in compliance with Rule 10b-17 under the Exchange Act.

(e) Fortune Brands and H&S shall cooperate in preparing, filing with the SEC and causing to become effective any other registration statements or amendments or supplements thereto that are necessary or appropriate in order to effect the transactions contemplated hereby, or to reflect the establishment of, or amendments to, any employee benefit plans contemplated hereby or the Employee Matters Agreement.

SECTION 2.2 Governmental Approvals and Consents; Third-Party Consents. Fortune Brands and H&S will use their respective commercially reasonable efforts to obtain all Governmental Approvals and Consents and all Third-Party Consents that are required or appropriate in connection with the transactions contemplated by this Agreement.

SECTION 2.3 Additional Approvals. Fortune Brands shall cooperate with H&S in effecting, and if so requested by H&S, Fortune Brands shall, as the sole stockholder of H&S prior to the Distribution, ratify any actions that are reasonably necessary or desirable to be taken by H&S to effectuate the transactions contemplated by this Agreement in a manner consistent with the terms hereof, including the preparation and implementation of appropriate plans, agreements and arrangements for employees of the H&S Business and non-employee members of the H&S Board.

SECTION 2.4 The Agent. Fortune Brands shall enter into a distribution agent agreement with the Agent or otherwise provide instructions to the Agent regarding the Distribution, such that the Agent, in its capacity as Fortune Brands' distribution agent and H&S's transfer agent, will distribute the H&S Shares in the manner described in Article IV.

ARTICLE III
BUSINESS SEPARATION

Subject to the terms and conditions of this Agreement, Fortune Brands and H&S shall take the following actions prior to the Distribution:

SECTION 3.1 Actions Prior to Distribution Date. Fortune Brands and H&S shall take the following actions in the following order prior to the Distribution Date:

(a) Formation of Beam Inc. Fortune Brands shall form a new wholly owned subsidiary, Beam Inc. ("**Beam**"), and incorporate Beam in Delaware upon the filing of a certificate of incorporation with the Secretary of State of the State of Delaware.

(b) Contribution of 1700 Insurance and Canada FinCo. Fortune Brands shall contribute to H&S all of Fortune Brands' right, title and interest in and to the issued and outstanding shares of capital stock of each of 1700 Insurance and Canada FinCo.

(c) Beam Restructuring. Fortune Brands shall cause Wood Terminal Co. to convert to a Delaware limited liability company and then cause Beam Global Spirits & Wine Inc. to convert to a Delaware limited liability company.

(d) Intercompany Debt Balance. Any outstanding intercompany debt balances between the Fortune Brands Parties, on one hand, and the H&S Parties, on the other hand, shall be settled as follows: (i) if the Fortune Brands Parties owe a net payable balance to the H&S Parties, a distribution by H&S to Fortune Brands of the net receivable balance; or (ii) if the H&S Parties owe a net payable balance to the Fortune Brands Parties, the capitalization by Fortune Brands to the paid-in-capital of H&S of the net receivable balance.

(e) Contribution of Assets. Fortune Brands shall contribute to H&S all of Fortune Brands' right, title and interest in and to the Transferred Business Assets (such contribution, together with the contributions pursuant to Section 3.1(b) and Section 3.1(h), the "**Contribution**").

(f) Conversion of H&S. Fortune Brands Home & Security LLC shall convert into a corporation upon the filing of a certificate of conversion and the Initial H&S Certificate of Incorporation with the Secretary of State of the State of Delaware (the "**Conversion**").

(g) FBIC Receivable. Fortune Brands shall make a contribution to the capital of FBIC of the outstanding receivable payable by FBIC to Fortune Brands.

(h) FBIC Contribution. Fortune Brands shall contribute all of the outstanding capital stock of FBIC to H&S in exchange for 0.05 additional H&S Shares.

(i) FBIC Conversion. H&S shall cause FBIC to convert to a Delaware limited liability company.

(j) H&S Board. The H&S Board shall be reconstituted so that it consists of the persons set forth on Schedule 3.1 or, in the event of the death or inability or unwillingness of any of such persons to serve on the H&S Board, such other persons as shall be designated by the Fortune Board. Each member of the reconstituted H&S Board shall, at the time of appointment to the H&S Board, be (i) designated as a Class I, Class II or Class III director and (ii) assigned to one or more committees of the H&S Board.

(k) H&S Charter and Bylaws. The H&S Board shall approve and adopt the H&S Restated Certificate of Incorporation and the H&S Amended and Restated Bylaws, and Fortune Brands, as sole stockholder of H&S, shall approve and adopt the H&S Restated Certificate of Incorporation.

(l) Subdivision of H&S Common Stock to Accomplish the Distribution. Effective upon the filing of the H&S Restated Certificate of Incorporation with the Secretary of State of the State of Delaware, each H&S Share then issued and outstanding shall, without any action on the part of the holder thereof, be subdivided and converted into that number of fully paid and non-assessable H&S Shares issued and outstanding equal to the number necessary to effect the Distribution.

SECTION 3.2 H&S Borrowings and Dividends.

(a) On or prior to 5:00 p.m. New York City time on the Distribution Date, H&S shall borrow $500,000,000 (five hundred million dollars) in principal amount under the H&S Short-Term Note, and subject to the receipt of an opinion from an independent firm acceptable to Fortune Brands, in its sole and absolute discretion, confirming the solvency and financial viability of H&S, which opinion is in form and substance satisfactory to the H&S Board and shall not have been withdrawn or rescinded, H&S shall pay the Special Dividend to Fortune Brands, as holder of record of all outstanding H&S Shares.

(b) H&S shall pay the U.S. Cash Dividend to Fortune Brands, as holder of record of all outstanding H&S Shares, as follows:

(i) at or prior to 5:00 p.m. New York City time, H&S shall pay to Fortune Brands an amount equal to H&S's reasonable best estimate of the amount of the U.S. Cash Dividend; and

(ii) within 20 days after the Distribution Date, if H&S and Fortune Brands determine that the amount of cash and cash equivalents actually held by the U.S. H&S Parties in their respective United States bank accounts as of 11:58 p.m. on the Distribution Date was (A) less than the amount paid to Fortune Brands pursuant to Section 3.2(b)(i), then Fortune Brands shall promptly pay to H&S cash in an amount equal to such shortfall or (B) more than the amount paid to Fortune Brands pursuant to Section 3.2(b)(i), then H&S shall promptly pay to Fortune Brands cash in an amount equal to such excess; provided, however, that neither H&S nor Fortune Brands shall be required to make any payment to the other pursuant to the foregoing provisions of this Section 3.2(b)(ii) if the amount of such payment would be less than $25,000 (twenty-five thousand dollars); and

(iii) within 20 days after the Distribution Date, H&S and Fortune Brands shall determine whether any amount paid to Fortune Brands pursuant to Section 3.2(b)(i) included any Foreign Cash, and to the extent H&S and Fortune Brands determine that the amount paid to Fortune Brands pursuant to Section 3.2(b)(i) included any amount of Foreign Cash, Fortune Brands shall promptly pay to H&S cash in an amount equal to the amount of Foreign Cash so paid. For the avoidance of doubt, none of the provisions of Section 3.2(b)(ii) shall apply with respect to Foreign Cash, and Foreign Cash shall not be taken into account in determining any shortfall or excess paid pursuant to Section 3.2(b)(i).

(c) Declaration and payment of the Special Dividend and U.S. Cash Dividend are intended to be independent of the transactions contemplated by Sections 3.3 and 3.4 and shall have no effect on and shall not be affected by such transactions.

SECTION 3.3 Intercompany Accounts. Effective immediately prior to the Effective Time, all intercompany cash management loan balances between the Fortune Brands Parties, on one hand, and the H&S Parties, on the other hand, shall be settled as follows: (a) if the Fortune Brands Parties owe a net payable balance to the H&S Parties, the payment in cash of any net payable balance owing from Fortune Brands Parties to H&S Parties; or (b) if the H&S Parties owe a net payable balance to the Fortune Brands Parties, the capitalization by Fortune Brands to the paid-in-capital of H&S of the net receivable balance.

SECTION 3.4 Termination of Existing Intercompany Agreements. Except as otherwise provided or contemplated by this Agreement, the Transaction Agreements or as set forth on Schedule 3.4, all Intercompany Agreements and all other intercompany arrangements and course of dealings, whether or not in writing and whether or not binding, in effect immediately prior to the Distribution shall be terminated and be of no further force and effect from and after the Effective Time; provided, however, that, for the avoidance of doubt, this Section 3.4 shall not terminate or affect this Agreement or any Transaction Agreement. If any Intercompany Agreement, intercompany arrangement or course of dealings is terminated pursuant to this Section 3.4 and, but for the mistake or oversight of either party hereto, would have been listed on Schedule 3.4, then, at the request of Fortune Brands or H&S made within 12 months following the Distribution Date, the relevant Parties shall negotiate in good faith after the Distribution to determine whether, notwithstanding such termination, such Intercompany Agreement, intercompany arrangement or course of dealings should continue following the Effective Time and the terms and conditions upon which the Parties may continue with respect thereto.

SECTION 3.5 Financial Instruments.

(a) H&S will, at its expense, take or cause to be taken all actions, and enter into (or cause the other H&S Parties to enter into) such agreements and arrangements, as shall be necessary to effect the release of and substitution for any Fortune Brands Party, not later than the Effective Time, from all primary, secondary, contingent, joint, several and other Liabilities in respect of H&S Financial Instruments to the extent related to the H&S Parties or the H&S Business (it being understood that all such Liabilities in respect of H&S Financial Instruments are H&S Liabilities).

(b) Fortune Brands will, at its expense, take or cause to be taken all actions, and enter into (or cause the other Fortune Brands Parties to enter into) such agreements and arrangements, as shall be necessary to effect the release of and substitution for any H&S Party, not later than the Effective Time, from all primary, secondary, contingent, joint, several and other Liabilities in respect of Fortune Brands Financial Instruments to the extent not related to the H&S Parties or the H&S Business (it being understood that all such Liabilities in respect of Fortune Brands Financial Instruments are Fortune Brands Liabilities).

(c) The parties' obligations under this Section 3.5 will continue to be applicable to all H&S Financial Instruments and Fortune Brands Financial Instruments identified at any time by Fortune Brands or H&S, whether before, at or after the Effective Time.

SECTION 3.6 Resignations; Transfer of Stock Held as Nominee.

(a) Fortune Brands will cause all of its employees and directors and all of the employees and directors of each other Fortune Brands Party to resign, effective not later than the Effective Time, from all boards of directors or similar governing bodies of H&S or any other H&S Party on which they serve, and from all positions as officers of H&S or any other H&S

Party in which they serve. H&S will cause all of its employees and directors and all of the employees and directors of each other H&S Party to resign, effective not later than the Effective Time, from all boards of directors or similar governing bodies of Fortune Brands or any other Fortune Brands Party on which they serve, and from all positions as officers of Fortune Brands or any other Fortune Brands Party in which they serve.

(b) Fortune Brands will cause each of its employees, and each of the employees of each other Fortune Brands Party, who holds stock or similar evidence of ownership of any H&S Party as nominee for the parent of such H&S Party pursuant to the laws of the country in which such H&S Party is organized to transfer such stock or similar evidence of ownership to the Person so designated by H&S to be such nominee as of and after the Effective Time. H&S will cause each of its employees, and each of the employees of each other H&S Party, who holds stock or similar evidence of ownership of any Fortune Brands Party as nominee for such Fortune Brands Party pursuant to the laws of the country in which such Fortune Brands Party is organized to transfer such stock or similar evidence of ownership to the Person so designated by Fortune Brands to be such nominee as of and after the Effective Time.

(c) Fortune Brands will cause each of its employees and each of the employees of each other Fortune Brands Party to revoke or withdraw their express written authority, if any, to act on behalf of any H&S Party as an agent or representative therefor after the Effective Time. H&S will cause each of its employees and each of the employees of each other H&S Party to revoke or withdraw their express written authority, if any, to act on behalf of any Fortune Brands Party as an agent or representative therefor after the Effective Time. All authority (other than express written authority) of any employee of any Fortune Brands Party to act on behalf of any H&S Party, or of any employee of any H&S Party to act on behalf of any Fortune Brands Party, shall automatically be revoked and withdrawn as of immediately prior to the Effective Time with no further act on the part of any of the Fortune Brands Parties or H&S Parties.

SECTION 3.7 Provision of Corporate Records. Without limitation of the parties' rights and obligations pursuant to Article XI, prior to or as promptly as reasonably practicable after the Distribution:

(a) Fortune Brands shall deliver to H&S all corporate books and records of the H&S Parties and, upon request, copies of all corporate books and records of the Fortune Brands Parties relating to the H&S Business in the possession or control of any Fortune Brands Party, including in each case all active agreements, litigation files and government filings.

(b) H&S shall deliver to Fortune Brands all corporate books and records of the Fortune Brands Parties and, upon request, copies of all corporate books and records of the H&S Parties relating to the Fortune Brands Business in the possession or control of any H&S Party, including in each case all active agreements, litigation files and government filings.

SECTION 3.8 Delivery of Instruments of Conveyance. In order to effectuate the transactions contemplated by Article II and the foregoing provisions of this Article III, Fortune Brands and H&S shall execute and deliver, or cause to be executed and delivered, prior to or as of the Effective Time, such deeds, bills of sale, instruments of assumption, instruments of assignment, stock powers, certificates of title and other instruments of assignment, transfer,

contribution, assumption, license and conveyance (collectively, the "**Conveyancing Instruments**") as Fortune Brands and H&S shall reasonably deem necessary or appropriate to effect such transactions, including the Contribution Agreement.

ARTICLE IV
THE DISTRIBUTION

SECTION 4.1 Record Date and Distribution Date. Subject to the terms and conditions of this Agreement, the Fortune Board shall, in its sole and absolute discretion, establish the Record Date and the Distribution Date and any necessary or appropriate procedures in connection with the Distribution.

SECTION 4.2 Delivery of H&S Shares. Fortune Brands shall take such steps as are necessary or appropriate to permit the H&S Shares to be distributed in the manner described in this Article IV.

SECTION 4.3 The Distribution. Subject to the satisfaction or waiver of the conditions set forth in Section 7.1 and at the sole and absolute discretion of Fortune Brands, on the Distribution Date Fortune Brands shall cause the Agent to distribute to each holder of record of Fortune Brands Shares as of the Record Date (or, if such holder has sold its Fortune Brands Shares in the regular way market on or prior to the Distribution Date, to the transferee of such Fortune Brands Shares) by means of a *pro rata* dividend of one H&S Share for each Fortune Brands Share held of record by such holder (or such transferee) as of the Record Date (the "**Distribution**"); provided, however, that any fractional H&S Shares shall be treated as provided in Section 4.5. The Distribution shall be effective at 11:59 p.m., New York City time, on the Distribution Date (the "**Effective Time**").

SECTION 4.4 Delivery of H&S Shares. Each H&S Share distributed pursuant to Section 4.3 shall be validly issued, fully paid and nonassessable and free of preemptive rights. The H&S Shares distributed shall be distributed as uncertificated shares registered in book-entry form through the direct registration system. No certificates therefor shall be distributed. Fortune Brands shall cause the Agent to deliver an account statement to each holder of record of H&S Shares reflecting such holder's ownership interest in H&S Shares.

SECTION 4.5 Fractional Shares. No fractional H&S Shares will be distributed in the Distribution. Fortune Brands will direct the Agent to determine the number of whole H&S Shares and fractional H&S Shares allocable to each holder of record of Fortune Brands Shares as of the Record Date. Upon the determination by the Agent of such number of fractional H&S Shares, as soon as practicable after the Distribution Date, the Agent, acting on behalf of the holders thereof, shall aggregate all of such fractional shares and sell the whole shares obtained thereby for cash on the open market and shall thereafter promptly disburse to each such holder entitled thereto its ratable portion of the resulting cash proceeds, after making appropriate deductions of the amounts required to be withheld for United States federal income tax purposes, if any, and after deducting an amount equal to all brokerage fees and other costs attributed to the sale of fractional H&S Shares pursuant to this Section 4.5.

SECTION 4.6 Distribution at Fortune Brands' Discretion. The consummation of the transactions provided for in this Article IV shall only be effected after the Distribution has been declared by the Fortune Board and after all of the conditions set forth in Section 7.1 have been satisfied or waived. Notwithstanding the foregoing, at any time prior to the Distribution, Fortune Brands, in its sole and absolute discretion, may determine not to consummate the Distribution.

ARTICLE V
NO REPRESENTATIONS AND WARRANTIES

SECTION 5.1 No Representations or Warranties. EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY OTHER TRANSACTION AGREEMENT, NO FORTUNE BRANDS PARTY OR H&S PARTY MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, TO ANY H&S PARTY OR FORTUNE BRANDS PARTY, AS APPLICABLE, OR ANY OTHER PERSON WITH RESPECT TO ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY, OR THE BUSINESS, ASSETS, CONDITION OR PROSPECTS (FINANCIAL OR OTHERWISE) OF, OR ANY OTHER MATTER INVOLVING, EITHER THE FORTUNE BRANDS BUSINESS OR THE H&S BUSINESS, OR THE SUFFICIENCY OF ANY ASSETS TRANSFERRED TO THE APPLICABLE PARTY, OR THE TITLE TO ANY SUCH ASSETS, OR THAT ANY REQUIREMENTS OF APPLICABLE LAW ARE COMPLIED WITH RESPECT TO THE DISTRIBUTION AND THE TRANSACTIONS CONTEMPLATED HEREBY. EACH OF THE FORTUNE BRANDS PARTIES AND THE H&S PARTIES SHALL TAKE ALL OF THE BUSINESS, ASSETS AND LIABILITIES TRANSFERRED TO OR ASSUMED BY IT PURSUANT TO THIS AGREEMENT OR ANY TRANSACTION AGREEMENT ON AN "AS IS, WHERE IS" BASIS, AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A SPECIFIC PURPOSE OR OTHERWISE ARE HEREBY EXPRESSLY DISCLAIMED.

ARTICLE VI
CERTAIN COVENANTS

SECTION 6.1 Non-Assignable Contracts. If and to the extent that any Fortune Brands Party is unable to obtain any consent, approval or amendment necessary for the transfer or assignment to any H&S Party of any Contract or other rights relating to the H&S Business that would otherwise be transferred or assigned to such H&S Party as contemplated by this Agreement or any other Transaction Agreement, (a) such Fortune Brands Party shall continue to be bound thereby and the purported transfer or assignment to such H&S Party shall automatically be deemed deferred until such time as all legal impediments are removed and all necessary consents have been obtained and (b) unless not permitted by the terms thereof or by law, the H&S Parties shall pay, perform and discharge fully all of the obligations of the Fortune Brands Parties thereunder from and after the Distribution, or such earlier time as such transfer or assignment would otherwise have taken place, and indemnify the Fortune Brands Parties for all Losses arising out of such performance by such H&S Party. The Fortune Brands Parties shall, without further consideration therefor, pay and remit to the applicable H&S Party promptly all monies, rights and other consideration received in respect of such performance. The Fortune Brands Parties shall exercise or exploit their rights and options under all such Contracts and other rights, agreements and documents referred to in this Section 6.1 only as reasonably directed

by H&S and at H&S's expense. If and when any such consent, approval or amendment shall be obtained or such Contract or other right or agreement shall otherwise become transferable or assignable or be able to be novated, the applicable Fortune Brands Party shall promptly assign or transfer and novate (to the extent permissible) all of their rights and obligations thereunder to the applicable H&S Party without payment of further consideration, and the H&S Party shall, without the payment of any further consideration therefor, assume such rights and obligations. To the extent that the transfer or assignment of any Contract or other right (or the proceeds thereof) pursuant to this Section 6.1 is prohibited by law or the terms thereof, this Section 6.1 shall operate to create a subcontract with the applicable H&S Party to perform each relevant Contract or other right, agreement or document at a subcontract price equal to the monies, rights and other considerations received by the Fortune Brands Parties with respect to the performance by such H&S Party.

SECTION 6.2 Shared Contracts.

(a) Any Contract that relates to both the Fortune Brands Business and the H&S Business (each such Contract, a "**Shared Contract**") shall be handled as contemplated by Section 6.2(d) unless Fortune Brands determines, in its sole discretion, that it is desirable to partially assign such Shared Contract as contemplated by Section 6.2(b) or to amend such Shared Contract as contemplated by Section 6.2(c).

(b) If any Shared Contract can be partially assigned by its terms and Fortune Brands determines, in its sole discretion, that it is so desirable with respect to such Shared Contract, Fortune Brands shall assign such Shared Contract in part to H&S, or another H&S Party designated by H&S, so that the H&S Parties will be entitled to the benefits and rights relating to the H&S Business and will assume their related portion of any Liabilities under such Shared Contract. If any such partial assignment requires the consent or approval of any Third Party or any other required action, the partial assignment of such Shared Contract shall be effected in accordance with the terms of this Agreement, if and when such consent or approval is obtained or such other required action has been taken.

(c) If Fortune Brands determines, in its sole discretion, that it is so desirable with respect to any Shared Contract, Fortune Brands and H&S shall, and shall cause the applicable Fortune Brands Parties and H&S Parties to, cooperate and use commercially reasonable efforts to enter into an arrangement with the counterparty to such Shared Contract to amend such Shared Contract so as to delete all obligations therefrom (i) to the extent that such obligations relate to the Fortune Brands Business, and enter into a new Contract with the applicable counterparty which solely relates to the Fortune Brands Business, on substantially equivalent terms and conditions as are then in effect under such Shared Contract, or (ii) to the extent that such obligations relate to the H&S Business, and enter into a new Contract with the applicable counterparty which solely relates to the H&S Business, on substantially equivalent terms and conditions as are then in effect under such Shared Contract.

(d) With respect to each Shared Contract that is not partially assigned or amended as contemplated by Section 6.2(b) or Section 6.2(c), Fortune Brands and H&S shall, and shall cause the applicable Fortune Brands Parties and H&S Parties to, cooperate in any lawful and reasonable arrangement, to the extent so permitted under the terms of such Shared Contract and applicable law:

(i) to provide the applicable Fortune Brands Party the benefits and obligations of any such Shared Contract with respect to the Fortune Brands Business, including subcontracting, licensing, sublicensing, leasing or subleasing to the Fortune Brands Party any or all of the rights and obligations with respect to such Shared Contract with respect to the Fortune Brands Business. In any such arrangement, the Fortune Brands Parties will, with respect to that portion of the Shared Contract relating to the Fortune Brands Business, (A) bear the sole responsibility for completion of the work or provision of goods and services, (B) bear all Taxes with respect thereto or arising therefrom, (C) be solely entitled to all benefits thereof, economic or otherwise, including the receipt of all goods and services thereunder, (D) be solely responsible for any amounts due thereunder, any warranty or breach thereof, any repurchase, indemnity and service obligations thereunder and any damages related to termination of such Shared Contract, (E) promptly reimburse the reasonable costs and expenses of H&S and the applicable H&S Party related to such activities, (F) be entitled to continue to receive any correspondence or invoices delivered with respect to such Shared Contract and (G) be entitled to receive copies of all correspondence and invoices delivered to or by any H&S Party with respect to such Shared Contract; and

(ii) to provide the applicable H&S Party the benefits and obligations of any such Shared Contract with respect to the H&S Business, including subcontracting, licensing, sublicensing, leasing or subleasing to the H&S Party any or all of the rights and obligations with respect to such Shared Contract with respect to the H&S Business. In any such arrangement, the H&S Parties will, with respect to that portion of the Shared Contract relating to the H&S Business, (A) bear the sole responsibility for completion of the work or provision of goods and services, (B) bear all Taxes with respect thereto or arising therefrom, (C) be solely entitled to all benefits thereof, economic or otherwise, including the receipt of all goods and services thereunder, (D) be solely responsible for any amounts due thereunder, any warranty or breach thereof, any repurchase, indemnity and service obligations thereunder and any damages related to termination of such Shared Contract, (E) promptly reimburse the reasonable costs and expenses of Fortune Brands and the applicable Fortune Brands Party related to such activities and (F) be entitled to receive copies of all correspondence and invoices delivered to or by any Fortune Brands Party with respect to such Shared Contract.

(e) With respect to each Shared Contract that is the subject of an arrangement contemplated by Section 6.2(d), Fortune Brands, on behalf of itself and each of the Fortune Brands Parties, shall indemnify, defend and hold harmless each of the H&S Parties from and against any and all Expenses or Losses incurred or suffered by one or more of the H&S Parties in connection with, relating to, arising out of or due to, directly or indirectly, that portion of the Shared Contract relating to the Fortune Brands Business. With respect to each Shared Contract that is the subject of an arrangement contemplated by Section 6.2(d), H&S, on behalf of itself and each of the H&S Parties, shall indemnify, defend and hold harmless each of the Fortune Brands Parties from and against any and all Expenses or Losses incurred or suffered by one or more of the Fortune Brands Parties in connection with, relating to, arising out of or due to, directly or indirectly, that portion of the Shared Contract relating to the Fortune Brands Business.

(f) No Fortune Brands Party or H&S Party shall be required to pay any consideration to any Third Party in connection with implementing the arrangements contemplated by this Section 6.2.

(g) The parties shall follow the procedures specified in Section 12.2 in the event of any dispute regarding the rights and obligations of the Fortune Brands Parties or the H&S Parties with respect to any Shared Contract that is the subject of an arrangement contemplated by Section 6.2(d).

SECTION 6.3 Further Assurances. (a) Each party shall use its commercially reasonable efforts, after the Distribution Date, to take, or cause to be taken, all actions, and to do, or cause to be done, all things reasonably necessary or advisable under applicable laws to consummate or make effective the transactions contemplated by this Agreement and each of the Transaction Agreements; provided, however, that no Fortune Brands Party or H&S Party shall be obligated under this Section 6.3 to pay any consideration, grant any concession or incur any Liability to any third Person.

(b) If, as a result of mistake or oversight, any asset or Contract reasonably necessary to the conduct of the H&S Business is not transferred to the applicable H&S Party, or any asset or Contract reasonably necessary to the conduct of the Fortune Brands Business is not transferred to the applicable Fortune Brands Party or is transferred to any H&S Party, the parties intend that such asset or Contract shall be transferred to the Party which requires such asset or Contract for the conduct of its business without the payment of any additional consideration (to the extent such asset or Contract is transferred on or prior to the one year anniversary of the Distribution Date), and Fortune Brands and H&S shall negotiate in good faith after the Effective Time to determine whether, notwithstanding such intent, such asset or Contract should not be transferred to an H&S Party or to a Fortune Brands Party, as the case may be, or the terms and conditions upon which such asset or Contract shall be made available to an H&S Party or to a Fortune Brands Party, as the case may be. Unless expressly provided to the contrary in this Agreement or any Transaction Agreement, if, as a result of mistake or oversight, any H&S Liability is retained or assumed by any Fortune Brands Party, or any Fortune Brands Liability is retained or assumed by any H&S Party, the parties intend that such Liability shall be transferred to the Party with respect to which such Liability primarily relates without the payment of any additional consideration (to the extent such Liability is transferred on or prior to the one year anniversary of the Distribution Date), and Fortune Brands and H&S shall negotiate in good faith after the Effective Time to determine whether, notwithstanding such intent, such Liability should not be transferred to an H&S Party or a Fortune Brands Party, as the case may be, or the terms and conditions upon which any such Liability shall be transferred. Notwithstanding anything to the contrary contained in this Section 6.3(b), (i) no Fortune Brands Party or H&S Party shall be obligated under this Section 6.3(b) to pay any consideration, grant any concession or incur any Liability to any third Person other than the Liability to be transferred and (ii) Section 6.2 (and not this Section 6.3(b)) shall apply with respect to any Shared Contract.

SECTION 6.4 Receipt of Misdirected Assets. In the event that at any time and from time to time after the Effective Time, any Fortune Brands Party shall receive from a Third Party an asset of the H&S Business (including any remittances from account debtors in respect of the H&S Business), such Fortune Brands Party shall promptly transfer such asset to the appropriate

H&S Party. In the event that at any time and from time to time after the Effective Time, any H&S Party shall receive from a Third Party an asset of the Fortune Brands Business (including any remittances from account debtors in respect of the Fortune Brands Business), such H&S Party shall promptly transfer such asset to the appropriate Fortune Brands Party. Each party hereto shall cooperate with the other party and use its commercially reasonable efforts to set up procedures and notifications as are reasonably necessary or advisable to effectuate the transfers contemplated by this Section 6.4.

SECTION 6.5 Late Payments. Except as expressly provided to the contrary in this Agreement or in any Transaction Agreement, any amount not paid when due pursuant to this Agreement or any Transaction Agreement (and any amounts billed or otherwise invoiced or demanded in writing and properly payable that are not paid within 30 days of the date of such bill, invoice or other written demand) shall accrue interest at a rate per annum equal to the Prime Rate.

SECTION 6.6 Certain Business Matters.

(a) Fortune Brands represents that as of the date hereof, Fortune Brands management does not intend for Fortune Brands to re-enter the home and security business as conducted by H&S as of the Effective Time.

(b) Fortune Brands agrees that neither it nor any other Fortune Brands Party will, directly or indirectly, solicit, recruit or hire any employee of any H&S Party for a period of the earlier of (i) 12 months following the Distribution Date or (ii) until six months after such employee's employment with any H&S Party terminates, provided that no Fortune Brands Party directly or indirectly suggested or directed that such employee terminate his or her employment; provided, however, that nothing contained in this Section 6.6(b) shall prohibit any general solicitations of employment not specifically directed toward employees of any H&S Party.

(c) H&S agrees that neither it nor any other H&S Party will, directly or indirectly, solicit, recruit or hire any employee of any Fortune Brands Party for a period of the earlier of (i) 12 months following the Distribution Date or (ii) until six months after such employee's employment with any Fortune Brands Party terminates, provided that no H&S Party directly or indirectly suggested or directed that such employee terminate his or her employment; provided, however, that nothing contained in this Section 6.6(c) shall prohibit any general solicitations of employment not specifically directed toward employees of any Fortune Brands Party.

SECTION 6.7 Litigation. (a) As of the Effective Time, the H&S Parties shall assume and thereafter, except as provided in Article X, be responsible for all Liabilities that may result from the Assumed Actions and all Losses and Expenses relating to the defense of the Assumed Actions incurred after the Distribution.

(b)(i) Fortune Brands agrees that, at all times from and after the Effective Time, if an Action relating primarily to the Fortune Brands Business is commenced by a Third Party naming either an H&S Party or both a Fortune Brands Party and an H&S Party as defendants thereto, then Fortune Brands shall use its commercially reasonable efforts to cause such H&S Party to be removed and dismissed from such Action; provided, however, that if Fortune Brands

is unable to cause such H&S Party to be removed and dismissed from such Action, Fortune Brands and H&S shall cooperate and consult to the extent necessary or advisable with respect to such Action.

(ii) H&S agrees that, at all times from and after the Effective Time, if an Action relating primarily to the H&S Business is commenced by a Third Party naming either a Fortune Brands Party or both a Fortune Brands Party and an H&S Party as defendants thereto, then H&S shall use its commercially reasonable efforts to cause such Fortune Brands Party to be removed and dismissed from such Action; provided, however, that if H&S is unable to cause such Fortune Brands Party to be removed and dismissed from such Action, Fortune Brands and H&S shall cooperate and consult to the extent necessary or advisable with respect to such Action.

(iii) Fortune Brands and H&S agree that, at all times from and after the Effective Time, if an Action that does not relate primarily to the H&S Business or the Fortune Brands Business is commenced by a Third Party naming both a Fortune Brands Party and an H&S Party as defendants thereto, then Fortune Brands and H&S shall cooperate and consult to the extent necessary or advisable with respect to such Action.

(iv) Notwithstanding anything to the contrary contained in this Agreement, H&S shall (A) have the right to negotiate, settle and compromise each Action identified on Schedule 6.7(A) on behalf of both all H&S Parties and all Fortune Brands Parties and (B) be entitled to all amounts payable by any Third Parties in connection with any such Action. None of the Fortune Brands Parties shall be responsible for the payment of any fees, costs or expenses incurred in connection with any Action identified on Schedule 6.7(A).

(v) Notwithstanding anything to the contrary contained in this Agreement, Fortune Brands shall (A) have the right to negotiate, settle and compromise each Action identified on Schedule 6.7(B) on behalf of both all Fortune Brands Parties and all H&S Parties and (B) be entitled to all amounts payable by any Third Parties in connection with any such Action. None of the H&S Parties shall be responsible for the payment of any fees, costs or expenses incurred in connection with any Action identified on Schedule 6.7(B).

SECTION 6.8 Signs; Use of Names. (a) Except as provided in the Transaction Agreements, on or prior to 90 days after the Distribution Date, the parties hereto, at the expense of the Fortune Brands Party or H&S Party that owns the tangible assets, shall remove (or, if necessary, on an interim basis cover up) any and all exterior and interior signs and identifiers on assets or properties owned or held by any H&S Party that show any affiliation with any Fortune Brands Party or the Fortune Brands Business, or on assets or properties owned or held by any Fortune Brands Party that show any affiliation with any H&S Party or the H&S Business. H&S hereby grants to the Fortune Brands Parties and Fortune Brands hereby grants to the H&S Parties for a period of 90 days following the Distribution Date, a non-exclusive, non-transferable, fully-paid and royalty-free license to use their respective corporate names (the "**Marks**") on business cards, schedules, stationery, displays, signs, promotional materials, manuals, forms, computer software and other material used in their respective businesses as of the Effective Time. Notwithstanding the foregoing, Fortune Brands and H&S shall use reasonable efforts to change all references to the other Party's Marks as soon as practicable following the Effective Time.

(b) Except as provided in the Transaction Agreements, after 90 days following the Effective Time, (i) without the prior written consent of H&S, the Fortune Brands Parties shall not use or display the name "Fortune Brands," or any variations thereof, or other trademarks, trade names, logos or identifiers using any of such names or otherwise owned by or licensed to any H&S Party that have not been assigned or licensed to a Fortune Brands Party, (ii) without the prior written consent of H&S, the Fortune Brands Parties shall not use or display the name "Fortune Brands Home & Security" or any variations thereof, or other trademarks, trade names, logos or identifiers using any of such names or otherwise owned by or licensed to any H&S Party that have not been assigned or licensed to a Fortune Brands Party and (iii) without the prior written consent of Fortune Brands, the H&S Parties shall not use or display the name "Beam Inc.," or any variations thereof, or other trademarks, trade names, logos or identifiers using any of such names or otherwise owned by or licensed to any Fortune Brands Party that have not been assigned or licensed to an H&S Party; provided, however, that notwithstanding the foregoing, nothing contained in this Agreement shall prevent any Party from using any other Party's name (including Beam Inc., formerly known as Fortune Brands) in public filings with Governmental Authorities, materials intended for distribution to either party's stockholders or any other communication in any medium that describes the relationship between the parties, including materials distributed to employees relating to the transition of employee benefit plans; and, provided further, that the continuation of references to the Marks in telephone directories (and other similar Third Party or incidental uses that are not capable of being updated within the time period set forth above) for a period not to exceed one year following the Effective Time shall not be deemed a breach of this Section 6.7.

SECTION 6.9 Form S-8 Registration Statement. H&S shall prepare and file with the SEC such amendments to the Form S-8 Registration Statement as may be necessary to keep the Form S-8 Registration Statement effective under the Securities Act and to keep registered the H&S Shares subject to stock-based awards granted to current or former officers, employees, directors and consultants of the Fortune Brands Parties for a period of not less than ten (10) years following the Distribution Date, provided that, H&S's obligations pursuant to this Section 6.9 shall terminate on the date upon which there are no further securities covered thereby that may be issued pursuant to stock-based awards granted to current or former officers, employees, directors and consultants of the Fortune Brands Parties pursuant to the terms of the applicable long-term incentive plan.

SECTION 6.10 Financial Instruments. After the Effective Time, (a) without the consent of the applicable Fortune Brands Party, H&S will not, and will not permit any H&S Party to, renew, extend, modify, amend or supplement any H&S Financial Instrument in any manner that would increase, extend or give rise to any Liability of any Fortune Brands Party under such H&S Financial Instrument and (b) without the consent of the applicable H&S Party, Fortune Brands will not, and will not permit any Fortune Brands Party to, renew, extend, modify, amend or supplement any Fortune Brands Financial Instrument in any manner that would increase, extend or give rise to any Liability of any H&S Party under such Fortune Brands Financial Instrument.

SECTION 6.11 Fortune Brands Merger. On the day immediately following the Distribution Date, Fortune Brands shall file a certificate of ownership and merger with the Secretary of State of the State of Delaware, effectuating the merger of Beam with and into Fortune Brands and changing the name of Fortune Brands to "Beam Inc." in accordance with Section 253 of the Delaware General Corporation Law.

SECTION 6.12 H&S Credit Facility. On the day immediately following the Distribution Date, H&S shall borrow approximately $500,000,000 (five hundred million dollars) in principal amount under the H&S Credit Facility, and H&S shall use the proceeds from such borrowing to repay the H&S Short-Term Note.

ARTICLE VII
CONDITIONS TO THE DISTRIBUTION

SECTION 7.1 Conditions to the Distribution. The obligation of Fortune Brands to effect the Distribution is subject to the satisfaction or the waiver by Fortune Brands, in its sole and absolute discretion, of each of the following conditions:

(a) Approval by the Fortune Board. This Agreement and the transactions contemplated hereby, including the declaration of the Distribution, shall have been duly approved by the Fortune Board in accordance with applicable law and the Restated Certificate of Incorporation, as amended, and By-laws of Fortune Brands.

(b) Receipt of IRS Private Letter Ruling and Opinion. Fortune Brands shall have received (i) a private letter ruling from the IRS (which shall not have been revoked or modified in any material respect) in form and substance satisfactory to Fortune Brands that confirms, among other things, that for U.S. federal income tax purposes, (A) the Contribution, the Conversion and the Distribution will qualify as a reorganization under Sections 355 and 368(a)(1)(D) of the Code, (B) the Distribution will be tax-free to Fortune Brands under Section 361(c) of the Code and (C) except for cash received in lieu of any fractional H&S Shares, the Distribution will be tax-free to Fortune Brands stockholders under Section 355(a) of the Code and (ii) an opinion of McDermott Will & Emery LLP (or other nationally recognized tax counsel), in form and substance satisfactory to Fortune Brands, confirming, among other things, the tax-free status of the Distribution for U.S. federal income tax purposes.

(c) Receipt of Solvency Conveyance Opinion. An independent firm acceptable to Fortune Brands, in its sole and absolute discretion, shall have delivered one or more opinions to the Fortune Board confirming the solvency and financial viability of Fortune Brands and H&S, which opinions shall be in form and substance satisfactory to Fortune Brands, in its sole and absolute discretion, and shall not have been withdrawn or rescinded.

(d) SEC Filings and Approvals. The parties shall have prepared and H&S shall, to the extent required under applicable law, have filed with the SEC any such documentation that Fortune Brands determines, in its sole and absolute discretion, is necessary or desirable to effectuate the Distribution and the other transactions contemplated by this Agreement and the Transaction Agreements, and each party shall have obtained all necessary approvals from the SEC.

(e) State and Foreign Securities and "Blue Sky" Laws Approvals. Fortune Brands and H&S shall have received all permits, registrations and consents required under the securities or "blue sky" laws of states or other political subdivisions of the United States or of applicable foreign jurisdictions in connection with the Distribution.

(f) Effectiveness of Registration Statements; No Stop Order. The SEC shall have declared effective the Form 10 Registration Statement and the Form S-8 Registration Statement, and no stop order suspending the effectiveness of the Form 10 Registration Statement or the Form S-8 Registration Statement shall be in effect or, to the knowledge of either Fortune Brands or H&S, threatened by the SEC.

(g) Dissemination of Information to Fortune Brands Stockholders. Prior to the Distribution, the parties hereto shall have prepared, and Fortune Brands shall have mailed to the holders of record of Fortune Brands Shares, such information concerning H&S, its business, operations and management, the Distribution and such other matters as Fortune Brands shall determine in its sole and absolute discretion is appropriate and as may otherwise be required by law.

(h) Approval of NYSE Listing Application. The NYSE shall have approved for listing, subject to official notice of issuance, the H&S Shares and the LTIP Shares.

(i) Consents. Fortune Brands and H&S shall have received all material Governmental Approvals and Consents required to have been received prior to the Contribution and Distribution and all material Third-Party Consents necessary to effect the Contribution and the Distribution and to permit the operation of the H&S Business after the Distribution Date.

(j) No Legal Restraint. No order, injunction, decree or regulation issued by any court or agency of competent jurisdiction or other legal restraint or prohibition preventing consummation of the Distribution or any of the transactions related thereto, including the Contribution, shall be in effect, and no other event outside the control of Fortune Brands shall have occurred or failed to occur that prevents the consummation of the Distribution or any of the transactions related thereto, including the Contribution.

(k) Material Transaction Agreements. The Material Transaction Agreements shall have been duly executed and delivered by the parties thereto, and each Material Transaction Agreement shall be in full force and effect.

(l) No Other Events. No other events or developments shall have occurred that, in the judgment of the Fortune Board, in its sole and absolute discretion, makes it inadvisable to effect the Contribution or the Distribution or the other transactions contemplated hereby.

SECTION 7.2 Fortune Brands Right Not to Close or to Terminate. The satisfaction of the foregoing conditions are for the sole benefit of Fortune Brands and shall not give rise to or create any duty on the part of Fortune Brands or the Fortune Board to waive or not waive any such condition or to effect the Distribution, or in any way limit Fortune Brands' power of termination set forth in Section 12.14.

ARTICLE VIII
INSURANCE MATTERS

SECTION 8.1 Insurance.

(a) Coverage. Subject to the provisions of this Section 8.1 and such terms as H&S may reasonably agree prior to the Distribution Date with any current Fortune Brands insurance carrier for coverage beginning as of the Effective Time, coverage of the H&S Parties under all Policies shall cease as of the Effective Time. From and after the Effective Time, the H&S Parties will be responsible for obtaining and maintaining all insurance coverages in their own right. All Policies will be retained by the Fortune Brands Parties, together with all rights, benefits and privileges thereunder (including the right to receive any and all return premiums with respect thereto), except that H&S will have the rights in respect of Policies to the extent described in Section 8.1(b) and to the extent provided in any arrangement or agreement between H&S and any current Fortune Brands insurance carrier for coverage beginning as of the Effective Time.

(b) Rights Under Shared Policies. Subject to any arrangement or agreement between H&S and any current Fortune Brands insurance carrier for coverage beginning as of the Effective Time, from and after the Effective Time, the H&S Parties will have no rights with respect to any Policies, except that (i) H&S will have the right to assert claims (and Fortune Brands will use commercially reasonable efforts to assist H&S in asserting claims if so requested by H&S in writing) for any loss, liability or damage with respect to the H&S Business or the Transferred Business Assets under Policies that include any H&S Party or any or all of the H&S Business or the Transferred Business Assets within the definition of the named insured, additional named insured, additional insured or insured (excluding, for the avoidance of doubt, any group health and welfare insurance policies) ("**Shared Policies**") with third-party insurers which are "occurrence basis" insurance policies ("**Occurrence Basis Policies**") arising out of insured incidents occurring from the date coverage thereunder first commenced until the Effective Time to the extent that the terms and conditions of any such Occurrence Basis Policies and agreements relating thereto so allow, (ii) H&S will have the right to continue to prosecute claims with respect to the H&S Business properly asserted under Occurrence Basis Policies prior to the Effective Time to the extent that the terms and conditions of any such Occurrence Basis Policies and agreements relating thereto so allow (and Fortune Brands will use commercially reasonable efforts to assist H&S in asserting claims if so requested by H&S in writing) and (iii) H&S will have the right to continue to prosecute claims with respect to the H&S Business or the Transferred Business Assets properly asserted with the insurer prior to the Effective Time (and Fortune Brands will use commercially reasonable efforts to assist H&S in asserting claims if so requested by H&S in writing) under Shared Policies with third-party insurers which are insurance policies written on a "claims made" basis ("**Claims Made Policies**") arising out of insured incidents occurring from the date coverage thereunder first commenced until the Effective Time to the extent that the terms and conditions of any such Claims Made Policies and agreements relating thereto so allow; provided, however, that in the case of clauses (i), (ii) and (iii), (A) all of the Fortune Brands Parties' reasonable Out-of-Pocket Expenses incurred in connection with their efforts to assist H&S in asserting or continuing to prosecute the claims described above are promptly paid by H&S following receipt by H&S of an invoice for such expenses, (B) subject to Section 8.1(c), the Fortune Brands Parties may, at any time, without liability or obligation to any H&S Party, amend, commute, terminate, buy-out, extinguish

liability under or otherwise modify any Shared Policies (and such claims shall be subject to any such amendments, commutations, terminations, buy-outs, extinguishments and modifications), (C) such claims will be subject to (and recovery thereon will be reduced by the amount of) any applicable deductibles, retentions or self-insurance provisions, and, with respect to any such deductibles, retentions or self-insurance provisions that require a payment by any Fortune Brands Party in respect thereof, H&S shall reimburse such Fortune Brands Party for such payment, (D) such claims will be subject to (and recovery thereunder will be reduced by the amount of) any payment or reimbursement obligations of any Fortune Brands Party in respect thereof, (E) H&S shall be responsible for and shall pay any claims handling expenses or residual Liability arising from such claims and (F) such claims will be subject to exhaustion of existing sublimits and aggregate limits as provided in Section 8.1(d). Fortune Brands' obligation to use commercially reasonable efforts to assist H&S in asserting claims under applicable Shared Policies shall include using commercially reasonable efforts to assist H&S to establish its right to coverage under such Shared Policies (so long as all of the Fortune Brands Parties' Out-of-Pocket Expenses in connection therewith are promptly paid by H&S). No Fortune Brands Party will bear any Liability for the failure of any insurer to pay any claim under any Shared Policy. It is understood that any Claims Made Policies may not provide any coverage to the H&S Parties for incidents occurring prior to the Effective Time but that are asserted with the insurance carrier after the Effective Time or any extended reporting period or extended discovery period, as applicable, in accordance with the terms of the applicable Policies.

(c) In the event that after the Effective Time any Fortune Brands Party proposes to amend, commute, terminate, buy-out, extinguish liability under or otherwise modify any Shared Policy under which H&S has or may in the future have rights to assert claims pursuant to Section 8.1(b) in a manner that would adversely affect any such rights of H&S, (i) Fortune Brands will give H&S prior notice thereof and consult with H&S with respect to such action (it being understood that the decision to take any such action will be in the sole discretion of Fortune Brands), (ii) Fortune Brands will not take such action without the prior written consent of H&S, such consent not to be unreasonably withheld, conditioned or delayed, (iii) Fortune Brands will pay to H&S its equitable share (which shall be mutually agreed upon by Fortune Brands and H&S, acting reasonably, based on the amount of premiums paid by or allocated to the H&S Business in respect of the applicable Shared Policy), if any, of any net proceeds actually received by Fortune Brands from the insurer under the applicable Shared Policy as a result of such action by Fortune Brands (after deducting Fortune Brands' reasonable costs and expenses incurred in connection with such action) and (iv) H&S will pay to Fortune Brands its equitable share (which shall be mutually agreed upon by Fortune Brands and H&S, acting reasonably, based on the amount of premiums paid by or allocated to the H&S Business in respect of the applicable Shared Policy), if any, of any net premium owed by Fortune Brands to the insurer under the applicable Shared Policy as a result of such action by Fortune Brands.

(d) To the extent that the limits of any Shared Policy preclude payment in full of any Unrelated Claim filed by both a Fortune Brands Party and an H&S Party, the insurance proceeds available under such Shared Policy shall be paid to such Fortune Brands Party or such H&S Party on a FIFO Basis. In the event that both a Fortune Brands Party and an H&S Party file Related Claims under any Shared Policy, each of such Fortune Brands Party and such H&S Party shall receive a *pro rata* amount of the available insurance proceeds, based on the relationship the Loss incurred by each such Party bears to the total Loss to both such Parties from the occurrence or event underlying the Related Claims.

SECTION 8.2 Maintenance of Insurance for H&S. Until the Effective Time, Fortune Brands shall maintain in full force and effect all Policies to the extent that such Policies apply to the H&S Business.

SECTION 8.3 Administration and Reserves. (a) From and after the Effective Time, the Fortune Brands Parties will be responsible for the Claims Administration with respect to claims of the Fortune Brands Parties under Shared Policies.

(b) From and after the Effective Time, the H&S Parties will be responsible for the Claims Administration with respect to claims of the H&S Parties under Shared Policies, and Fortune Brands shall provide appropriate instructions to the applicable insurance brokers under the Shared Policies to facilitate Claims Administration by H&S.

(c) In the event that, after the Effective Time, any Fortune Brands Party proposes to change the third-party administrator for any Shared Policy under which H&S has or may in the future have rights to assert claims pursuant to Section 8.1(b), Fortune Brands will not take such action without the prior written consent of H&S, which consent shall not be unreasonably withheld, conditioned or delayed.

(d) Any insurance or casualty reserves of the Fortune Brands Parties with respect to the H&S Business shall be transferred to H&S by such Fortune Brands Parties on or prior to the Effective Time.

SECTION 8.4 Insurance Premiums. From and after the Effective Time, Fortune Brands will pay all premiums, Taxes, assessments or similar charges (retrospectively-rated or otherwise) as required under the terms and conditions of the respective Shared Policies in respect of periods of coverage prior to the Effective Time, whereupon H&S will upon the request of Fortune Brands promptly reimburse Fortune Brands for that portion of such additional premiums and other payments paid by Fortune Brands as are reasonably determined by Fortune Brands to be attributable to the H&S Business. Notwithstanding the foregoing, to the extent that H&S has previously paid a premium (or has been allocated a portion of a premium by Fortune Brands) or satisfied a deductible amount under a Shared Policy, H&S shall not be required to pay such premium pursuant to the foregoing sentence or satisfy such deductible again if H&S makes a claim under such Shared Policy in accordance with this Article VIII.

SECTION 8.5 Agreement for Waiver of Conflict and Shared Defense. In the event that a Shared Policy provides coverage for both a Fortune Brands Party, on the one hand, and an H&S Party, on the other hand, relating to the same occurrence, Fortune Brands and H&S agree to defend jointly and to waive any conflict of interest necessary to the conduct of that joint defense. Nothing in this Section 8.5 will be construed to limit or otherwise alter in any way the indemnity obligations of the parties, including those created by this Agreement, the Indemnification Agreement, by operation of law or otherwise.

SECTION 8.6 Duty to Mitigate Settlements. To the extent that any Party is responsible for the Claims Administration for any claims under any Shared Policy after the Effective Time, such Party shall use its commercially reasonable efforts to mitigate the amount of any settlements of such claims.

SECTION 8.7 Non-Waiver of Rights to Coverage. An insurance carrier that would otherwise be obligated to pay any claim shall not be relieved of the responsibility with respect thereto, or, solely by virtue of the provisions of this Article VIII, have any subrogation rights with respect thereto, it being expressly understood and agreed that no insurance carrier or any Third Party shall be entitled to a benefit (*i.e.*, a benefit such Person would not be entitled to receive had the Distribution not occurred or in the absence of the provisions of this Article VIII) by virtue of the provisions hereof.

ARTICLE IX
EXPENSES

SECTION 9.1 Expenses Incurred on or Prior to the Distribution Date. Except as otherwise provided in this Agreement or any Transaction Agreement, each of Fortune Brands and H&S shall pay all Third Party fees, costs and expenses paid or incurred by it in connection with the preparation, execution, delivery and implementation of this Agreement, any Transaction Agreement, the Form 10 Registration Statement, the Form S-8 Registration Statement and the Distribution and the consummation of the transactions contemplated hereby and thereby ("**Separation Costs**"); provided, however, that Fortune Brands will pay all non-recurring Third Party fees, costs and expenses in connection with the foregoing incurred on or prior to the Distribution Date that Fortune Brands deems necessary to effect the Distribution (including those Separation Costs identified on Schedule 9.1(A)) and H&S will pay all non-recurring Third Party fees, costs and expenses in connection with the foregoing incurred prior to the Distribution Date that are expected to benefit H&S following the Distribution in the ordinary course of business as set forth on Schedule 9.1(B).

SECTION 9.2 Expenses Incurred or Accrued After the Distribution Date. Except as otherwise provided in this Agreement or any Transaction Agreement, Fortune Brands and H&S shall each bear its own costs and expenses incurred after the Distribution Date.

ARTICLE X
MUTUAL RELEASES; INDEMNIFICATION

SECTION 10.1 Release of Pre-Distribution Claims.

(a) Except as provided in Section 10.1(b) or on Schedule 10.1(A), effective as of the Effective Time,

(i) Fortune Brands, on behalf of itself and each of the Fortune Brands Parties and its and their respective successors and assigns, does hereby release and forever discharge each of the H&S Parties and their respective successors and assigns and all Persons who at any time prior to the Effective Time have been Representatives of any H&S Party (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns, from any and all demands, Actions and Liabilities whatsoever, whether at law or in equity (including any right of contribution), whether arising under any Contract, by operation of law or otherwise, existing or arising from any acts or events occurring or failing to

occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed on or before the Effective Time, including in connection with the transactions and all other activities to implement the Distribution; and

(ii) H&S, on behalf of itself and each of the H&S Parties and its and their respective successors and assigns, does hereby release and forever discharge each of the Fortune Brands Parties and their respective successors and assigns and all Persons who at any time prior to the Effective Time have been Representatives of any Fortune Brands Party (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns, from any and all demands, Actions and Liabilities whatsoever, whether at law or in equity (including any right of contribution), whether arising under any Contract, by operation of law or otherwise, existing or arising from any acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed on or before the Effective Time, including in connection with the transactions and all other activities to implement the Distribution.

(b) Nothing contained in Section 10.1(a) shall impair any right of any Person identified in Section 10.1(a) pursuant to this Agreement, any Transaction Agreement or any Employee Contract. Nothing contained in Section 10.1(a) shall release or discharge any Person from:

(i) any Liability or obligation provided in or resulting from any agreement of the Fortune Brands Parties and H&S Parties that is specified in Schedule 10.1(B), to the extent set forth therein;

(ii) any Liability, contingent or otherwise, assumed, transferred, assigned, retained or allocated to such Person in accordance with, or any other Liability of that Person under, this Agreement or any of the Transaction Agreements;

(iii) any Liability the release of which would result in the release of any Person other than a Fortune Brands Party or an H&S Party or their respective Representatives (in each case, in their respective capacities as such); or

(iv) any Liability or obligation provided in or resulting from any Employee Contract.

In addition, nothing contained in Section 10.1(a) shall release any Party from honoring its existing obligations to indemnify any Person who was a Representative of such Party, at or prior to the Effective Time, to the extent such Person becomes a named defendant in any Action involving such Party, and was entitled to such indemnification pursuant to then existing obligations (including under any applicable charter, bylaw or similar provision); provided, however, that to the extent applicable, Sections 10.2 and 10.3 hereof shall determine whether any Party shall be required to indemnify the other in respect of such Liability.

(c) Fortune Brands shall not, and shall cause the other Fortune Brands Parties not to, make any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution or indemnification, against any H&S Party or any other Person released pursuant to Section 10.1(a)(i), with respect to any Liability released pursuant to Section

10.1(a)(i); and H&S shall not, and shall cause the other H&S Parties not to, make, any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution or indemnification, against any Fortune Brands Party or any other Person released pursuant to Section 10.1(a)(ii), with respect to any Liability released pursuant to Section 10.1(a)(ii).

(d) It is the intent of each of the parties hereto by virtue of the provisions of this Section 10.1 to provide for a full and complete release and discharge of all Liabilities existing or arising from all acts and events occurring or failing to occur or alleged to have occurred or to have failed to occur and all conditions existing or alleged to have existed on or before the Effective Time between any of the Fortune Brands Parties, on the one hand, and any of the H&S Parties, on the other hand (including any Contracts existing or alleged to exist between any of the Parties on or before the Effective Time), except as expressly set forth in Section 10.1(b). At any time, at the reasonable request of either party hereto, the other party hereto shall execute and deliver, or cause to be executed and delivered, releases reflecting the provisions hereof.

SECTION 10.2 Indemnification by H&S. Except as provided in Section 10.5 or in the Transaction Agreements, H&S shall indemnify, defend and hold harmless each of the Fortune Brands Parties, each of their respective Representatives and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the "**Fortune Brands Indemnified Parties**"), from and against any and all Expenses or Losses incurred or suffered by one or more of the Fortune Brands Indemnified Parties in connection with, relating to, arising out of or due to, directly or indirectly, any of the following:

(a) the failure by any H&S Party or any other Person to pay, perform or otherwise promptly discharge any H&S Liability in accordance with its terms;

(b) any H&S Liability;

(c) the H&S Business as conducted (regardless of whether by Fortune Brands and its Subsidiaries, including the H&S Parties, or another Person) on, at any time prior to or at any time after the Effective Time;

(d) except to the extent provided in Section 10.3(d), any claim that the information included in the Form 10 Registration Statement or the Information Statement is or was false or misleading with respect to any material fact or omits or omitted to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading;

(e) except to the extent provided in Section 10.3(e), any claim that the information included in the Form S-8 Registration Statement or the prospectus forming a part thereof is or was false or misleading with respect to any material fact or omits or omitted to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading;

(f) the use by any H&S Party after the Effective Time of the name Beam Inc. or any variation thereof, or other trademarks, trade names, logos or identifiers using any of such names or otherwise owned by or licensed to any Fortune Brands Party;

(g) the breach by any H&S Party of any covenant or agreement set forth in this Agreement or any Conveyancing Instrument; and

(h) any H&S Financial Instrument,

in each case, regardless of when or where the loss, claim, accident, occurrence, event or happening giving rise to the Expense or Loss took place, or whether any such loss, claim, accident, occurrence, event or happening is known or unknown, or reported or unreported and regardless of whether such loss, claim, accident, occurrence, event or happening giving rise to the Expense or Loss existed prior to, on or after the Effective Time or relates to, arises out of or results from actions, inactions, events, omissions, conditions, facts or circumstances occurring or existing prior to, on or after the Effective Time.

SECTION 10.3 Indemnification by Fortune Brands. Except as provided in Section 10.5 or in the Transaction Agreements, Fortune Brands shall indemnify, defend and hold harmless each of the H&S Parties, each of their respective Representatives and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the "**H&S Indemnified Parties**"), from and against any and all Expenses or Losses incurred or suffered by one or more of the H&S Indemnified Parties in connection with, relating to, arising out of or due to, directly or indirectly, any of the following items:

(a) the failure by any Fortune Brands Party or any other Person to pay, perform or otherwise promptly discharge any Fortune Brands Liability in accordance with its terms;

(b) any Fortune Brands Liability;

(c) the Fortune Brands Business as conducted (regardless of whether by Fortune Brands and its Subsidiaries, including the H&S Parties, or another Person) on, at any time prior to or at any time after the Effective Time;

(d) solely with respect to the information contained in the Form 10 Registration Statement or the Information Statement that is set forth on Schedule 10.3(D) (and to the extent provided therein), any claim that the information included in the Form 10 Registration Statement or the Information Statement is or was false or misleading with respect to any material fact or omits or omitted to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading;

(e) solely with respect to the information contained in the Form S-8 Registration Statement or the prospectus forming a part thereof that is set forth on Schedule 10.3(E) (and to the extent provided therein), any claim that the information included in the Form S-8 Registration Statement or the prospectus forming a part thereof is or was false or misleading with respect to any material fact or omits or omitted to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading;

(f) the use by any Fortune Brands Party after the Effective Time of the name Fortune Brands or any variation thereof, or other trademarks, trade names, logos or identifiers using any of such names or otherwise owned by or licensed to any H&S Party;

(g) the breach by any Fortune Brands Party of any covenant or agreement set forth in this Agreement or any Conveyancing Instrument; and

(h) any Fortune Brands Financial Instrument,

in each case, regardless of when or where the loss, claim, accident, occurrence, event or happening giving rise to the Expense or Loss took place, or whether any such loss, claim, accident, occurrence, event or happening is known or unknown, or reported or unreported and regardless of whether such loss, claim, accident, occurrence, event or happening giving rise to the Expense or Loss existed prior to, on or after the Effective Time or relates to, arises out of or results from actions, inactions, events, omissions, conditions, facts or circumstances occurring or existing prior to, on or after the Effective Time.

SECTION 10.4 Applicability of and Limitation on Indemnification. Except as expressly provided herein, the indemnity obligation under this Article X shall apply notwithstanding any investigation made by or on behalf of any Indemnified Party and shall apply without regard to whether the Loss or Expense for which indemnity is claimed hereunder is based on strict liability, absolute liability or any other theory of liability or arises as an obligation for contribution.

SECTION 10.5 Adjustment of Indemnifiable Losses.

(a) The amount that either party hereto (an "**Indemnifying Party**") is required to pay to any Person entitled to indemnification hereunder (an "**Indemnified Party**") shall be reduced by any insurance proceeds and other amounts actually recovered by or on behalf of such Indemnified Party (net of increased insurance premiums and charges related directly and solely to the related indemnifiable Expense or Loss and costs and expenses (including reasonable legal fees and expenses) incurred by the Indemnified Party in connection with seeking to collect and collecting such amounts) in reduction of the related Expense or Loss (such net amounts are referred to herein as "**Indemnity Reduction Amounts**"). Each of Fortune Brands and H&S shall use its reasonable best efforts to collect any proceeds under its respective available and applicable Third Party insurance policies to which it or any of its Subsidiaries is entitled prior to seeking indemnification or contribution under this Agreement, where allowed; provided, however, that any such actions by an Indemnified Party will not relieve the Indemnifying Party of any of its obligations under this Agreement, including the Indemnifying Party's obligation to pay directly or reimburse the Indemnified Party for costs and expenses actually incurred by the Indemnified Party. If any Indemnity Reduction Amounts are received by or on behalf of an Indemnified Party in respect of an indemnifiable Expense or Loss for which indemnification is provided under this Agreement after the full amount of such indemnifiable Expense or Loss has been paid by an Indemnifying Party or after an Indemnifying Party has made a partial payment of such indemnifiable Expense or Loss and such Indemnity Reduction Amounts exceed the remaining unpaid balance of such indemnifiable Expense or Loss, then the Indemnified Party shall promptly remit to the Indemnifying Party an amount equal to the excess (if any) of (i) the

amount theretofore paid by the Indemnifying Party in respect of such indemnifiable Expense or Loss over (ii) the amount of the indemnity payment that would have been due if such Indemnity Reduction Amounts in respect thereof had been received before the indemnity payment was made. The Indemnified Party agrees that the Indemnifying Party shall be subrogated to such Indemnified Party under any insurance policy.

(b) An insurer who would otherwise be obligated to pay any claim shall not be relieved of the responsibility with respect thereto, or, solely by virtue of the indemnification provisions hereof, have any subrogation rights with respect thereto, it being expressly understood and agreed that no insurer or any other Third Party shall be entitled to a "windfall" (*i.e.*, a benefit it would not be entitled to receive in the absence of the indemnification provisions) by virtue of the indemnification provisions hereof.

SECTION 10.6 Procedures for Indemnification of Third-Party Claims.

(a) If any Third Party shall make any claim or commence any arbitration proceeding or suit (each such claim, proceeding or suit being a "**Third-Party Claim**") against any one or more of the Indemnified Parties with respect to which an Indemnified Party intends to make any claim for indemnification against H&S under Section 10.2 or against Fortune Brands under Section 10.3, such Indemnified Party shall promptly, but in no event later than 10 days after receipt by the Indemnified Party of written notice of the Third-Party Claim, give written notice to the Indemnifying Party describing such Third-Party Claim in reasonable detail. Notwithstanding the foregoing, the failure of any Indemnified Party to provide notice in accordance with this Section 10.6(a) shall not relieve the related Indemnifying Party of its obligations under this Article X, except to the extent that such Indemnifying Party is actually prejudiced by such failure to provide notice.

(b) The Indemnifying Party shall have 30 days after receipt of the notice referred to in Section 10.6(a) to notify the Indemnified Party that it elects to conduct and control the defense of such Third-Party Claim. If the Indemnifying Party does not give the foregoing notice, the Indemnified Party shall have the right to defend, contest, settle or compromise such Third-Party Claim in the exercise of its exclusive discretion subject to the provisions of this Section 10.6, and the Indemnifying Party shall, upon request from any of the Indemnified Parties, promptly pay to such Indemnified Parties in accordance with the other terms of this Section 10.6(b) the amount of any Expense or Loss subject to indemnification hereunder resulting from such Third-Party Claim. If the Indemnifying Party gives the foregoing notice within such 30-day period, the Indemnifying Party shall have the right to undertake, conduct and control, through counsel reasonably acceptable to the Indemnified Party, and at the Indemnifying Party's sole expense, the conduct and settlement of such Third-Party Claim, and the Indemnified Party shall cooperate with the Indemnifying Party in connection therewith; provided, however, that: (i) the Indemnifying Party shall use its reasonable best efforts to prevent any lien, encumbrance or other adverse charge to thereafter attach to any asset of any Indemnified Party; (ii) the Indemnifying Party shall use its reasonable best efforts to prevent any injunction against any Indemnified Party; (iii) the Indemnifying Party shall permit the Indemnified Party and any counsel chosen by the Indemnified Party and reasonably acceptable to the Indemnifying Party to monitor such conduct or settlement and shall provide the Indemnified Party and any such counsel with such information regarding such Third-Party Claim as either of them may reasonably request (which

request may be general or specific), but the fees and expenses of such counsel chosen by the Indemnified Party (but not more than one separate counsel for all Indemnified Parties similarly situated) shall be borne by the Indemnified Party unless (A) the Indemnifying Party and the Indemnified Party shall have mutually agreed that the Indemnifying Party should pay for such counsel, (B) in the Indemnified Party's reasonable judgment a conflict of interest exists in respect of such Third-Party Claim or (C) the Indemnifying Party shall have assumed responsibility for such Third-Party Claim with any reservations or exceptions; and (iv) the Indemnifying Party shall agree promptly to reimburse to the extent required under this Article X the Indemnified Party for the full amount of any Expense or Loss resulting from such Third-Party Claim. In no event shall the Indemnifying Party, without the prior written consent of the Indemnified Party, settle or compromise any claim or consent to the entry of any judgment that does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnified Party a release from all liability in respect of such claim.

(c) If the Indemnifying Party shall not have undertaken the conduct and control of the defense of any Third-Party Claim as provided in Section 10.6(b), the Indemnifying Party shall nevertheless be entitled through counsel chosen by the Indemnifying Party and reasonably acceptable to the Indemnified Party to monitor the conduct or settlement of such claim by the Indemnified Party, and the Indemnified Party shall provide the Indemnifying Party and such counsel with such information regarding such Third-Party Claim as either of them may reasonably request (which request may be general or specific), but all costs and expenses incurred in connection with such monitoring shall be borne by the Indemnifying Party.

(d) Subject to Section 10.6(e), no Indemnifying Party will consent to any settlement, compromise or discharge (including the consent to entry of any judgment) of any Third-Party Claim without the Indemnified Party's prior written consent (which consent will not be unreasonably withheld, conditioned or delayed); provided, however, that if the Indemnifying Party assumes the defense of any Third-Party Claim, the Indemnified Party will agree to any settlement, compromise or discharge of such Third-Party Claim that the Indemnifying Party may recommend and that by its terms obligates the Indemnifying Party to pay the full amount of Indemnifiable Losses in connection with such Third-Party Claim and unconditionally and irrevocably releases the Indemnified Party and its Affiliates completely from all Liability in connection with such Third-Party Claim; provided further that the Indemnified Party may refuse to agree to any such settlement, compromise or discharge that (i) provides for injunctive or other nonmonetary relief affecting the Indemnified Party or any of its Affiliates or (ii) in the reasonable opinion of the Indemnified Party, would otherwise materially adversely affect the Indemnified Party or any of its Affiliates. Whether or not the Indemnifying Party shall have assumed the defense of a Third-Party Claim, the Indemnified Party will not (unless required by law) admit any liability with respect to, or settle, compromise or discharge, such Third-Party Claim without the Indemnifying Party's prior written consent (which consent will not be unreasonably withheld, conditioned or delayed).

(e) If the Indemnified Party determines in its reasonable good faith judgment that the Indemnifying Party is not contesting such Third-Party Claim in good faith or is not settling such Third-Party Claim in accordance with this Section 10.6, the Indemnified Party shall have the right to undertake control of the defense of such Third-Party Claim upon five (5) days written notice to the Indemnifying Party and thereafter to defend, contest, settle or compromise such Third-Party Claim in the exercise of its exclusive discretion.

SECTION 10.7 Procedures for Indemnification of Direct Claims. Any claim for indemnification on account of an Expense or a Loss made directly by the Indemnified Party against the Indemnifying Party and that does not result from a Third-Party Claim shall be reasonably promptly asserted by written notice from the Indemnified Party to the Indemnifying Party specifically claiming indemnification hereunder. Such Indemnifying Party shall have a period of 30 days after the receipt of such notice within which to respond thereto. If such Indemnifying Party does not respond within such 30-day period, such Indemnifying Party shall be deemed to have refused to accept responsibility to provide indemnification with respect to such claim. If such Indemnifying Party does not respond within such 30-day period or does respond within such 30-day period and rejects such claim in whole or in part, such Indemnified Party shall be free to pursue resolution as provided in Article XII.

SECTION 10.8 Contribution. If the indemnification provided for in this Article X is judicially determined to be unavailable (other than in accordance with the terms of this Agreement, in which case this Section 10.8 shall not apply) to an Indemnified Party in respect of any Losses or Expenses referred to herein, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Expense or Loss in such proportion as is appropriate to reflect the relative fault of the H&S Indemnified Parties, on the one hand, and the Fortune Brands Indemnified Parties, on the other hand, in connection with the conduct, statements or omissions that resulted in such Expense or Loss. The relative fault of any H&S Indemnified Party, on the one hand, and of any Fortune Brands Indemnified Party, on the other hand, in the case of any Expense or Loss arising out of or related to information contained in the Form 10 Registration Statement, the Information Statement, the Form S-8 Registration Statement (including the related prospectus) or other securities law filing shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission of a material fact relates to information supplied by the H&S Business or an H&S Indemnified Party, on the one hand, or by the Fortune Brands Business or a Fortune Brands Indemnified Party, on the other hand. The information on Schedules 10.3(D) and 10.3(E) shall be deemed supplied by the Fortune Brands Business or the Fortune Brands Indemnified Parties. All other information in the Form 10 Registration Statement, the Information Statement and the Form S-8 Registration Statement (including the related prospectus) shall be deemed supplied by the H&S Business or the H&S Indemnified Parties.

SECTION 10.9 Remedies Cumulative. Subject to the provisions of Article IX and Section 10.11, the remedies provided in this Article X shall be cumulative and shall not preclude assertion by an Indemnified Party of any other rights or the seeking of any and all other remedies against any Indemnifying Party.

SECTION 10.10 Survival. All covenants and agreements of the parties contained in this Agreement relating to indemnification shall survive the Effective Time indefinitely, unless a specific survival or other applicable period is expressly set forth herein.

SECTION 10.11 Exclusivity of Indemnification Agreement and Tax Allocation Agreement. Notwithstanding anything to the contrary contained in this Agreement, (a) the Indemnification Agreement shall be the exclusive agreement among any of the Parties with respect to indemnification in respect of smoking and health and fire safe cigarette matters and (b) the Tax Allocation Agreement shall be the exclusive agreement among any of the Parties with respect to indemnification in respect of Tax matters.

ARTICLE XI
ACCESS TO INFORMATION AND SERVICES

SECTION 11.1 Agreement for Exchange of Information. (a) Subject to Section 11.1(b), at all times from and after the Distribution Date for a period of six years, as soon as reasonably practicable after written request: (i) Fortune Brands shall afford to the H&S Parties and their authorized accountants, counsel and other designated representatives reasonable access during normal business hours to, or, at H&S's expense, provide copies of, all records, books, Contracts, instruments, data, documents and other information (collectively, "**Information**") in the possession or under the control of Fortune Brands immediately following the Distribution Date that relates to H&S, the H&S Business or the employees or former employees of the H&S Business; and (ii) H&S shall afford to the Fortune Brands Parties and their authorized accountants, counsel and other designated representatives reasonable access during normal business hours to, or, at Fortune Brands' expense, provide copies of, all Information in the possession or under the control of H&S immediately following the Distribution Date that relates to Fortune Brands, the Fortune Brands Business or the employees or former employees of the Fortune Brands Business; provided, however, that in the event that either Fortune Brands or H&S determines that any such provision of or access to Information would be commercially detrimental in any material respect, violate any law or agreement or waive any attorney-client privilege, the work product doctrine or other applicable privilege, the Parties shall take all reasonable measures to permit the compliance with such obligations in a manner that avoids any such harm or consequence.

(b) Either party hereto may request Information under Section 11.1(a) or Section 11.7: (i) to comply with reporting, disclosure, filing or other requirements imposed on the requesting party or any of its Affiliates (including under applicable securities or Tax laws) by a Governmental Authority having jurisdiction over such requesting party or Affiliate thereof; (ii) for use in any other judicial, regulatory, administrative, Tax or other proceeding or in order to satisfy audit, accounting, claims defense, regulatory filings, litigation, Tax or other similar requirements (other than in connection with any action, suit or proceeding in which any Fortune Brands Party is adverse to any H&S Party); (iii) for use in compensation, benefit or welfare plan administration or other *bona fide* business purposes; or (iv) to comply with its obligations under this Agreement or any Transaction Agreement.

(c) Without limiting the generality of the foregoing, until the end of the first full H&S fiscal year occurring after the Distribution Date (and for a reasonable period of time afterwards as required for each party to prepare consolidated financial statements or complete a financial statement audit for the fiscal year during which the Distribution Date occurs), each party hereto shall use its commercially reasonable efforts to cooperate with the other party's Information requests to enable the other party to meet its timetable for dissemination of its earnings releases and financial statements and to enable such other party's auditors to timely complete their audit of the annual financial statements and review of the quarterly financial statements.

SECTION 11.2 Ownership of Information. Any Information owned by any Party that is provided to a requesting Party pursuant to Section 11.1 shall be deemed to remain the property of the providing Party. Unless specifically set forth herein, nothing contained in this Agreement shall be construed to grant or confer rights of license or otherwise in any such Information.

SECTION 11.3 Compensation for Providing Information. The party requesting Information agrees to reimburse the providing party for the reasonable Out-of-Pocket Expenses, if any, of gathering and copying such Information, to the extent that such Out-of-Pocket Expenses are incurred for the benefit of the requesting party.

SECTION 11.4 Retention of Records. To facilitate the possible exchange of Information pursuant to this Article XI after the Distribution Date, except as otherwise required or agreed in writing, or as otherwise provided in the Tax Allocation Agreement, the parties hereto agree to use commercially reasonable efforts to retain all Information in their respective possession or control on the Distribution Date in accordance with the policies and procedures of Fortune Brands as in effect on the Distribution Date or such other policies and procedures as may reasonably be adopted by the applicable party after the Distribution Date.

SECTION 11.5 Limitation of Liability. No party shall have any liability to the other party (a) if any Information exchanged or provided pursuant to this Agreement that is an estimate or forecast, or that is based on an estimate or forecast, is found to be inaccurate, in the absence of gross negligence or willful misconduct by the party providing such Information or (b) if any Information is destroyed despite using commercially reasonable efforts to comply with the provisions of Section 11.4.

SECTION 11.6 Production of Witnesses. At all times from and after the Distribution Date, each party shall use commercially reasonable efforts to make available, or cause to be made available, to the other party (without cost (other than reimbursement of actual Out-of-Pocket Expenses) to, and upon prior written request of, the other party) its directors, officers, employees and agents as witnesses to the extent that the same may reasonably be required by the other party (giving consideration to business demands of such directors, officers, employees and agents) in connection with any legal, administrative or other proceeding (except in the case of any action, suit or proceeding in which any Fortune Brands Party is adverse to any H&S Party) in which the requesting party may from time to time be involved with respect to the H&S Business, the Fortune Brands Business or any transactions contemplated hereby; provided that the same shall not unreasonably interfere with the conduct of business by the party of which the request is made.

SECTION 11.7 Sharing of Knowledge. Subject to Section 11.1(b) and any limitations set forth in any Transaction Agreement, for a period of two years following the Distribution Date, as soon as reasonably practicable after written request: (a) to the extent that information or knowledge with respect to the H&S Business as of or prior to the Effective Time is available through discussions with employees of the Fortune Brands Parties, Fortune Brands shall make such employees reasonably available to H&S to provide such information or knowledge and (b)

to the extent that information or knowledge relating to the Fortune Brands Business as of or prior to the Effective Time is available through discussions with employees of the H&S Parties, H&S shall make such employees reasonably available to Fortune Brands to provide such information or knowledge; provided, however, that in the event that either Fortune Brands or H&S determines that any such provision of such information or knowledge would be commercially detrimental in any material respect, violate any law or agreement or waive any attorney-client privilege, the work product doctrine or other applicable privilege, the parties hereto shall take all reasonable measures to permit the compliance with such obligations in a manner that avoids any such harm or consequence; and provided further that, to the extent specific information- or knowledge-sharing provisions are contained in any of the Transaction Agreements, such other provisions (and not this Section 11.7) shall govern.

SECTION 11.8 Confidentiality. (a) From and after the Distribution Date, each of Fortune Brands and H&S shall hold, and shall cause their respective Subsidiaries, Affiliates and Representatives to hold, in strict confidence, with at least the same degree of care that applies to Fortune Brands' confidential and proprietary information pursuant to policies in effect as of the Distribution Date or such other procedures as may reasonably be adopted by the receiving party after the Distribution Date, all Confidential Information of the disclosing party or any of its Affiliates obtained by such receiving party prior to the Distribution Date, accessed by such receiving party pursuant to Section 11.1 or furnished to such receiving party by or on behalf of the disclosing party or any of its Affiliates pursuant to this Agreement or, to the extent not addressed in a Transaction Agreement, any agreement contemplated hereby, shall not use such Confidential Information (except as contemplated by this Agreement, such Transaction Agreement or any agreement contemplated hereby) and shall not release or disclose such Confidential Information to any other Person, except its Representatives, who shall be bound by the provisions of this Section 11.8 or similar confidentiality obligations; provided, however, that Fortune Brands and H&S and their respective Representatives may disclose or use such information if, and only to the extent that, (i) a disclosure of such information is compelled by judicial or administrative process or, in the opinion of the receiving party's counsel, by other requirements of law (in which case such party will provide, to the extent reasonably practicable under the circumstances, advance written notice to the other party of its intent to make such disclosure) or (ii) the receiving party can show that such information (A) has been published or has otherwise become available to the general public as part of the public domain without breach of this Agreement, (B) has been furnished or made known to the receiving party without any obligation to keep it confidential by a Third Party under circumstances that are not known to the receiving party to involve a breach of the Third Party's obligations to a party hereto or (C) was developed independently of information furnished or made available to the receiving party as contemplated under this Agreement (except, in the case of each of (A), (B) and (C), to the extent that notwithstanding the foregoing, use or disclosure thereof would be prohibited by applicable law). Each of Fortune Brands and H&S, respectively, shall be responsible for any breach of this Section 11.8 by any of its Representatives to whom it has disclosed Confidential Information.

(b) Notwithstanding the provisions of this Section 11.8, each of Fortune Brands and H&S will be deemed to have satisfied its obligations under Section 11.8(a) with respect to preserving the confidentiality of the other party's Confidential Information as long as it takes the same degree of care that it takes to: (i) secure and maintain the confidentiality of its own similar information; (ii) protect its own similar information against anticipated threats or hazards; and (iii) protect against loss or theft or unauthorized access, copying, disclosure, loss, damage, modification or use of its own similar information.

(c) Each of Fortune Brands and H&S acknowledges that the disclosing party would not have an adequate remedy at law for the breach by the receiving party of any one or more of the covenants contained in this Section 11.8 and agrees that, notwithstanding Section 12.2 and Section 12.3, the disclosing party shall, in addition to the other remedies that may be available to it, be entitled to an injunction to prevent actual or threatened breaches of this Section 11.8 and to enforce specifically the terms and provisions of this Section 11.8 in any court of competent jurisdiction. Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Section 11.8 shall survive the Distribution Date indefinitely.

(d) This Section 11.8 shall not apply with respect to Confidential Information furnished to the receiving party or accessed by the receiving party pursuant to any Transaction Agreement, except to the extent that such Transaction Agreement incorporates the provisions of this Section 11.8 by reference.

(e) Notwithstanding the limitations set forth in this Section 11.8, with respect to financial and other information related to the H&S Parties for the periods during which such H&S Parties were Subsidiaries of Fortune Brands, in addition to fulfilling its periodic reporting obligations with the SEC as required by applicable law, Fortune Brands shall be permitted to disclose such information in its earnings releases, investor calls, rating agency presentations and other similar disclosures to the extent such information has customarily been included by Fortune Brands in such disclosures.

SECTION 11.9 Privileged Matters. (a) Each of Fortune Brands and H&S agrees to maintain, preserve and assert all privileges, including privileges arising under or relating to the attorney-client relationship (which shall include the attorney-client and work product privileges), not heretofore waived, that relate to the H&S Business or the Fortune Brands Business for any period prior to the Distribution Date (each a "**Privilege**"). Each party hereto acknowledges and agrees that any costs associated with asserting any Privilege shall be borne by the party requesting that such Privilege be asserted. Each party hereto agrees that neither it nor any of its Affiliates shall waive any Privilege that could be asserted by the other party hereto or any of its Affiliates under applicable law without the prior written consent of the other party. The rights and obligations created by this Section 11.9 shall apply to all information relating to the Fortune Brands Business or the H&S Business as to which, but for the Distribution, either party would have been entitled to assert or did assert the protection of a Privilege ("**Privileged Information**"), including (i) any and all information generated prior to the Distribution Date but which, after the Distribution, is in the possession of either party and (ii) all information generated, received or arising after the Distribution Date that refers to or relates to Privileged Information generated, received or arising prior to the Distribution Date.

(b) Upon receipt by either party of any subpoena, discovery or other request that may call for the production or disclosure of Privileged Information or if either party obtains knowledge that any current or former employee of Fortune Brands, H&S or any of their respective Affiliates has received any subpoena, discovery or other request that may call for the production or disclosure of Privileged Information of the other party hereto or any of such other

party's Affiliates, such party shall notify promptly the other party of the existence of the request and shall provide the other party a reasonable opportunity to review the information and to assert any rights it may have under this Section 11.9 or otherwise to prevent the production or disclosure of Privileged Information. Each party agrees that it will not produce or disclose any information that may be covered by a Privilege of the other party or any of such other party's Affiliates under this Section 11.9 unless (i) the other party has provided its written consent to such production or disclosure (which consent shall not be unreasonably withheld, conditioned or delayed) or (ii) a court of competent jurisdiction has entered a final, nonappealable order finding that the information is not entitled to protection under any applicable Privilege.

(c) Fortune Brands' transfer of books and records and other information to H&S, and Fortune Brands' agreement to permit H&S to possess Privileged Information existing or generated prior to the Distribution Date, are made in reliance on H&S's agreement, as set forth in Sections 11.8 and 11.9, to maintain the confidentiality of Privileged Information and to assert and maintain all applicable Privileges. The access to information being granted pursuant to Section 11.1, the agreement to provide witnesses and individuals pursuant to Section 11.6 and the transfer of Privileged Information to H&S pursuant to this Agreement shall not be deemed a waiver of any Privilege that has been or may be asserted under this Section 11.9 or otherwise. Nothing in this Agreement shall operate to reduce, minimize or condition the rights granted to Fortune Brands in, or the obligations imposed upon H&S by, this Section 11.9. H&S's transfer of books and records and other information to Fortune Brands, and H&S's agreement to permit Fortune Brands to possess Privileged Information existing or generated prior to the Distribution Date, are made in reliance on Fortune Brands' agreement, as set forth in Sections 11.8 and 11.9, to maintain the confidentiality of Privileged Information and to assert and maintain all applicable Privileges. The access to information being granted pursuant to Section 11.1, the agreement to provide witnesses and individuals pursuant to Section 11.6 and the transfer of Privileged Information to Fortune Brands pursuant to this Agreement shall not be deemed a waiver of any Privilege that has been or may be asserted under this Section 11.9 or otherwise. Nothing in this Agreement shall operate to reduce, minimize or condition the rights granted to H&S in, or the obligations imposed upon Fortune Brands by, this Section 11.9.

SECTION 11.10 Attorney Representation. (a) H&S, on behalf of itself and the other H&S Parties, hereby acknowledges that Sidley Austin LLP ("**Sidley**") is counsel to Fortune Brands, and not counsel to any H&S Party, in connection with the transactions contemplated by this Agreement. H&S acknowledges that Sidley has acted as counsel for Fortune Brands for several years and that, in the event of any Dispute (under Article X or otherwise), Fortune Brands reasonably anticipates that Sidley will represent the Fortune Brands Parties in such matters. Accordingly, to the extent required by applicable law or otherwise, H&S, on behalf of itself and each of the H&S Parties, expressly (a) consents to Sidley's representation of any of the Fortune Brands Parties in any post-Distribution matter in which the interests of any H&S Party, on the one hand, and any Fortune Brands Party, on the other hand, are adverse, whether or not such matter is one in which Sidley may have previously advised Fortune Brands; provided, however, that, if at the time any Fortune Brands Party requests that Sidley represent it with respect to any such post-Distribution matter, any H&S Party is a current Sidley client, the foregoing provisions of this clause (a) shall be disregarded; (b) consents to the disclosure by Sidley to Fortune Brands of any information learned by Sidley in the course of its representation of Fortune Brands, whether or not such information is subject to the attorney-client privilege or

Sidley's duty of confidentiality and whether or not such disclosure is made before or after the Distribution; and (c) irrevocably waives any right it may have to discover or obtain information or documentation relating to the representation of Fortune Brands by Sidley, including in connection with the transactions contemplated by this Agreement or any of the Transaction Agreements. H&S further covenants, on behalf of itself and each of the H&S Parties, that it shall not assert any claim against Sidley in respect of legal services provided to Fortune Brands by Sidley, whether or not such services relate to the H&S Business, the Transferred Subsidiaries, the Transferred Business Assets or the transactions contemplated by this Agreement or any of the Transaction Agreements.

(b) Fortune Brands, on behalf of itself and the other Fortune Brands Parties, hereby waives any conflict of interest with respect to any attorney who is or becomes an employee of H&S resulting from such person being an employee of Fortune Brands or any of its Subsidiaries (including the H&S Parties) or having provided legal services to Fortune Brands or any of its Subsidiaries at any time prior to the Distribution and agrees to allow such attorney to represent the H&S Parties in any transaction or dispute with respect to this Agreement, the Transaction Agreements, the transactions contemplated hereby and thereby and transactions between the Parties that commence following the Distribution Date. H&S, on behalf of itself and the other H&S Parties, hereby waives any conflict of interest with respect to any attorney who is or becomes an employee of Fortune Brands resulting from such person being an employee of H&S or any of its Subsidiaries or having provided legal services to H&S or any of its Subsidiaries at any time prior to the Distribution and agrees to allow such attorney to represent the Fortune Brands Parties in any transaction or dispute with respect to this Agreement, the Transaction Agreements and the transactions contemplated hereby and thereby and transactions between the Parties that commence following the Distribution Date. In furtherance of the foregoing, each Fortune Brands Party and each H&S Party will, upon request, execute and deliver a specific waiver as may be required in connection with a particular transaction or dispute under the applicable rules of professional conduct in order to effectuate the general waiver set forth above.

SECTION 11.11 Financial Information Certifications. (a) In order to enable the principal executive officer or officers, principal financial officer or officers and controller or controllers of Fortune Brands to make the certifications required of them under Section 302 of the Sarbanes-Oxley Act of 2002, within 30 days following the end of any fiscal quarter during which H&S was a Subsidiary of Fortune Brands, and within 60 days following the end of any fiscal year during which H&S was a Subsidiary of Fortune Brands, H&S shall provide a certification statement with respect of internal controls for corporate and shared services processes for such quarter, year or portion thereof to those certifying officers and employees of Fortune Brands, which certification shall be in substantially the same form as had been provided by officers or employees of H&S in certifications delivered prior to the Distribution Date (provided that such certification shall be made by H&S rather than individual officers or employees), or as otherwise agreed upon between the parties. Such certification statements shall also reflect any changes in certification statements necessitated by the transactions contemplated by this Agreement.

(b) In order to enable the principal executive officer or officers, principal financial officer or officers and controller or controllers of H&S to make the certifications required of them under Section 302 of the Sarbanes-Oxley Act of 2002, within 30 days following the end of

any fiscal quarter during which H&S was a Subsidiary of Fortune Brands, and within 60 days following the end of any fiscal year during which H&S was a Subsidiary of Fortune Brands, Fortune Brands shall provide a certification statement with respect to testing of internal controls for corporate and shared services processes for such quarter, year or portion thereof to those certifying officers and employees of H&S, which certification shall be in substantially the same form as had been provided by officers or employees of Fortune Brands in certifications delivered to its principal executive officer, principal financial officer and controller prior to the Distribution Date (provided that such certification shall be made by Fortune Brands rather than individual officers or employees,) or as otherwise agreed upon between the parties. Such certification statements shall also reflect any changes in certification statements necessitated by the transactions contemplated by this Agreement.

ARTICLE XII
MISCELLANEOUS

SECTION 12.1 Entire Agreement. This Agreement and the Transaction Agreements, including the Schedules and Exhibits referred to herein and therein, and the documents delivered pursuant hereto and thereto, contain the entire understanding of the parties hereto with regard to the subject matter contained herein or therein, and supersede all prior agreements, negotiations, discussions, understandings, writings and commitments between any of the Fortune Brands Parties, on the one hand, and any of the H&S Parties, on the other hand, with respect to such subject matter hereof or thereof.

SECTION 12.2 Dispute Resolution; Mediation.

(a) Subject to Section 12.2(c), either party hereto seeking resolution of any dispute, controversy or claim arising out of or relating to this Agreement, or the validity, interpretation, breach or termination of this Agreement (a "**Dispute**"), shall provide written notice thereof to the other party hereto, and following delivery of such notice, the parties hereto shall attempt in good faith to negotiate a resolution of the Dispute. The negotiations shall be conducted by executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for the subject matter of the Dispute. All such negotiations shall be confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. If the parties hereto are unable for any reason to resolve a Dispute within 30 days after the delivery of such notice or if a party reasonably concludes that the other party is not willing to negotiate as contemplated by this Section 12.2(a), the Dispute shall be submitted to mediation in accordance with Section 12.2(b).

(b) Any Dispute not resolved pursuant to Section 12.2(a) shall, at the written request of any party hereto (a "**Mediation Request**"), be submitted to non-binding mediation in accordance with the then current International Institute for Conflict Prevention and Resolution ("**CPR**") Mediation Procedure (the "**Procedure**"), except as modified herein. The mediation shall be held in Chicago, Illinois. The parties shall have 20 days from receipt by a party (or parties) of a Mediation Request to agree on a mediator. If no mediator has been agreed upon by the parties within 20 days of receipt by a party (or parties) of a Mediation Request, then any party may request (on written notice to the other party), that CPR appoint a mediator in accordance with the Procedure. All mediation pursuant to this clause shall be confidential and

shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence, and no oral or documentary representations made by the parties during such mediation shall be admissible for any purpose in any subsequent proceedings. No party hereto shall disclose or permit the disclosure of any information about the evidence adduced or the documents produced by any other party in the mediation proceedings or about the existence, contents or results of the mediation without the prior written consent of such other party except in the course of a judicial or regulatory proceeding or as may be required by law or requested by a Governmental Authority or securities exchange. Before making any disclosure permitted by the preceding sentence, the party intending to make such disclosure shall, to the extent reasonably practicable, give the other party reasonable written notice of the intended disclosure and afford the other party a reasonable opportunity to protect its interests. If the Dispute has not been resolved within 60 days of the appointment of a mediator, or within 90 days after receipt by a party (or parties) of a Mediation Request (whichever occurs sooner), or within such longer period as the parties may agree to in writing, then any party may file an action on the Dispute in any court having jurisdiction in accordance with Section 12.4.

(c) Notwithstanding the foregoing provisions of this Section 12.2, (i) any party may seek preliminary provisional or injunctive judicial relief without first complying with the procedures set forth in Section 12.2(a) and Section 12.2(b) if such action is reasonably necessary to avoid irreparable damage and (ii) either party may initiate litigation before the expiration of the periods specified in Section 12.2(b) if such party has submitted a Mediation Request and the other party has failed, within 14 days after the appointment of a mediator, to agree upon a date for the first mediation session to take place within 30 days after the appointment of such mediator or such longer period as the parties may agree to in writing.

SECTION 12.3 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws (as opposed to the conflicts of law provisions) of the State of Delaware.

SECTION 12.4 Submission to Jurisdiction; Waiver of Jury Trial. Each of Fortune Brands, on behalf of itself and each of the Fortune Brands Parties, and H&S, on behalf of itself and each of the H&S Parties, hereby irrevocably (a) submits in any Dispute to the exclusive jurisdiction of the United States District Court for the Northern District of Illinois and the jurisdiction of any court of the State of Illinois located in Chicago, Illinois, (b) waives any and all objections to jurisdiction that they may have under the laws of the State of Illinois or the United States, (c) agrees that service of any process, summons, notice or document by U.S. registered mail to its respective address set forth in Section 12.11 shall be effective service of process for any litigation brought against it in any such court and (d) UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN CONNECTION WITH ANY DISPUTE (AS DEFINED HEREIN).

SECTION 12.5 Amendment. This Agreement shall not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each of Fortune Brands and H&S.

SECTION 12.6 Waiver. Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or parties entitled to the benefit thereof. Any such waiver shall be validly and sufficiently given for the purposes of this Agreement if, as to either party, it is in writing signed by an authorized representative of such party. The failure of either party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, or in any way to affect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

SECTION 12.7 Partial Invalidity. Wherever possible, each provision hereof shall be construed in a manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provision hereof, unless such a construction would be unreasonable.

SECTION 12.8 Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original instrument, but both of which shall be considered one and the same agreement, and shall become binding when the counterparts have been signed by and delivered to each of the parties hereto.

SECTION 12.9 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns; provided, however, that the rights and obligations of either party under this Agreement shall not be assignable by such party without the prior written consent of the other party. The successors and permitted assigns hereunder shall include any permitted assignee as well as the successors in interest to such permitted assignee (whether by merger, liquidation (including successive mergers or liquidations) or otherwise).

SECTION 12.10 Third-Party Beneficiaries. Except for Article X and Section 11.10, this Agreement is solely for the benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein express or implied shall give or be construed to give to any other Person any legal or equitable rights hereunder.

SECTION 12.11 Notices. All notices, requests, claims, demands and other communications required or permitted hereunder shall be in writing and shall be deemed given or delivered (a) when delivered personally, (b) if transmitted by facsimile when confirmation of transmission is received, (c) if sent by registered or certified mail, postage prepaid, return receipt requested, on the third business day after mailing or (d) if sent by nationally recognized overnight courier, on the first business day following the date of dispatch; and shall be addressed as follows:

If to Fortune Brands prior to the Effective Time, to:

Fortune Brands, Inc.
520 Lake Cook Road
Deerfield, Illinois 60015
Attention: General Counsel
Facsimile: (847) 484-4490

If to Fortune Brands at or after the Effective Time, to:

Fortune Brands, Inc.
510 Lake Cook Road
Deerfield, Illinois 60015
Attention: General Counsel
Facsimile: (847) 948-8610

If to H&S, to:

Fortune Brands Home & Security, Inc.
520 Lake Cook Road
Deerfield, Illinois 60015
Attention: General Counsel
Facsimile: (847) 484-4490

or to such other address as such party may indicate by a notice delivered to the other party in accordance herewith.

SECTION 12.12 Performance. Fortune Brands will cause to be performed and hereby guarantees the performance of all actions, agreements and obligations set forth herein to be performed by any Fortune Brands Party. H&S will cause to be performed and hereby guarantees the performance of all actions, agreements and obligations set forth herein to be performed by any H&S Party.

SECTION 12.13 Force Majeure. No party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations under this Agreement results from any cause beyond its reasonable control and without its fault or negligence, including acts of God, acts of civil or military authority, embargoes, acts of terrorism, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, unusually severe weather conditions, labor problems or unavailability of parts, or, in the case of computer systems, any failure in electrical or air conditioning equipment. In the event of any such excused delay, the time for performance shall be extended for a period equal to the time lost by reason of the delay.

SECTION 12.14 Termination. Notwithstanding anything to the contrary contained herein, this Agreement may be terminated and the Distribution abandoned at any time prior to the Distribution by and in the sole discretion of the Fortune Board without the prior approval of any Person. In the event of such termination, this Agreement shall forthwith become void, and no party shall have any liability to any Person by reason of this Agreement.

SECTION 12.15 Limited Liability. Notwithstanding any other provision of this Agreement, no individual who is a stockholder, director, employee, officer, agent or representative of H&S or Fortune Brands, in such individual's capacity as such, shall have any liability in respect of or relating to the covenants or obligations of H&S or Fortune Brands, as applicable, under this Agreement or any Transaction Agreement or in respect of any certificate delivered with respect hereto or thereto, and, to the fullest extent legally permissible, each of H&S and Fortune Brands, for itself and its stockholders, directors, employees, officers and Affiliates, waives and agrees not to seek to assert or enforce any such liability that any such individual otherwise might have pursuant to applicable law.

SECTION 12.16 Survival. Except as otherwise expressly provided herein, all covenants, conditions and agreements of the parties hereto contained in this Agreement shall remain in full force and effect and shall survive the Distribution Date.

* * * * *

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives as of the date first above written.

FORTUNE BRANDS, INC.

By: /s/ Bruce A. Carbonari
Name: Bruce A. Carbonari
Title: Chairman of the Board and Chief Executive Officer

FORTUNE BRANDS HOME & SECURITY, INC.

By: /s/ Christopher J. Klein
Name: Christopher J. Klein
Title: President and Chief Executive Officer

Exhibit 3.1

RESTATED CERTIFICATE OF INCORPORATION

OF

FORTUNE BRANDS HOME & SECURITY, INC.

a Delaware corporation

Fortune Brands Home & Security, Inc., a corporation organized and existing under the laws of the State of Delaware (the "**Corporation**"), hereby certifies as follows:

A. The name of the Corporation is Fortune Brands Home & Security, Inc. The Corporation was originally incorporated under the name AB Hardware Inc. The Corporation's original certificate of incorporation was filed with the office of the Secretary of State of the State of Delaware on June 9, 1988.

B. This restated certificate of incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, as amended (the "**DGCL**"), restates and amends the provisions of the Corporation's certificate of incorporation and has been duly approved by the written consent of the stockholders of the Corporation in accordance with Section 228 of the DGCL.

C. The text of the certificate of incorporation of this Corporation is hereby amended and restated to read in its entirety as follows:

ARTICLE I
NAME

The name of the Corporation is Fortune Brands Home & Security, Inc.

ARTICLE II
REGISTERED OFFICE

The address of the Corporation's registered office in the State of Delaware is 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle, Delaware 19802. The name of its registered agent at such address is Corporation Service Company.

ARTICLE III
PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

ARTICLE IV
CAPITAL STOCK

4.1 Authorized Capital Stock. The total number of shares of all classes of capital stock that the Corporation is authorized to issue is eight hundred ten million (810,000,000) shares, consisting of seven hundred fifty million (750,000,000) shares of common stock, par value $0.01 per share ("**Common Stock**"), and sixty million (60,000,000) shares of preferred stock, par value $0.01 per share ("**Preferred Stock**").

4.2 Increase or Decrease in Authorized Capital Stock. The number of authorized shares of Preferred Stock or Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority in voting power of the stock of the Corporation entitled to vote generally in the election of directors, irrespective of the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto), voting together as a single class, without a separate vote of the holders of the class or classes the number of authorized shares of which are being increased or decreased, unless a vote by any holders of one or more series of Preferred Stock is required by the express terms of any series of Preferred Stock as provided for or fixed pursuant to the provisions of Section 4.4 of this Certificate of Incorporation (as defined below).

4.3 Common Stock.

(a) The holders of shares of Common Stock shall be entitled to one vote for each such share on each matter properly submitted to the stockholders on which the holders of shares of Common Stock are entitled to vote. The holders of shares of Common Stock shall not have cumulative voting rights. Except as otherwise required by law or this restated certificate of incorporation of the Corporation (as further amended from time to time in accordance with the provisions hereof and including, without limitation, the terms of any certificate of designation with respect to any series of Preferred Stock, this "**Certificate of Incorporation**"), and subject to the rights of the holders of Preferred Stock, if any, at any annual or special meeting of the stockholders of the Corporation, the holders of shares of Common Stock shall have the right to vote for the election of directors and on all other matters properly submitted to a vote of the stockholders; provided, however, that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation that relates solely to the terms, number of shares, powers, designations, preferences or relative, participating, optional or other special rights (including, without limitation, voting rights), or to qualifications, limitations or restrictions thereof, of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation or pursuant to the DGCL.

(b) Subject to the rights of the holders of Preferred Stock, the holders of shares of Common Stock shall be entitled to receive such dividends and other distributions (payable in cash, property or capital stock of the Corporation) when, as and if declared thereon by the board of directors of the Corporation (the "**Board**") from time to time out of any assets or funds of the Corporation legally available therefor and shall share equally on a per share basis in such dividends and distributions.

(c) In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation, and subject to the rights of the holders of Preferred Stock in respect thereof, the holders of shares of Common Stock shall be entitled to receive all of the remaining assets of the Corporation available for distribution to its stockholders, ratably in proportion to the number of shares of Common Stock held by them.

4.4 Preferred Stock.

(a) The Board is expressly authorized to issue from time to time the Preferred Stock in one or more series pursuant to a resolution or resolutions providing for such issue duly adopted by the Board. The Board is further authorized, subject to limitations prescribed by law, to fix by resolution or resolutions and to set forth in a certification of designation filed pursuant to the DGCL the powers, designations, preferences and relative, participating, optional or other special rights, if any, and the qualifications, limitations or restrictions thereof, if any, of any wholly unissued series of Preferred Stock, including, without limitation, dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including, without limitation, sinking fund provisions), redemption price or prices and liquidation preferences of any such series, and the number of shares constituting any such series and the designation thereof, or any of the foregoing.

(b) The Board is further authorized to increase (but not above the total number of authorized shares of the class) or decrease (but not below the number of shares of any such series then outstanding) the number of shares of any series of Preferred Stock, the number of which was fixed by it, subsequent to the issuance of shares of such series then outstanding, subject to the powers, preferences and rights, and the qualifications, limitations and restrictions thereof, stated in this Certificate of Incorporation or the resolution of the Board originally fixing the number of shares of such series. If the number of shares of any series of Preferred Stock is so decreased, then the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

ARTICLE V
BOARD OF DIRECTORS

5.1 General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board.

5.2 Number of Directors; Election; Term.

(a) The number of directors that shall constitute the entire Board shall not be less than five (5) nor more than fifteen (15). Within such limit, the number of members of the entire Board shall be fixed, from time to time, exclusively by the Board, subject to the rights of the holders of preferred stock with respect to the election of directors, if any.

(b) Subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, the directors of the Corporation shall be divided into three classes as nearly equal in size as is practicable, hereby designated Class I, Class II and Class III. The Board is authorized to assign members of the Board already in office to such classes. The term of office of

the initial Class I directors shall expire upon the election of directors at the first annual meeting of stockholders following the effectiveness of this Article V; the term of office of the initial Class II directors shall expire upon the election of directors at the second annual meeting of stockholders following the effectiveness of this Article V; and the term of office of the initial Class III directors shall expire upon the election of directors at the third annual meeting of stockholders following the effectiveness of this Article V. At each annual meeting of stockholders, commencing with the first annual meeting of stockholders following the effectiveness of this Article V, each of the successors elected to replace the directors of a class whose term shall have expired at such annual meeting shall be elected to hold office until the third annual meeting next succeeding his or her election and until his or her respective successor shall have been duly elected and qualified. Subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, if the number of directors that constitutes the Board is changed, any newly created directorships or decrease in directorships shall be so apportioned by the Board among the classes as to make all classes as nearly equal in number as is practicable, provided that no decrease in the number of directors constituting the Board shall shorten the term of any incumbent director.

(c) Notwithstanding the foregoing provisions of this Section 5.2, and subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, each director shall serve until such director's successor is duly elected and qualified or until such director's earlier death, resignation or removal.

(d) Elections of directors need not be by written ballot unless the bylaws of the Corporation (as amended from time to time in accordance with the provisions hereof and thereof, the "**Bylaws**") shall so provide.

(e) Notwithstanding any of the other provisions of this Article V, whenever the holders of any one or more series of Preferred Stock issued by the Corporation shall have the right, voting separately by series, to elect directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of the certificate of designation for such series of Preferred Stock, and such directors so elected shall not be divided into classes pursuant to this Article V unless expressly provided by such terms. During any period when the holders of any series of Preferred Stock have the right to elect additional directors as provided for or fixed pursuant to the provisions of this Article V, then upon commencement and for the duration of the period during which such right continues; (i) the then otherwise total authorized number of directors of the Corporation shall automatically be increased by such specified number of directors, and the holders of such Preferred Stock shall be entitled to elect the additional directors so provided for or fixed pursuant to such provisions, and (ii) each such additional director shall serve until such director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to such provisions, whichever occurs earlier, subject to such director's earlier death, disqualification, resignation or removal. Except as otherwise provided by the Board in the resolution or resolutions establishing such series, whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to the provisions of such series of stock, the terms of office of all such additional directors elected by the holders of such stock, or elected to fill any vacancies resulting from the death, resignation, disqualification or removal of such additional directors, shall forthwith terminate, and the total authorized number of directors of the Corporation shall be reduced accordingly.

5.3 Removal. Subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, a director may be removed from office by the stockholders of the Corporation only for cause.

5.4 Vacancies and Newly Created Directorships. Subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, vacancies occurring on the Board for any reason and newly created directorships resulting from an increase in the number of directors may be filled only by vote of a majority of the remaining members of the Board, although less than a quorum, or by a sole remaining director, at any meeting of the Board. A person so elected by the Board to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such person shall have been assigned by the Board and until such person's successor shall be duly elected and qualified.

ARTICLE VI
AMENDMENT OF BYLAWS

In furtherance and not in limitation of the powers conferred by statute, the Board is expressly authorized to adopt, amend, alter or repeal the Bylaws. The Bylaws may also be adopted, amended, altered or repealed by the stockholders by the affirmative vote of the holders of at least 75% of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

ARTICLE VII
STOCKHOLDERS

7.1 No Action by Written Consent of Stockholders. Except as otherwise expressly provided by the terms of any series of Preferred Stock permitting the holders of such series of Preferred Stock to act by written consent, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of the stockholders of the Corporation and may not be effected by written consent in lieu of a meeting.

7.2 Special Meetings. Except as otherwise expressly provided by the terms of any series of Preferred Stock permitting the holders of such series of Preferred Stock to call a special meeting of the holders of such series, special meetings of the stockholders of the Corporation may be called only by the chairperson of the Board, the chief executive officer of the Corporation or the Board, and the ability of the stockholders to call a special meeting of the stockholders is hereby specifically denied.

7.3 Advance Notice. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws.

ARTICLE VIII
LIMITATION OF LIABILITY AND INDEMNIFICATION

8.1 Limitation of Personal Liability. No director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL, as it presently exists or may hereafter be amended from time to time. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

8.2 Indemnification and Advancement of Expenses. The Corporation shall indemnify its directors and officers to the fullest extent authorized or permitted by the DGCL, as now or hereafter in effect, and such right to indemnification shall continue as to a person who has ceased to be a director or officer of the Corporation and shall inure to the benefit of such person's heirs, executors and personal and legal representatives. A director's right to indemnification conferred by this Section 8.2 shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any proceeding in advance of its final disposition, provided that such director presents to the Corporation a written undertaking to repay such amount if it shall ultimately be determined that such director is not entitled to be indemnified by the Corporation under this Article VIII or otherwise. Notwithstanding the foregoing, except for proceedings to enforce any officer's or director's rights to indemnification or any director's rights to advancement of expenses, the Corporation shall not be obligated to indemnify any director or officer, or advance expenses of any director, (or such person's heirs, executors or personal or legal representatives) in connection with any proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized by the Board.

8.3 Non-Exclusivity of Rights. The rights to indemnification and advancement of expenses conferred in Section 8.2 of this Certificate of Incorporation shall neither be exclusive of, nor be deemed in limitation of, any rights to which any person may otherwise be or become entitled or permitted under this Certificate of Incorporation, the Bylaws, any statute, agreement, vote of stockholders or disinterested directors or otherwise.

8.4 Insurance. To the fullest extent authorized or permitted by the DGCL, the Corporation may purchase and maintain insurance on behalf of any current or former director or officer of the Corporation against any liability asserted against such person, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Article VIII or otherwise.

8.5 Persons Other Than Directors and Officers. This Article VIII shall not limit the right of the Corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to, or to purchase and maintain insurance on behalf of, persons other than those persons described in the first sentence of Section 8.2 of this Certificate of Incorporation or to advance expenses to persons other than directors of the Corporation.

8.6 Effect of Modifications. Any amendment, repeal or modification of any provision contained in this Article VIII shall, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to further limit or eliminate the liability of directors or officers) and shall not adversely affect any right or

protection of any current or former director or officer of the Corporation existing at the time of such amendment, repeal or modification with respect to any acts or omissions occurring prior to such amendment, repeal or modification.

ARTICLE IX
MISCELLANEOUS

9.1 Forum for Certain Actions. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (a) any state derivative action or proceeding brought or purporting to be brought on behalf of the Corporation, (b) any state action asserting a claim of breach of a fiduciary duty owed by any current or former director or officer of the Corporation to the Corporation or the Corporation's stockholders, (c) any action asserting a claim against the Corporation arising pursuant to any provision of the DGCL, this Certificate of Incorporation or the Bylaws or (d) any action asserting a claim against the Corporation or any of its current or former directors or officers that relates to the internal affairs or governance of the Corporation and arises under or by virtue of the laws of the State of Delaware, in each such case subject to such Court of Chancery having personal jurisdiction over the indispensible parties named as defendants therein.

9.2 Amendment. The Corporation reserves the right to amend, repeal or modify any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by this Certificate of Incorporation and the DGCL; and all rights, preferences and privileges herein conferred upon stockholders by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the right reserved in this Article IX. In addition to any other vote that may be required by law, applicable stock exchange rule or the terms of any series of Preferred Stock, the affirmative vote of the holders of at least a majority of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend, repeal, modify or adopt any provision of this Certificate of Incorporation. Notwithstanding any other provision of this Certificate of Incorporation, and in addition to any other vote that may be required by law, applicable stock exchange rule or the terms of any series of Preferred Stock, the affirmative vote of the holders of at least 75% of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend, repeal, modify or adopt any provision as part of this Certificate of Incorporation inconsistent with the purpose and intent of Article V, Article VI, Article VII or this Article IX (including, without limitation, any such Article as renumbered as a result of any amendment, repeal, modification or adoption of any other Article).

9.3 Severability. If any provision or provisions of this Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever the validity, legality and enforceability of such provision in any other circumstance and of the remaining provisions of this Certificate of Incorporation (including, without limitation, each portion of any paragraph of this Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, the Corporation has caused this Restated Certificate of Incorporation to be signed by a duly authorized officer of the Corporation on this 27th day of September, 2011.

/s/ Christopher J. Klein

By: Christopher J. Klein

Its: President and Chief Executive Officer

CERTIFICATE OF DESIGNATIONS

OF

SERIES A JUNIOR PARTICIPATING PREFERRED STOCK

OF

FORTUNE BRANDS HOME & SECURITY, INC.

Pursuant to Section 151 of the
General Corporation Law of the State of Delaware

The undersigned do hereby certify that the following resolution was duly adopted by the board of directors of Fortune Brands Home & Security, Inc., a Delaware corporation (the "Corporation"), on September 6, 2011:

RESOLVED, that pursuant to the authority vested in the Board of Directors of the Corporation (the "Board of Directors") by the Certificate of Incorporation, as amended (the "Charter"), the Board of Directors does hereby create, authorize and provide for the issue of a series of Preferred Stock, par value $0.01 per share, of the Corporation, to be designated "Series A Junior Participating Preferred Stock" (hereinafter referred to as the "Series A Preferred Stock"), initially consisting of 750,000 shares, and to the extent that the designations, powers, preferences and relative and other special rights and the qualifications, limitations or restrictions of the Series A Preferred Stock are not stated and expressed in the Charter, does hereby fix and herein state and express such designations, powers, preferences and relative and other special rights and the qualifications, limitations and restrictions thereof, as follows (all terms used herein that are defined in the Charter shall be deemed to have the meanings provided therein):

Section 1. Designation and Amount. The shares of such series shall be designated as "Series A Junior Participating Preferred Stock," and the number of shares constituting such series shall be 750,000.

Section 2. Dividends and Distributions.

(A) Subject to the prior and superior rights of the holders of any shares of any series of Preferred Stock ranking prior and superior to the shares of Series A Preferred Stock with respect to dividends, the holders of shares of Series A Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the last business day of March, June, September and December in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) $1.00 or (b) subject to the provision for

adjustment hereinafter set forth, 1,000 times the aggregate per share amount of all cash dividends, plus 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions other than a dividend payable in shares of common stock, par value $0.01 per share, of the Corporation (the "Common Stock") or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Preferred Stock. In the event the Corporation shall, at any time after 5:00 p.m. New York City time on October 10, 2011 (the "Record Date"), (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each case the amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Corporation shall declare a dividend or distribution on the Series A Preferred Stock as provided in paragraph (A) above immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided, however, that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, subject to the prior and superior rights of the holders of any shares of any series of Preferred Stock ranking prior to and superior to the shares of Series A Preferred Stock with respect to dividends, a dividend of $1.00 per share on the Series A Preferred Stock shall nevertheless by payable on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series A Preferred Stock, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be no more than sixty (60) days prior to the date fixed for the payment thereof.

Section 3. Voting Rights. The holders of shares of Series A Preferred Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each share of Series A Preferred Stock shall entitle the holder thereof to 1,000 votes on all matters submitted to a vote of the stockholders of the Corporation. In the event the Corporation shall at any time after the Record Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the number of votes per share to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein or by law, the holders of shares of Series A Preferred Stock and the holders of shares of Common Stock shall vote collectively as one class on all matters submitted to a vote of stockholders of the Corporation.

(C) (i) If at any time dividends on any Series A Preferred Stock shall be in arrears in an amount equal to six (6) quarterly dividends thereon, the occurrence of such contingency shall mark the beginning of a period (herein called a "default period") which shall extend until such time when all accrued and unpaid dividends for all previous quarterly dividend periods and for the current quarterly dividend period on all shares of Series A Preferred Stock then outstanding shall have been declared and paid or set apart for payment. During each default period, all holders of Preferred Stock (including holders of the Series A Preferred Stock) with dividends in arrears in an amount equal to six (6) quarterly dividends thereon, voting as a class, irrespective of series, shall have the right to elect two (2) Directors.

(ii) During any default period, such voting right of the holders of Series A Preferred Stock may be exercised initially at a special meeting called pursuant to subparagraph (iii) of this Section 3(C) or at any annual meeting of stockholders, and thereafter at annual meetings of stockholders, provided that such voting right shall not be exercised unless the holders of ten percent (10%) in number of shares of Preferred Stock outstanding shall be present in person or by proxy. The absence of a quorum of the holders of Common Stock shall not affect the exercise by the holders of Preferred Stock of such voting rights. At any meeting at which the holders of Preferred Stock shall exercise such voting right initially during an existing default period, they shall have the right, voting as a class, to elect Directors to fill such vacancies, if any, in the Board of Directors as may then exist up to two (2) Directors or, if such right is exercised at an annual meeting, to elect two (2) Directors. If the number which may be so elected at any special meeting does not amount to the required number, the holders of the Preferred Stock shall have the right to make such increase in the number of Directors as shall be necessary to permit the election by them of the required number. After the holders of the Preferred Stock shall have exercised their right to elect Directors in any default period and during the continuance of such period, the number of Directors shall not be increased or decreased except by vote of the holders of Preferred Stock as herein provided or pursuant to the rights of any equity securities ranking senior to or pari passu with the Series A Preferred Stock.

(iii) Unless the holders of Preferred Stock shall, during an existing default period, have previously exercised their right to elect Directors, the Board of Directors may order, or any stockholder or stockholders owning in the aggregate not less than ten percent (10%) of the total number of shares of Preferred Stock outstanding, irrespective of series, may request, the calling of special meeting of the holders of Preferred Stock, which meeting shall thereupon be called by the Chief Executive Officer or the Secretary of the Corporation. Notice of such meeting and of any annual meeting at which holders of Preferred Stock are entitled to vote pursuant to this paragraph (C)(iii) shall be given to each holder of record of Preferred Stock by mailing a copy of such notice to him or her at his or her last address as the same appears on the books of the Corporation. Such meeting shall be called for a time not earlier than ten (10) days and not later than fifty (50) days after such order or request, or in default of the calling of such meeting within fifty (50) days after such order or request, such meeting may be called on similar notice by any stockholder or stockholders owning in the aggregate not less than ten percent (10%) of the total number of shares of Preferred Stock outstanding. Notwithstanding the provisions of this paragraph (C)(iii), no such special meeting shall be called during the period within fifty (50) days immediately preceding the date fixed for the next annual meeting of the stockholders.

(iv) In any default period, the holders of Common Stock, and, if applicable, other classes of capital stock of the Corporation, shall continue to be entitled to elect the whole number of Directors until the holders of Preferred Stock shall have exercised their right to elect two (2) Directors voting as a class, after the exercise of which right (x) the Directors so elected by the holders of Preferred Stock shall continue in office until their successors shall have been elected by such holders or until the expiration of the default period, and (y) any vacancy in the Board of Directors may (except as provided in paragraph (C)(ii) of this Section 3) be filled by vote of a majority of the remaining Directors theretofore elected by the holders of the class of capital stock which elected the Director whose office shall have become vacant. References in this paragraph (C) to Directors elected by the holders of a particular class of stock shall include Directors appointed by such Directors to fill vacancies as provided in clause (y) of the foregoing sentence.

(v) Immediately upon the expiration of a default period, (x) the right of the holders of Preferred Stock as a class to elect Directors shall cease, (y) the term of any Directors elected by the holders of Preferred Stock as a class shall terminate, and (z) the number of Directors shall be such number as may be provided for in the Charter or the Corporation's by-laws irrespective of any increase made pursuant to the provisions of paragraph (C)(ii) of this Section 3 (such number being subject, however, to change thereafter in any manner provided by law or in the Charter or the Corporation's by-laws). Any vacancies in the Board of Directors effected by the provisions of clauses (y) and (z) in the preceding sentence may be filled by a majority of the remaining Directors.

(D) Except as set forth herein, holders of Series A Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

Section 4. Certain Restrictions.

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series A Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Preferred Stock outstanding shall have been paid in full, the Corporation shall not:

(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of capital stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock;

(ii) declare or pay dividends on or make any other distributions on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except dividends paid ratably on the Series A Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any capital stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any capital stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Preferred Stock; or

(iv) purchase or otherwise acquire for consideration any shares of Series A Preferred Stock, or any shares of capital stock ranking on a parity with the Series A Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Reacquired Shares. Any shares of Series A Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors, subject to the conditions and restrictions on issuance set forth herein.

Section 6. Liquidation, Dissolution or Winding Up.

(A) Upon any liquidation (voluntary or otherwise), dissolution or winding up of the Corporation, no distribution shall be made to the holders of shares of capital stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock unless, prior thereto, the holders of shares of Series A Preferred Stock shall have received $1,000 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment (the "Series A Liquidation Preference"). Following the payment of the full amount of the Series A Liquidation Preference, no additional distributions shall be made to the holders of shares of Series A Preferred Stock unless, prior thereto, the holders of shares of Common Stock shall have received an amount per share (the "Common Adjustment") equal to the quotient obtained by dividing (i) the Series A Liquidation Preference by (ii) 1,000 (as appropriately adjusted as set forth in subparagraph (C) below to reflect such events as stock splits, stock dividends and recapitalizations with respect to the Common Stock) (such number in clause (ii), the "Adjustment Number"). Following the payment of the full amount of the Series A Liquidation Preference and the Common Adjustment in respect of all outstanding shares of Series A Preferred Stock and Common Stock, respectively, and the payment of liquidation preferences of all other shares of capital stock which rank prior to or on a parity with Series A Preferred Stock, holders of Series A Preferred Stock and holders of shares of Common Stock shall receive their ratable and proportionate share of the remaining assets to be distributed in the ratio of the Adjustment Number to 1 with respect to such Preferred Stock and Common Stock, on a per share basis, respectively.

(B) In the event, however, that there are not sufficient assets available to permit payment in full of the Series A Liquidation Preference and the liquidation preferences of all other series of Preferred Stock, if any, which rank on a parity with the Series A Preferred Stock, then such remaining assets shall be distributed ratably to the holders of such parity shares in proportion to their respective liquidation preferences. In the event, however, that there are not sufficient assets available to permit payment in full of the Common Adjustment, then such remaining assets shall be distributed ratably to the holders of Common Stock.

(C) In the event the Corporation shall at any time after the Record Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the Adjustment Number in effect immediately prior to such event shall be adjusted by multiplying such Adjustment Number by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 7. Consolidation, Merger, etc. In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash or any other property, then in any such case the shares of Series A Preferred Stock shall at the same time be similarly exchanged or changed into an amount per share (subject to the provision for adjustment hereinafter set forth) equal to 1,000 times the aggregate amount of capital stock, securities, cash or any other property (payable in kind), as the case may be, for which or into which each share of

Common Stock is exchanged or changed. In the event the Corporation shall at any time after the Record Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series A Preferred Stock shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 8. No Redemption. The shares of Series A Preferred Stock shall not be redeemable.

Section 9. Ranking. The Series A Preferred Stock shall rank junior to all other series of the Corporation's Preferred Stock as to the payment of dividends and the distribution of assets, whether or not upon the dissolution, liquidation or winding up of the Corporation, unless the terms of any such series shall provide otherwise.

Section 10. Amendment. The Charter shall not be amended in any manner which would materially alter or change the powers, preferences or special rights of the Series A Preferred Stock so as to affect them adversely without the affirmative vote of the holders of two-thirds of the outstanding shares of Series A Preferred Stock, voting separately as a class.

Section 11. Fractional Shares. Series A Preferred Stock may be issued in fractions of a share which shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series A Preferred Stock.

* * * * * * *

IN WITNESS WHEREOF, the Corporation has caused its corporate seal to be hereunto affixed and this certificate to be signed by Christopher J. Klein, its Chief Executive Officer, and the same to be attested to by Lauren S. Tashma, its Assistant Secretary, this 6th day of September, 2011.

FORTUNE BRANDS HOME & SECURITY, INC.

By: /s/ Christopher J. Klein
Name: Christopher J. Klein
Title: Chief Executive Officer

(Corporate Seal)

Attest:

By: /s/ Lauren S. Tashma
Name: Lauren S. Tashma
Title: Assistant Secretary

Exhibit 3.2

AMENDED AND RESTATED BYLAWS

OF

FORTUNE BRANDS HOME & SECURITY, INC.

(hereinafter called the "**Corporation**")

ARTICLE I

MEETINGS OF STOCKHOLDERS

Section 1.1. Place of Meetings. Meetings of the stockholders for the election of directors or for any other purpose shall be held at such time and place, either within or without the State of Delaware, as shall be designated from time to time by the board of directors of the Corporation (the "**Board**").

Section 1.2. Annual Meetings. The annual meeting of stockholders for the election of directors and for the transaction of such other business as may properly be brought before the meeting in accordance with these amended and restated bylaws of the Corporation (as amended from time to time in accordance with the provisions hereof, these "**Bylaws**") shall be held on such date and at such time as shall be designated from time to time by the Board. The Board may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board.

Section 1.3. Special Meetings. Unless otherwise required by law or by the certificate of incorporation of the Corporation (including, without limitation, the terms of any certificate of designation with respect to any series of Preferred Stock), as amended and restated from time to time (the "**Certificate of Incorporation**"), special meetings of the stockholders of the Corporation, for any purpose or purposes, may be called only by the Chairperson of the Board, the Chief Executive Officer or the Board. The ability of the stockholders to call a special meeting of stockholders is hereby specifically denied. At a special meeting of stockholders, only such business shall be conducted as shall be specified in the notice of meeting. The Board may postpone, reschedule or cancel any special meeting of stockholders previously scheduled by the Board.

Section 1.4. Notice. Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, date and time of the meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called and the means of remote communications, if any, by which stockholders and proxy holders may be deemed present in person and vote at such meeting. Unless otherwise required by law or the Certificate of Incorporation, written notice of any meeting shall be given either personally, by mail or by electronic transmission (if permitted under the circumstances by the General Corporation Law of the State of Delaware, as amended (the "**DGCL**")) not less than ten (10) nor more than sixty (60) days before the date of the meeting, by or at the direction of the Board, the Chairperson of the Board or the Chief Executive Officer, to each stockholder entitled to vote at such meeting as of the record date for determining stockholders entitled to notice of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States

mail with postage thereon prepaid, addressed to the stockholder at the stockholder's address as it appears on the stock transfer books of the Corporation. If notice is given by means of electronic transmission, such notice shall be deemed to be given at the times provided in the DGCL. Any stockholder may waive notice of any meeting before or after the meeting. The attendance of a stockholder at any meeting shall constitute a waiver of notice at such meeting, except where the stockholder attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of stockholders need be specified in any waiver of notice unless so required by law.

Section 1.5. Adjournments. Any meeting of stockholders may be adjourned from time to time to reconvene at the same or some other place by holders of a majority of the voting power of the Corporation's capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, though less than a quorum, or by any officer entitled to preside at or to act as secretary of such meeting, and notice need not be given of any such adjourned meeting if the time and place thereof, and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting, are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, notice of the adjourned meeting in accordance with the requirements of Section 1.4 of these Bylaws shall be given to each stockholder of record entitled to vote at the meeting. If, after the adjournment, a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting.

Section 1.6. Quorum. Unless otherwise required by applicable law or the Certificate of Incorporation, the holders of a majority of the voting power of the Corporation's capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at a meeting of stockholders. Where a separate vote by a class or classes or series is required, a majority of the voting power of the shares of such class or classes or series present in person or represented by proxy shall constitute a quorum entitled to take action with respect to such vote. If a quorum shall not be present or represented at any meeting of stockholders, either the chairperson of the meeting or the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, in the manner provided in Section 1.5 of these Bylaws, until a quorum shall be present or represented. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum.

Section 1.7. Voting.

(a) Matters Other Than Election of Directors. Any matter brought before any meeting of stockholders, other than the election of directors, shall be decided by the affirmative vote of the holders of a majority of the voting power of the Corporation's capital stock present in person or represented by proxy at the meeting and entitled to vote on such matter, voting as a single class, unless the

matter is one upon which, by express provision of law, the Certificate of Incorporation or these Bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such matter. Except as provided in the Certificate of Incorporation, every stockholder having the right to vote shall have one vote for each share of stock having voting power registered in such stockholder's name on the books of the Corporation. Such votes may be cast in person or by proxy as provided in Section 1.10 of these Bylaws. The Board, in its discretion, or the officer of the Corporation presiding at a meeting of stockholders, in such officer's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

(b) Election of Directors. Except as provided in Section 5.4 of the Certificate of Incorporation, directors shall be elected by the vote of the majority of the votes cast (meaning the number of shares voted "for" a nominee must exceed the number of shares voted "against" such nominee) with "abstentions" and "broker non-votes" not counted as a vote cast either "for" or "against" that nominee's election at any meeting for the election of directors at which a quorum is present; provided, however, that in a Contested Election of Directors (as defined below) at such a meeting, directors shall be elected by a plurality of the votes cast on the election of directors (instead of by votes cast "for" or "against" a nominee). The term "**Contested Election of Directors**" shall mean an annual or special meeting of the Corporation with respect to which (i) the secretary of the Corporation (the "**Secretary**") receives a notice that a stockholder has nominated or intends to nominate a person for election to the Board in compliance with the requirements for stockholder nominees for director set forth in Section 1.17 of these Bylaws and (ii) such nomination has not been withdrawn by such stockholder on or prior to the tenth (10^{th}) day before the Corporation first mails its notice of meeting for such meeting to the stockholders. Stockholders shall be entitled to cast votes "against" nominees for director unless plurality voting applies in the election of directors. If, with respect to an election of directors not constituting a Contested Election of Directors and for which a quorum is present, any incumbent director does not receive a majority of the votes cast, such director shall promptly tender a resignation following certification of the stockholder vote. Such resignation will be effective only upon the acceptance thereof by the Board. Such director shall continue in office until such resignation is accepted or, if not accepted, such director's successor shall have been elected and qualified. The Nominating and Corporate Governance Committee shall promptly consider the tendered resignation, and a range of possible responses based on the circumstances, if known, that led to the election results, and make a recommendation to the Board on whether to accept or reject the resignation or whether any other action should be taken with respect thereto. The Board will act on any such recommendation by the Nominating and Corporate Governance Committee within 90 days following certification of the stockholder vote and will promptly publicly disclose its decision and the rationale behind it in a filing with the Securities and Exchange Commission. Any director who tenders a resignation pursuant to this provision shall not participate in the Nominating and Corporate Governance Committee or Board recommendation or deliberations regarding

whether to accept the resignation offer or take other action. If directors who have tendered resignations constitute a majority of the directors then in office, then, with respect to each tendered resignation, all directors, other than the director who tendered the particular resignation under consideration, may participate in the deliberations and action regarding whether to accept or reject the tendered resignation or to take other action with respect thereto.

Section 1.8. Voting of Stock of Certain Holders. Shares of stock of the Corporation standing in the name of another corporation or entity, domestic or foreign, and entitled to vote may be voted by such officer, agent or proxy as the bylaws or other internal regulations of such corporation or entity may prescribe or, in the absence of such provision, as the board of directors or comparable body of such corporation or entity may determine. Shares of stock of the Corporation standing in the name of a deceased person, a minor, an incompetent or a debtor in a case under Title 11, United States Code, and entitled to vote may be voted by an administrator, executor, guardian, conservator, debtor-in-possession or trustee, as the case may be, either in person or by proxy, without transfer of such shares into the name of the official or other person so voting. A stockholder whose shares of stock of the Corporation are pledged shall be entitled to vote such shares, unless on the transfer records of the Corporation such stockholder has expressly empowered the pledgee to vote such shares, in which case only the pledgee, or the pledgee's proxy, may vote such shares.

Section 1.9. Treasury Stock. Shares of stock of the Corporation belonging to the Corporation, or to another corporation a majority of the shares entitled to vote in the election of directors of which are held by the Corporation, shall not be voted at any meeting of stockholders of the Corporation and shall not be counted in the total number of outstanding shares for the purpose of determining whether a quorum is present. Nothing in this Section 1.9 shall limit the right of the Corporation to vote shares of stock of the Corporation held by it in a fiduciary capacity.

Section 1.10. Proxies. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy filed with the Secretary before or at the time of the meeting. No such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period.

Section 1.11. No Consent of Stockholders in Lieu of Meeting. Except as otherwise expressly provided by the terms of any series of preferred stock permitting the holders of such series of preferred stock to act by written consent, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation, and, as specified by the Certificate of Incorporation, the ability of the stockholders to consent in writing to the taking of any action is specifically denied.

Section 1.12. List of Stockholders Entitled to Vote. The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make or have prepared and made, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, provided, however, that if the record date for determining the stockholders entitled to vote is less than ten (10) days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth (10^{th}) day before the meeting

date, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting during ordinary business hours, at the principal place of business of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

Section 1.13. Record Date. In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting, but the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the foregoing provisions of this Section 1.13 at the adjourned meeting.

Section 1.14. Organization and Conduct of Meetings. The Chairperson of the Board shall act as chairperson of meetings of stockholders. The Board may designate any other officer or director of the Corporation to act as chairperson of any meeting in the absence of the Chairperson of the Board, and the Board may further provide for determining who shall act as chairperson of any stockholders meeting in the absence of the Chairperson of the Board and such designee. The Board may adopt by resolution such rules and regulations for the conduct of any meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the chairperson of any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess or adjourn the meeting to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairperson, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the chairperson of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) the determination of when the polls shall open and close for any given matter to be voted on at the meeting; (c) rules and procedures for maintaining order at the meeting and the safety of those present; (d) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted

proxies or such other persons as the chairperson of the meeting shall determine; (e) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (f) limitations on the time allotted to questions or comments by participants. Except to the extent determined by the Board or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 1.15. Inspectors of Election. In advance of any meeting of stockholders, the Board, by resolution, the Chairperson of the Board or the Chief Executive Officer shall appoint one or more inspectors to act at the meeting and make a written report thereof. One or more other persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the chairperson of the meeting shall appoint one or more inspectors to act at the meeting. Unless otherwise required by applicable law, inspectors may be officers, employees or agents of the Corporation. Each inspector, before entering upon the discharge of the duties of inspector, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. The inspector shall have the duties prescribed by law and shall take charge of the polls and, when the vote is completed, shall make a certificate of the result of the vote taken and of such other facts as may be required by applicable law.

Section 1.16. Nature of Business at Meetings of Stockholders.

(a) General. No business may be transacted at an annual meeting of stockholders, other than business that is either (i) specified in the Corporation's proxy materials with respect to such meeting given by or at the direction of the Board (or any duly authorized committee thereof), (ii) otherwise properly brought before the annual meeting by or at the direction of the Board (or any duly authorized committee thereof) or (iii) otherwise properly brought before the annual meeting by any stockholder of the Corporation (A) who is a stockholder of record on the date of the giving of the notice provided for in this Section 1.16 and on the record date for the determination of stockholders entitled to notice of and to vote at such annual meeting, (B) who is entitled to vote at such annual meeting and (C) who complies with the notice procedures set forth in this Section 1.16. In addition to the other requirements set forth in this Section 1.16, a stockholder may not transact any business at an annual meeting unless (1) such stockholder and any beneficial owner on whose behalf such business is proposed (each, a "**Proposing Party**") acted in a manner consistent with the representation made in the Business Solicitation Representation (as defined below) and (2) such business is a proper matter for stockholder action under the DGCL. For the avoidance of doubt, the foregoing clause (iii) shall be the exclusive means for a stockholder to propose business (other than business included in the Corporation's proxy materials pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (such act, and the rules and regulations promulgated thereunder, the "**Exchange Act**")) at an annual meeting of stockholders.

(b) Timing of Notice. In addition to any other applicable requirements, for business to be properly brought before an annual meeting by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary. To be timely, a stockholder's notice must be received by the

Secretary at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the annual meeting is convened more than thirty (30) days before or more than sixty (60) days after such anniversary date, or if no annual meeting was held in the preceding year, notice by the stockholder to be timely must be so received no more than one hundred twenty (120) days prior to such annual meeting nor less than the later of (i) ninety (90) days prior to such annual meeting and (ii) ten (10) days after the earlier of (A) the day on which notice of the date of the meeting was mailed or (B) the day on which public disclosure of the date of the meeting was made. In no event shall an adjournment of an annual meeting, or a postponement of an annual meeting for which notice has been given, or the public disclosure thereof, commence a new time period for the giving of a stockholder's notice as described above.

(c) Form of Notice. To be in proper written form, a stockholder's notice to the Secretary must set forth (i) as to each matter each Proposing Party proposes to bring before the annual meeting, a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and address of each Proposing Party, (iii)(A) the class or series and number of shares of capital stock of the Corporation that are owned, directly or indirectly, beneficially or of record by each Proposing Party or any Stockholder Associated Person (as defined below) and (B) any derivative positions held or beneficially held by each Proposing Party and Stockholder Associated Person and whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of, or any other agreement, arrangement or understanding (including, without limitation, any short position or any borrowing or lending of shares) has been made, the effect or intent of which is to mitigate loss to or manage risk or benefit of share price changes for, or to increase or decrease the voting power of, any such Proposing Party or any Stockholder Associated Person with respect to shares of the Corporation (which information described in this clause (iii) shall be supplemented by such Proposing Party not later than ten (10) days after the record date for the meeting to disclose such ownership as of the record date); (iv) a description of all arrangements or understandings between each Proposing Party or any Stockholder Associated Person and any other person or persons (including their names) in connection with the proposal of such business by such Proposing Party and any material interest of each Proposing Party and any Stockholder Associated Person in such business; (v) a representation that such Proposing Party intends to appear in person or by proxy at the annual meeting to bring such business before the meeting; (vi) a Business Solicitation Representation (as defined below); and (vii) any other information relating to each Proposing Party that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for stockholder proposals pursuant to Section 14 of the Exchange Act or the rules and regulations promulgated thereunder (the "**Proxy Rules**").

(d) Definitions. For purposes of these Bylaws, (i) "**Business Solicitation Representation**" shall mean, with respect to any Proposing Party, a representation as to whether or not such Proposing Party or any Stockholder Associated Person will deliver a proxy statement and form of proxy to the holders of at least the percentage of the Corporation's voting shares required under applicable law to adopt such proposed business or otherwise to solicit proxies from stockholders in support of such proposal; (ii) "**public disclosure**" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act; and (iii) "**Stockholder Associated Person**" shall mean, with respect to any Proposing Party or any Nominating Party (as defined below), (A) any person directly or indirectly controlling, controlled by, under common control with or acting in concert with such Proposing Party or (B) any member of such Proposing Party's immediate family sharing the same household.

(e) Improper Business. No business shall be conducted at the annual meeting of stockholders except business brought before the annual meeting in accordance with the procedures set forth in this Section 1.16. If the chairperson of an annual meeting determines that business was not properly brought before the annual meeting in accordance with the foregoing procedures, the chairperson shall declare to the meeting that the business was not properly brought before the meeting, and such business shall not be transacted. Notwithstanding the foregoing provisions of this Section 1.16, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting of stockholders of the Corporation to propose business, such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 1.16, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders, and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

Section 1.17. Nomination of Directors.

(a) General. Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation, except as may be otherwise provided in the Certificate of Incorporation with respect to the right, if any, of holders of preferred stock of the Corporation to nominate and elect a specified number of directors in certain circumstances and except as may otherwise be provided in the Proxy Rules. Nominations of persons for election to the Board may be made at any annual meeting of stockholders, or at any special meeting of stockholders called for the purpose of electing directors, (i) by or at the direction of the Board (or any duly authorized committee thereof)

or (ii) by any stockholder of the Corporation (A) who is a stockholder of record on the date of the giving of the notice provided for in this Section 1.17 and on the record date for the determination of stockholders entitled to notice of and to vote at such meeting, (B) who is entitled to vote at such meeting and (C) who complies with the notice procedures set forth in this Section 1.17. In addition to the other requirements set forth herein, a stockholder may not present a nominee for election at an annual or special meeting unless such stockholder, and any beneficial owner on whose behalf such nomination is made, acted in a manner consistent with the representations made in the Nominee Solicitation Representation (as defined below).

(b) Timing of Notice. In addition to any other applicable requirements, for a nomination to be made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary. To be timely, a stockholder's notice must be received by the Secretary at the principal executive offices of the Corporation (i) in the case of an annual meeting, not less than ninety (90) days nor more than one hundred twenty (120) days prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the annual meeting is convened more than thirty (30) days before or more than sixty (60) days after such anniversary date, or if no annual meeting was held in the preceding year, notice by the stockholder to be timely must be so received no more than one hundred twenty (120) days prior to such annual meeting nor less than the later of (A) ninety (90) days prior to such annual meeting and (B) ten (10) days after the earlier of (1) the day on which notice of the date of the meeting was mailed or (2) the day on which public disclosure of the date of the meeting was made; and (ii) in the case of a special meeting of stockholders called for the purpose of electing directors, no more than ten (10) days after the earlier of (A) the day on which notice of the date of the special meeting was mailed or (B) the day on which public disclosure of the date of the special meeting was made. In no event shall an adjournment of an annual or special meeting, or a postponement of such a meeting for which notice has been given, or the public disclosure thereof, commence a new time period for the giving of a stockholder's notice as described above. Notwithstanding the foregoing, in the event that the number of directors to be elected to the Board at the annual meeting is increased effective after the time period for which nominations would otherwise be due under this Section 1.17 and there is no public announcement by the Corporation naming the nominees for the additional directorships at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 1.17 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth (10^{th}) day following the day on which such public announcement is first made by the Corporation.

(c) Form of Notice. To be in proper written form, a stockholder's notice to the Secretary must set forth (i) as to each person whom the stockholder

proposes to nominate for election as a director (A) the name, age, business address and residence address of such person; (B) the principal occupation or employment of such person; (C) the class or series and number of shares of capital stock (if any) of the Corporation that are owned, directly or indirectly, beneficially or of record by such person; and (D) any other information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors required pursuant to the Proxy Rules; and (ii) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf such nomination is made (each, a "**Nominating Party**") (A) the name and address of each Nominating Party, (B)(1) the class or series and number of shares of capital stock of the Corporation that are owned, directly or indirectly, beneficially or of record by each Nominating Party or any Stockholder Associated Person and (2) any derivative positions held or beneficially held by each Nominating Party and Stockholder Associated Person and whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of, or any other agreement, arrangement or understanding (including, without limitation, any short position or any borrowing or lending of shares) has been made, the effect or intent of which is to mitigate loss to or manage risk or benefit of share price changes for, or to increase or decrease the voting power of, any such Nominating Party or any Stockholder Associated Person with respect to shares of the Corporation (which information described in this clause (ii)(B) shall be supplemented by such Nominating Party not later than ten (10) days after the record date for the meeting to disclose such ownership as of the record date); (C) a description of all arrangements or understandings between each Nominating Party or any Stockholder Associated Person and each proposed nominee or any other person or persons (including their names) pursuant to which the nomination(s) are to be made, (D) a representation that such Nominating Party intends to appear in person or by proxy at the meeting to nominate the persons named in its notice, (E) a representation (a "**Nominee Solicitation Representation**") as to whether or not such Nominating Party or any Stockholder Associated Person will deliver a proxy statement and form of proxy to a number of holders of the Corporation's voting shares reasonably believed by such Nominating Party to be sufficient to elect its nominee or nominees or otherwise to solicit proxies from stockholders in support of such nominations and (F) any other information relating to each Nominating Party that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to the Proxy Rules. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected. The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation.

(d) Defective Nominations. No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 1.17. If the chairperson of the meeting determines that a

nomination was not made in accordance with the foregoing procedures, the chairperson shall declare to the meeting that the nomination was defective, and such defective nomination shall be disregarded. Notwithstanding the foregoing provisions of this Section 1.17, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination, such nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 1.17, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders, and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

Section 1.18 Exchange Act. Notwithstanding the provisions of Section 1.16 and Section 1.17 above, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in such sections. Nothing in such sections shall be deemed to affect any rights of (a) stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act, (b) stockholders to request inclusion of nominees in the Corporation's proxy statement pursuant to the Proxy Rules or (c) the holders of any series of preferred stock to elect directors under specified circumstances.

ARTICLE II

DIRECTORS

Section 2.1. Number. The number of directors that shall constitute the entire Board shall not be less than five (5) nor more than fifteen (15). Within such limit, the number of members of the entire Board shall be fixed, from time to time, exclusively by the Board, subject to the rights of the holders of preferred stock with respect to the election of directors, if any.

Section 2.2. Duties and Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or by the Certificate of Incorporation required to be exercised or done by the stockholders.

Section 2.3. Meetings. The Board may hold meetings, both regular and special, either within or without the State of Delaware. Regular meetings of the Board may be held without notice at such time and at such place as may from time to time be determined by the Board. Special meetings of the Board may be called by the Chairperson of the Board (if there be one), the Chief Executive Officer or the Board and shall be held at such place, on such date and at such time as he, she or they shall specify.

Section 2.4. Notice. Notice of any meeting of the Board stating the place, date and time of the meeting shall be given to each director by mail posted not less than five (5) days before the date of the meeting, by nationally recognized overnight courier deposited not less than two

(2) days before the date of the meeting or by email, facsimile or other means of electronic communication delivered or sent not less than twenty-four (24) hours before the date and time of the meeting, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances. If mailed or sent by overnight courier, such notice shall be deemed to be given at the time when it is deposited in the United States mail with first class postage prepaid or deposited with the overnight courier. Notice by facsimile or other electronic transmission shall be deemed given when the notice is transmitted. Any director may waive notice of any meeting before or after the meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where the director attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in any notice or waiver of notice of such meeting, unless so required by law.

Section 2.5. Organization. At each meeting of the Board, the Chairperson of the Board, or, in the Chairperson's absence, a director chosen by a majority of the directors present, shall act as chairperson. The Secretary shall act as secretary at each meeting of the Board. In case the Secretary shall be absent from any meeting of the Board, an assistant secretary shall perform the duties of secretary at such meeting; and in the absence from any such meeting of the Secretary and all assistant secretaries, the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 2.6. Resignations and Removals of Directors. Any director of the Corporation may resign at any time, by giving notice in writing or by electronic transmission to the Chairperson of the Board, the Chief Executive Officer or the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the occurrence of some other event, and, unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective. Subject to the rights of holders of any series of preferred stock with respect to the election of directors, a director may be removed from office by the stockholders of the Corporation only for cause.

Section 2.7. Quorum. At all meetings of the Board, a majority of directors constituting the Board shall constitute a quorum for the transaction of business, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board. If a quorum shall not be present at any meeting of the Board, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting of the time and place of the adjourned meeting, until a quorum shall be present.

Section 2.8. Actions of the Board by Written Consent. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting, if all the members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission are filed with the minutes of proceedings of the Board or committee.

Section 2.9. Telephonic Meetings. Members of the Board, or any committee thereof, may participate in a meeting of the Board or such committee by means of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 2.9 shall constitute presence in person at such meeting.

Section 2.10. Committees. The Board may designate one or more committees, each committee to consist of two or more of the directors of the Corporation and, to the extent permitted by law, to have and exercise such authority as may be provided for in the resolutions creating such committee, as such resolutions may be amended from time to time. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of any such committee. In the absence or disqualification of a member of a committee, and in the absence of a designation by the Board of an alternate member to replace the absent or disqualified member, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any absent or disqualified member. Each committee shall keep regular minutes and report to the Board when required. A majority of any committee may determine its action and fix the time and place of its meetings, unless the Board shall otherwise provide. The Board shall have power at any time to fill vacancies in, to change the membership of or to dissolve any such committee.

Section 2.11. Compensation. The Board shall have the authority to fix the compensation of directors. The directors shall be paid their reasonable expenses, if any, of attendance at each meeting of the Board or any committee thereof and may be paid a fixed sum for attendance at each such meeting and an annual retainer or salary for service as director or committee member, payable in cash or securities. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Directors who are full-time employees of the Corporation shall not receive any compensation for their service as director.

Section 2.12. Interested Directors. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of the Corporation's directors or officers are directors or officers or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board or committee thereof that authorizes the contract or transaction, or solely because any such director's or officer's vote is counted for such purpose if: (a) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Board or the committee and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; (b) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (c) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee that authorizes the contract or transaction.

ARTICLE III

OFFICERS

Section 3.1. General. The officers of the Corporation shall be chosen by the Board and shall be a Chief Executive Officer, a principal financial officer, a principal accounting officer, a Secretary and a Treasurer. The Board, in its discretion, may also choose a Chairperson of the Board (who must be a director), a Vice Chairperson of the Board (who must be a director), a President, a Controller and one or more Executive Vice Presidents, Senior Vice Presidents, Vice Presidents, Assistant Secretaries, Assistant Treasurers and such other officers as the Board from time to time may deem proper. Any two or more offices may be held by the same person. The officers of the Corporation need not be stockholders of the Corporation nor, except in the case of the Chairperson of the Board or the Vice Chairperson of the Board, need such officers be directors of the Corporation.

Section 3.2. Election; Term. The Board, at its first meeting held after each annual meeting of stockholders, as necessary, shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board, and each officer of the Corporation shall hold office until such officer's successor is elected and qualified, or until such officer's earlier death, resignation or removal. Any officer may be removed at any time by the Board. Any officer may resign upon notice given in writing or electronic transmission to the Chief Executive Officer or the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the occurrence of some other event. Any vacancy occurring in any office of the Corporation shall be filled in the manner prescribed in this Article III for the regular election to such office.

Section 3.3. Voting Securities Owned by the Corporation. Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the Chief Executive Officer or any other officer authorized to do so by the Board, and any such officer may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The Board may, by resolution, from time to time confer like powers upon any other person or persons.

Section 3.4. Chairperson of the Board of Directors. Unless otherwise determined by the Board, the Chairperson of the Board shall be the Chief Executive Officer. The Chairperson of the Board, if there be one, shall preside at all meetings of stockholders and of the Board. The Chairperson of the Board shall perform such other duties and may exercise such other powers as may from time to time be assigned by these Bylaws or by the Board.

Section 3.5. Chief Executive Officer. The Chief Executive Officer shall, subject to the control of the Board, have general supervision of the business of the Corporation and shall direct the affairs and policies of the Corporation. The Chief Executive Officer shall also perform such other duties and may exercise such other powers as may from time to time be assigned to such officer by these Bylaws or by the Board.

Section 3.6. Vice Chairperson, President, Executive Vice Presidents, Senior Vice Presidents and Vice Presidents. The Vice Chairperson (if any), President (if any), Executive Vice Presidents (if any), Senior Vice Presidents (if any) and such other Vice Presidents as shall have been chosen by the Board shall have such powers and shall perform such duties as shall be assigned to them by the Board.

Section 3.7. Secretary. The Secretary shall give the requisite notice of meetings of stockholders and directors and shall record the proceedings of such meetings, shall have the custody of the seal of the Corporation and shall affix it or cause it to be affixed to such instruments as require the seal and attest it and, besides the Secretary's powers and duties prescribed by law, shall have such other powers and perform such other duties as shall at any time be assigned to such officer by the Board.

Section 3.8. Treasurer. The Treasurer shall have charge of the funds and securities of the Corporation and shall have such other powers and perform such other duties as shall at any time be assigned to such officer by the Board.

Section 3.9. Assistant Secretaries. Assistant Secretaries, if there be any, shall assist the Secretary in the discharge of the Secretary's duties, shall have such powers and perform such other duties as shall at any time be assigned to them by the Board and, in the absence or disability of the Secretary, shall perform the duties of the Secretary's office, subject to the control of the Board.

Section 3.10. Assistant Treasurers. Assistant Treasurers, if there be any, shall assist the Treasurer in the discharge of the Treasurer's duties, shall have such powers and perform such other duties as shall at any time be assigned to them by the Board and, in the absence or disability of the Treasurer, shall perform the duties of the Treasurer's office, subject to the control of the Board.

Section 3.11. Other Officers. Such other officers as the Board may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board. The Board may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

ARTICLE IV

STOCK

Section 4.1. Uncertificated Shares. Unless otherwise provided by resolution of the Board, each class or series of shares of the Corporation's capital stock shall be issued in uncertificated form pursuant to the customary arrangements for issuing shares in such form. Shares shall be transferable only on the books of the Corporation by the holder thereof in person or by attorney upon presentment of proper evidence of succession, assignation or authority to transfer in accordance with the customary procedures for transferring shares in uncertificated form.

Section 4.2. Record Date. In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the

stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be the close of business on the day on which the Board adopts the resolution relating thereto.

Section 4.3. Record Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

Section 4.4. Transfer and Registry Agents. The Corporation may from time to time maintain one or more transfer offices or agencies and registry offices or agencies at such place or places as may be determined from time to time by the Board.

ARTICLE V

MISCELLANEOUS

Section 5.1. Contracts. The Board may authorize any officer or officers or any agent or agents to enter into any contract or execute and deliver any instrument or other document in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 5.2. Disbursements. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board may from time to time designate.

Section 5.3. Fiscal Year. The fiscal year of the Corporation shall end on the 31st day of December in each year or on such other day as may be fixed from time to time by resolution of the Board.

Section 5.4. Corporate Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words “Corporate Seal, Delaware.” The seal may be used by causing it or a facsimile thereof to be impressed or affixed or otherwise reproduced.

Section 5.5. Offices. The Corporation shall maintain a registered office inside the State of Delaware and may also have other offices outside or inside the State of Delaware. The books of the Corporation may be kept (subject to any applicable law) outside the State of Delaware at the principal executive offices of the Corporation or at such other place or places as may be designated from time to time by the Board.

ARTICLE VI

AMENDMENTS

Section 6.1. Amendments. These Bylaws may also be adopted, amended, altered or repealed by the Board or by the stockholders by the affirmative vote of the holders of at least 75% of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

* * *

Adopted as of: September 27, 2011

Exhibit 10.1

TAX ALLOCATION AGREEMENT

by and between

FORTUNE BRANDS, INC.

and

FORTUNE BRANDS HOME & SECURITY, INC.

Dated as of September 28, 2011

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EXHIBITS

SCHEDULES

TAX ALLOCATION AGREEMENT

This TAX ALLOCATION AGREEMENT (this "**Agreement**") is made as of September 28, 2011, by and between Fortune Brands, Inc., a Delaware corporation ("**Fortune Brands**"), and Fortune Brands Home & Security, Inc., a Delaware corporation ("**H&S**"), and, as of the date hereof, a wholly-owned subsidiary of Fortune Brands. Fortune Brands and H&S are referred to herein as "**Parties**" or each individually as a "**Party**."

WHEREAS, Fortune Brands, through the H&S Subsidiaries (as defined herein) and the Transferred Subsidiaries (as defined herein), is engaged in the business of designing, manufacturing and selling home and security products, as described more fully in the Form 10 Registration Statement (as defined herein) (the "**Transferred Business**");

WHEREAS, the board of directors of Fortune Brands (the "**Fortune Board**") has determined that it would be advisable and in the best interests of Fortune Brands and its stockholders for Fortune Brands to transfer to H&S (i) 100% of the ownership interests of the Transferred Subsidiaries (as defined herein) and (ii) the Transferred Business Assets (as defined herein) as further described in the Separation and Distribution Agreement by and between Fortune Brands and H&S (the "**Separation and Distribution Agreement**"), dated September 27, 2011;

WHEREAS, the Fortune Board has determined that it would be advisable and in the best interests of Fortune Brands and its stockholders for Fortune Brands to distribute on a *pro rata* basis to the holders of shares of Fortune Brands' common stock, par value $3.125 per share ("**Fortune Brands Shares**"), without any consideration being paid by the holders of such Fortune Brands Shares, all of the outstanding shares of H&S common stock, par value $0.01 per share ("**H&S Shares**"), owned by Fortune Brands as of the Distribution Date (as defined herein);

WHEREAS, for federal income tax purposes, the Contribution, Conversion and Distribution, together with the other actions described in Exhibit A, (collectively, the "**Plan of Separation**") are intended to qualify for tax-free treatment under Sections 355 and 368(a)(1)(D) of the Internal Revenue Code of 1986, as amended (the "**Code**");

WHEREAS, it is the intention of the Parties that the distribution of H&S Shares to the stockholders of Fortune Brands, except for cash received in lieu of any factions H&S Shares, will qualify as tax-free under Section 355(a) of the Code to such stockholders and as tax-free to Fortune Brands under Section 361(c) of the Code; and

WHEREAS, in connection with the Plan of Separation, the Parties desire to set forth their agreement with respect to tax matters for taxable periods prior to and including the Distribution Date, in line with the following: (i) H&S is responsible for and shall pay all taxes attributable to the H&S Business and will indemnify Fortune Brands for these taxes, (ii) Fortune Brands is responsible for and shall pay all taxes to the extent such taxes are not attributable to the H&S Business and will indemnify H&S for these taxes, (iii) the Parties will cooperate to efficiently settle Audits, (iv) the Parties are restricted from taking certain actions that could cause the Distribution or certain internal transactions undertaken in anticipation of the Distribution to fail to qualify for tax-free or tax-favored treatment, and each Party will be responsible for any taxes

imposed as a result of the failure of the Distribution or the internal transactions to qualify for tax-favored treatment under the Code if such failure is attributable to certain post-distribution actions taken by that Party or in respect of that Party's shareholders, and (v) the Parties will cooperate fully and share information with respect to the tax matters covered herein.

NOW, THEREFORE, in consideration of the foregoing and the terms, conditions, covenants and provisions of this Agreement, each of the Parties mutually covenants and agrees as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

SECTION 1.1 Definitions. As used in this Agreement, the following terms shall have the following meanings:

"**Acting Party**" has the meaning set forth in Section 5.4.

"**Active Business**" means the business conducted by each of the Active Business Entities (as defined herein) as of the Distribution Date.

"**Affiliate**" has the meaning set forth in Section 1.1 of the Separation and Distribution Agreement.

"**Agreement**" has the meaning set forth in the preamble hereto.

"**Active Business Entities**" means (a) Fortune Brands International Corp., a Delaware corporation, (b) Moen Incorporated, a Delaware corporation, (c) Jim Beam Brands Co., a Delaware corporation, and (d) Wood Terminal Co., a Delaware corporation.

"**Audit**" means any audit (including a determination of the status of qualified and non-qualified employee benefit plans), assessment of Taxes, other examination by or on behalf of any Taxing Authority (including notices), proceeding, or appeal of such a proceeding relating to Taxes, whether administrative or judicial, including proceedings relating to competent authority determinations initiated by a Party or any of its Subsidiaries.

"**Business Day**" means any day other than a Saturday, Sunday or a day on which banks are required to be closed in Chicago, Illinois.

"**Challenging Party**" has the meaning set forth in Section 9.2(d).

"**Change of Control**" means the occurrence of any of the following (a) the direct or indirect sale, transfer or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of a Party, (b) the adoption of a plan relating to the liquidation or dissolution of a Party other than (i) the consolidation with, merger into or transfer of all or part of the properties and assets of any Subsidiary of a Party to such Party or any other Subsidiary of such Party and (ii) the merger of a Party with an Affiliate solely for the purpose of reincorporating (or re-forming) the Party in

another jurisdiction or changing such Party's name, (c) the consummation of any transaction (including any merger or consolidation) the result of which is that any Person becomes the beneficial owner, directly or indirectly, of more than 50 percent of the voting stock of such Party, measured by voting power rather than number of shares, (d) during any consecutive two-year period, individuals who at the beginning of such period constituted the board of directors of a Party (together with any new directors whose election by such board of directors or whose nomination for election by the stockholders of a Party was approved by a vote of a majority of the directors then still in office who are entitled to vote to elect such new director and were either directors at the beginning of such period or persons whose election as directors or nomination for election was previously so approved) cease for any reason to constitute a majority of the board of directors of such Party then in office or (e) a Party consolidates with, or merges with or into, directly or indirectly, any unrelated Person, or any unrelated Person consolidates with, or merges with or into, a Party, in any such event pursuant to a transaction in which any of the outstanding voting stock of such Party or such other Person is converted into or exchanged for cash, securities or other property, other than any such transaction where the voting stock of such Party outstanding immediately prior to such transaction is converted into or exchanged for voting stock of the surviving or transferee Person constituting a majority of the outstanding shares of such voting stock of such surviving or transferee Person (immediately after giving effect to such issuance).

"**Code**" has the meaning set forth in the recitals to this Agreement.

"**Contribution**" has the meaning set forth in Section 3.1(e) of the Separation and Distribution Agreement.

"**Conversion**" has the meaning set forth in Section 3.1(g) of the Separation and Distribution Agreement.

"**Correlative Adjustment**" means a disallowance of an item of deduction, loss or credit (or an increase of an item of income or gain) attributable to a Party or that Party's Subsidiaries, that is included in a Tax Return for a Pre-Distribution Tax Period or the portion of a Straddle Tax Period ending on the Distribution Date, and that directly results in a correlative increase of an item of deduction, loss or credit (or reduction of an item of income or gain) with respect to another Party or that Party's Subsidiaries with respect to a Tax Return for a Pre-Distribution Tax Period or a Straddle Tax Period**.**

"**Correlative Detriment**" has the meaning set forth in Section 4.1(b).

"**CPR**" has the meaning set forth in Section 12.2(b).

"**Dispute**" has the meaning set forth in Section 12.2(a).

"**Distribution**" has the meaning set forth in Section 4.3 of the Separation and Distribution Agreement.

"**Distribution Date**" has the meaning set forth in Section 1.1 of the Separation and Distribution Agreement.

"**Distribution Taxes**" mean any and all Taxes (a) required to be paid by or imposed on a Party or any of its Subsidiaries resulting from, or directly arising in connection with, the failure of the Contribution, Conversion, and Distribution, taken together, to qualify as a reorganization described in Sections 355(a) and 368(a)(1)(D) of the Code (or the failure to qualify under or the application of corresponding provisions of the Laws of other jurisdictions); (b) required to be paid by or imposed on a Party or any of its Subsidiaries resulting from, or directly arising in connection with, the failure of the stock distributed in the Distribution to constitute "qualified property" for purposes of Sections 355(d), 355(e) and Section 361(c) of the Code (or any corresponding provision of the Laws of other jurisdictions); or (c) required to be paid by or imposed on a Party or any of its Subsidiaries resulting from, or directly arising in connection with, the failure of any transaction undertaken in connection with or pursuant to the Plan of Separation to qualify for Tax-Free Status, in whole or in part.

"**Distribution Tax-Related Losses**" shall mean (a) all Distribution Taxes imposed pursuant to any Final Determination; (b) all reasonable accounting, legal and other professional fees and court costs incurred in connection with such Distribution Taxes; and (c) all reasonable costs and expenses and all damages associated with shareholder litigation or controversies and any amount paid by any Fortune Brands Party or H&S Party in respect of the liability of shareholders, whether paid to shareholder or to the IRS or any other Taxing Authority, in each case, resulting from the failure of the Distribution or any other transaction contemplated by the IRS Ruling or any Tax Opinion to have Tax-Free Status.

"**Due Date**" means the date (taking into account all valid extensions) upon which a Tax Return is required to be filed with or Taxes are required to be paid to a Taxing Authority, whichever is applicable.

"**Effective Time**" has the meaning set forth in Section 4.3 of the Separation and Distribution Agreement.

"**Employee Matters Agreement**" means the Employee Matters Agreement by and between Fortune Brands and H&S, dated as September 28, 2011.

"**Estimated Tax Return**" has the meaning set forth in Section 2.1(c)(iv).

"**Final Amount**" has the meaning set forth in Section 9.2(d).

"**Final Determination**" means the final resolution of liability for any Tax for any taxable period, by or as a result of:

(a) a final decision, judgment, decree or other order by any court of competent jurisdiction that can no longer be appealed;

(b) a final settlement with the IRS, a closing agreement or accepted offer in compromise under Sections 7121 or 7122 of the Code, or a comparable agreement under the Laws of other jurisdictions, which resolves the liability for the Taxes addressed in such agreement for any taxable period;

(c) any allowance of a refund or credit in respect of an overpayment of Tax, but only after the expiration of all periods during which such refund may be recovered by the jurisdiction imposing the Tax; or

(d) any other final disposition, including by reason of the expiration of the applicable statute of limitations.

"**Form 10 Registration Statement**" has the meaning set forth in Section 1.1 of the Separation and Distribution Agreement.

"**Fortune Board**" has the meaning set forth in the recitals to this Agreement.

"**Fortune Brands**" has the meaning set forth in the first paragraph of this Agreement.

"**Fortune Brands Business**" has the meaning set forth in Section 1.1 of the Separation and Distribution Agreement.

"**Fortune Brands Non-Separated Issue**" has the meaning set forth in Section 9.2(b)(iii) of this Agreement.

"**Fortune Brands Parties**" has the meaning set forth in Section 1.1 of the Separation and Distribution Agreement.

"**Fortune Brands Party's Tax Attributes**" has the meaning set forth in Section 5.2(a) of this Agreement.

"**Fortune Brands Separated Issue**" has the meaning set forth in Section 9.2(b)(ii) of this Agreement.

"**Fortune Brands Shares**" has the meaning set forth in the recitals to this Agreement.

"**Fortune Brands Tainting Act**" has the meaning set forth in Section 5.1(a).

"**H&S**" has the meaning set forth in the first paragraph of this Agreement.

"**H&S Allocable Audit Portion**" means the amount of any additional Taxes due and payable that are attributable to a Pre-Distribution Tax Period or the portion of a Straddle Tax Period ending on the Distribution Date that are not reported on a Tax Return filed for such Pre-Distribution Tax Period or Straddle Tax Period to the extent such Taxes are attributable to any H&S-Fortune Brands Entities. The determination of the amount of additional Taxes due and payable that are attributable to the H&S-Fortune Brands Entities shall be calculated on a "with and without basis," by calculating the amount of the excess (if any) of (a) the net amount of Taxes due and payable pursuant to a Final Determination, over (b) the net amount of Taxes that would be due and payable from the Final Determination that are not attributable to the operations conducted through the H&S Business; provided, however, that (a) and (b) shall be determined by ignoring any available losses, deductions, allowances or credits of the Fortune Brands Parties that are permitted or allowed as a result of consolidated, combined, unitary, group, or similar relief of the Parties (or their Subsidiaries).

"**H&S Allocable Portion**" means, with respect to a Tax Return filed after the Distribution Date for either a Pre-Distribution Tax Period or Straddle Tax Period, the amount of Taxes due and payable, after taking into account all prior payments, including estimated payments, for such Pre-Distribution Tax Period or Straddle Tax Period attributable to any H&S-Fortune Brands Entity. The determination of the amount of Taxes due and payable that are attributable to the H&S-Fortune Brands Entities for a given Tax Return shall be calculated on a "with and without basis," by calculating the amount of the excess (if any) of (a) the net amount of Taxes shown as due and payable on such Tax Return as filed, over (b) the net amount of Taxes that would be shown as due and payable on such Tax Return if such Tax Return were recalculated excluding the H&S-Fortune Brands Entities; provided, however, that (a) and (b) shall be determined by ignoring any available losses, deductions, allowances or credits of Fortune Brands that are permitted or allowed as a result of consolidated, combined, unitary, group, or similar relief of the Parties (or their Subsidiaries). To the extent the H&S Allocable Portion is determined to be less than zero (for example, due to an overpayment of estimated taxes by an H&S Party to a Fortune Brands Party), such amount shall be treated as a Refund to which H&S is entitled as of the due date of the applicable Tax Return. Notwithstanding anything to contrary, the H&S Allocable Portion shall be computed by taking into account any W-2 wages of any Fortune Brands Party, as permitted under Law, for purposes of determining the eligibility for any deduction allowable under Section 199 of the Code.

"**H&S Business**" has the meaning set forth in Section 1.1 of the Separation and Distribution Agreement.

"**H&S-Fortune Brands Entities**" mean each of the H&S Parties that has filed or is required to file, with respect to itself, its predecessor or any of its assets, any Tax Return on a consolidated, combined, unitary, group, or other basis with any Fortune Brands Party.

"**H&S Non-Separated Issue**" has the meaning set forth in Section 9.2(b)(iii) of this Agreement.

"**H&S Parties**" has the meaning set forth in Section 1.1 of the Separation and Distribution Agreement.

"**H&S Party's Tax Attributes**" has the meaning set forth in Section 5.2(b) of this Agreement.

"**H&S Separated Issue**" has the meaning set forth in Section 9.2(b)(ii) of this Agreement.

"**H&S Settlement Amount**" has the meaning set forth in Section 9.2(d) of this Agreement.

"**H&S Shares**" has the meaning set forth in the recitals to this Agreement.

"**H&S Subsidiaries**" has the meaning set forth in Section 1.1 of the Separation and Distribution Agreement.

"**H&S Tainting Act**" has the meaning set forth in Section 5.1(b).

"**Income Taxes**" mean:

(a) all Taxes based upon, measured by, or calculated with respect to (i) net income or profits (including, any capital gains, minimum tax or any Tax on items of tax preference, but not including sales, use, real, or personal property, gross or net receipts, value added, excise, leasing, transfer or similar Taxes), or (ii) multiple bases (including, corporate franchise, doing business and occupation Taxes) if one or more bases upon which such Tax is determined is described in clause (a)(i) above; and

(b) any related interest and any penalties, additions to such Tax or additional amounts imposed with respect thereto by any Taxing Authority.

"**Income Tax Returns**" mean all Tax Returns that relate to Income Taxes.

"**Indemnified Party**" means the Party which is or may be entitled pursuant to this Agreement to receive any payments (including reimbursement for Taxes or costs and expenses) from another Party.

"**Indemnifying Party**" means the Party which is or may be required pursuant to this Agreement to make indemnification or other payments (including reimbursement for Taxes and costs and expenses) to another.

"**Initial Amount**" has the meaning set forth in Section 9.2(d).

"**IRS**" means the United States Internal Revenue Service or any successor thereto, including its agents, representatives, and attorneys.

"**IRS Ruling**" means the requests submitted to the IRS for all private letter rulings to be obtained by Fortune Brands from the IRS in connection with the Plan of Separation, and any supplemental materials submitted to the IRS relating thereto, and the IRS private letter rulings received by Fortune Brands with respect to the Plan of Separation.

"**Law**" means any U.S. or non-U.S. federal, national, supranational, state, provincial, local or similar statute, law, ordinance, regulation, rule, code, administrative pronouncement, order, requirement or rule of law (including common law), or any income tax treaty.

"**McDermott**" means McDermott Will & Emery LLP.

"**Mediation Request**" has the meaning set forth in Section 12.2(b).

"Non-Acting Party" has the meaning set forth in Section 5.4.

"**Non-Challenging Party**" has the meaning set forth in Section 9.2(d).

"**Non-Challenging Party's Benefit**" has the meaning set forth in Section 9.2(d).

"**Non-Income Tax Returns**" mean all Tax Returns other than Income Tax Returns.

"**Party**" has the meaning set forth in the first paragraph of this Agreement.

"**Person**" has the meaning set forth in Section 1.1 of the Separation and Distribution Agreement.

"**Plan of Separation**" has the meaning set forth in the recitals to this Agreement.

"**Post-Distribution Income Tax Returns**" mean, collectively, all Income Tax Returns required to be filed by a Party or any of its Subsidiaries for a Post-Distribution Tax Period.

"**Post-Distribution Ruling**" has the meaning set forth in Section 5.4.

"**Post-Distribution Tax Period**" means a Tax year beginning and ending after the Distribution Date.

"**Pre-Distribution Income Tax Returns**" mean, collectively, all Income Tax Returns required to be filed by a Party or any of its Subsidiaries for a Pre-Distribution Tax Period.

"**Pre-Distribution Tax Period**" means a Tax year beginning and ending on or before the Distribution Date.

"**Pre-Distribution U.S. Income Tax Audit**" means any Audit of any U.S. federal, state, or local Income Tax Return filed, or allegedly required to be filed, for any Pre-Distribution Tax Period or Straddle Tax Period which includes an H&S-Fortune Brands Entity**.**

"**Preparing Party**" has the meaning set forth in Section 2.1(a).

"**Prime Rate**" has the meaning set forth in Section 1.1 of the Separation and Distribution Agreement.

"**Procedure**" has the meaning set forth in Section 12.2(b).

"**Proposed Acquisition Transaction**" means a transaction or series of transactions (or any agreement, understanding, arrangement, or substantial negotiations within the meaning of Section 355(e) of the Code and the Treasury Regulations promulgated thereunder, to enter into a transaction or series of related transactions), as a result of which a Party (or any successor thereto) would merge or consolidate with any other Person, or as a result of which any Person or any group of Persons would (directly or indirectly) acquire, or have the right to acquire (through an option or otherwise), from any Party (or any successor thereto) or one or more holders of its stock, respectively, any amount of stock of the Party, as the case may be, that would, when combined with any other changes in ownership of the stock of the Party, comprise more than 35 percent of (a) the value of all outstanding stock of the Party as of the date of such transaction, or in the case of a series of transactions, the date of the last transaction of such series, or (b) the total combined voting power of all outstanding stock of the Party as of the date of such transaction, or in the case of a series of transactions, the date of the last transaction of such series. For purposes of determining whether a transaction constitutes an indirect acquisition for purposes of the first sentence of this definition, any recapitalization or other action resulting in a shift of voting power or any redemption of shares of stock shall be treated as an indirect

acquisition of shares of stock by the non-exchanging shareholders. This definition and the application thereof is intended to monitor compliance with Section 355(e) of the Code and the Treasury Regulations promulgated thereunder and shall be interpreted accordingly by the Parties in good faith.

"**Qualified Tax Counsel**" means any law firm or accounting firm of national reputation approved by Fortune Brands or H&S, as appropriate, which approval shall not be unreasonably withheld.

"**Refund**" means any refund of Taxes (including any overpayment of Taxes that can be refunded or, alternatively, applied to future Taxes payable), including any interest paid on or with respect to such refund of Taxes; provided, however, the amount of the refund of Taxes shall be net of any Taxes imposed by any Taxing Authority on the receipt of the refund.

"**Restricted Period**" means the period beginning at the Effective Time and ending on the two-year anniversary of the day after the Distribution Date.

"**Restricted Person**" means any Person that had in effect at any time during the two-year period preceding the Distribution Date, a confidentiality agreement with any Fortune Brands Party or H&S Party in respect of the potential acquisition of any of the Active Businesses and each of such Person's Affiliates, successors and assigns.

"**Separation and Distribution Agreement**" has the meaning set forth in the recitals to this Agreement.

"**Straddle Period Income Tax Returns**" mean, collectively, all Income Tax Returns required to be filed by a Party or any of its Subsidiaries for a Straddle Tax Period.

"**Straddle Tax Period**" means a Tax year beginning before the Distribution Date and ending after the Distribution Date.

"**Subsidiary**" has the meaning set forth in Section 1.1 of the Separation and Distribution Agreement.

"**Tainting Act**" has the meaning set forth in Section 5.3.

"**Tax**" or "**Taxes**" whether used in the form of a noun or adjective, means taxes on or measured by income, franchise, gross receipts, sales, use, excise, payroll, personal property, real property, ad-valorem, value-added, leasing, leasing use, unclaimed property or other taxes, levies, imposts, duties, charges, or withholdings of any nature. Whenever the term "Tax" or "Taxes" is used it shall include penalties, fines, additions to tax and interest thereon.

"**Tax Attributes**" mean for U.S. federal, state, local, and non-U.S. Income Tax purposes, earnings and profits, tax basis, net operating and capital loss carryovers or carrybacks, alternative minimum Tax credit carryovers or carrybacks, general business credit carryovers or carrybacks, income tax credits or credits against income tax, disqualified interest and excess limitation carryovers or carrybacks, overall foreign losses, research and experimentation credit base periods, and all other items that are determined or computed on an affiliated group basis (as defined in Section 1504(a) of the Code determined without regard to the exclusion contained in Section 1504(b)(3) of the Code), or similar Tax items determined under applicable Tax law.

"**Tax Benefit**" means the reduction in Taxes resulting from the payment by a Party (or its Subsidiaries) of amounts that are indemnified by the other Party under this Agreement or the Separation and Distribution Agreement.

"**Tax-Free Status**" means the qualification of the Distribution or any other transaction contemplated by the IRS Ruling or any Tax Opinion as a transaction in which gain or loss is not recognized, in whole or in part, and no amount is included in income, including by reason of Distribution Taxes, for U.S. federal, state, and local income tax purposes (other than intercompany items, excess loss accounts or other items required to be taken into account pursuant to Treasury Regulations promulgated under Section 1502 of the Code).

"**Tax Opinions**" mean certain Tax opinions and supporting memoranda rendered by McDermott to Fortune Brands or any of its Subsidiaries in connection with the Plan of Separation.

"**Tax Package**" means:

(a) a pro forma Tax Return relating to the operations of any H&S Party that is required to be included in an Income Tax Return that is required to be filed by any Fortune Brands Party; and

(b) all information relating to the operations of the H&S Parties that is reasonably necessary to prepare and file such pro forma Tax Return consistent with past practices.

"**Tax Representation Letter**" means any letter containing certain representations and covenants issued by Fortune Brands or any of its Subsidiaries to McDermott in connection with the Tax Opinions.

"**Tax Returns**" mean any return, report, certificate, form or similar statement or document (including any related or supporting information or schedule attached thereto and any information return, amended tax return, claim for refund, or declaration of estimated Tax) required to be supplied to, or filed with, a Taxing Authority in connection with the determination, assessment or collection of any Tax or the administration of any Laws relating to any Taxes.

"**Taxing Authority**" means any governmental authority or any subdivision, agency, commission, or authority thereof or any quasi-governmental or private body having jurisdiction over the assessment, determination, collection, or imposition of any Tax (including the IRS).

"**Timing Item**" has the meaning set forth in Section 4.1(b) of this Agreement.

"**Total Benefit**" has the meaning set forth in Section 9.2(d).

"**Transaction Agreements**" has the meaning set forth in Section 1.1 of the Separation and Distribution Agreement.

"**Transferred Business**" has the meaning set forth in the recitals to this Agreement

"**Transferred Business Assets**" has the meaning set forth in Section 1.1 of the Separation and Distribution Agreement.

"**Transferred Subsidiaries**" has the meaning set forth in Section 1.1 of the Separation and Distribution Agreement.

"**Treasury Regulations**" mean the final and temporary (but not proposed) income tax and administrative regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"**Unqualified Tax Opinion**" means an unqualified reasoned "will" opinion of Qualified Tax Counsel, which opinion is reasonably acceptable to Fortune Brands or H&S, as applicable, and upon which each of the Parties may rely to confirm that a transaction (or transactions) will not result in Distribution Taxes, including confirmation in accordance with Circular 230 or otherwise that may be provided for purposes of avoiding any applicable penalties or additions to Tax for purposes of this definition. For purposes hereof, an opinion is "reasoned" if it describes the reasons for the conclusions, including the facts and analysis supporting the conclusions.

"**U.S.**" means the United States.

SECTION 1.2 Interpretation.

(a) For purposes of this Agreement:

(i) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation;"

(ii) the word "or" is not exclusive;

(iii) the words "herein," "hereunder," "hereof," "hereby," "hereto" and words of similar import shall be deemed to be references to this Agreement as a whole and not to any particular Section or other provision hereof; and

(iv) relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding" and "through" means "through and including."

(b) In this Agreement, unless the context clearly indicates otherwise:

(i) words used in the singular include the plural and words used in the plural include the singular;

(ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement;

(iii) reference to any Person's "Affiliates" shall be deemed to mean such Person's Affiliates following the Distribution;

(iv) reference to any gender includes the other gender;

(v) reference to any Article, Section, Exhibit or Schedule means such Article or Section of, or such Exhibit or Schedule to, this Agreement, as the case may be;

(vi) reference to any agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and by this Agreement;

(vii) reference to any Law means such Law (including all rules and regulations promulgated thereunder) as amended, modified, codified or reenacted, in whole or in part, and in effect at the time of determining compliance or applicability;

(viii) accounting terms used herein shall have the meanings ascribed to them by Fortune Brands and its Subsidiaries, including H&S, in its and their internal accounting and financial policies and procedures in effect immediately prior to the date of this Agreement;

(ix) if there is any conflict between the provisions of this Agreement and the Separation and Distribution Agreement or any of the other Transaction Agreements, the provisions of this Agreement shall control with respect to all matters related to Taxes or Tax Returns of the Fortune Brands Parties or the H&S Parties unless explicitly stated otherwise herein or therein;

(x) any portion of this Agreement obligating a Party to take any action or refrain from taking any action, as the case may be, shall mean that such Party shall also be obligated to cause its relevant Subsidiaries to take such action or refrain from taking such action, as the case may be; and

(xi) unless otherwise specified in this Agreement, all references to dollar amounts herein shall be in respect of lawful currency of the United States.

(c) The titles to Articles and headings of Sections contained in this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of or to affect the meaning or interpretation of this Agreement, and this Agreement and the Transaction Agreements shall be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted.

(d) The Exhibits and Schedules shall be construed with and as an integral part of this Agreement to the same extent as if the same had been set forth verbatim herein.

ARTICLE II

PREPARATION AND FILING OF TAX RETURNS

SECTION 2.1 Responsibility of Parties to Prepare and File Pre-Distribution Income Tax Returns and Straddle Period Income Tax Returns.

(a) General. To the extent not previously filed and subject to the rights and obligations of each of the Parties set forth herein, Schedule 2.1(a) sets forth the Parties (each, a "**Preparing Party**") that are responsible for preparing or causing to be prepared all Pre-Distribution Income Tax Returns and Straddle Period Income Tax Returns. Unless otherwise provided in this Agreement, the Preparing Party is responsible for the costs and expenses associated with such preparation. The Party responsible, or whose Affiliate is responsible, for filing a Pre-Distribution Income Tax Return or Straddle Period Income Tax Return under applicable Law shall timely file or cause to be timely filed such Income Tax Returns with the applicable Taxing Authority. Pre-Distribution Income Tax Returns and Straddle Period Income Tax Returns shall be prepared and filed in a manner (i) consistent with the past practice of the Parties and their Subsidiaries unless otherwise modified by a Final Determination or required by applicable Law; and (ii) consistent with (and the Parties and their Subsidiaries shall not take any position inconsistent with) the IRS Ruling, the Tax Representation Letters, and the Tax Opinions. No Parties shall take any actions inconsistent with the assumptions (including items of income, gain, deduction, loss and credit) made in determining all estimated or advance payments of Income Tax on or prior to the Distribution Date.

(b) Tax Package. To the extent not previously provided, the Party other than the Preparing Party shall (at its own cost and expense), to the extent that a Pre-Distribution Income Tax Return or a Straddle Period Income Tax Return includes items of that Party or its Subsidiaries, prepare and provide or cause to be prepared and provided to the Preparing Party a Tax Package relating to that Pre-Distribution Income Tax Return or Straddle Period Income Tax Return. Such Tax Package shall be provided in a timely manner consistent with the past practices of the Parties and their Subsidiaries. In the event a Party does not fulfill its obligations pursuant to this Section 2.1(b), the Preparing Party shall be entitled, at the sole cost and expense of the first Party, to prepare or cause to be prepared the information required to be included in the Tax Package for purposes of preparing any such Pre-Distribution Income Tax Return or Straddle Period Income Tax Return.

(c) Procedures Relating to the Review and Filing of Pre-Distribution Income Tax Returns and Straddle Period Income Tax Returns.

(i) In the case of Pre-Distribution Income Tax Returns and Straddle Period Income Tax Returns, to the extent not previously filed, no later than 30 days prior to the Due Date of each such Tax Return (reduced to 15 days for state or local Pre-Distribution Income Tax Returns and Straddle Period Income Tax Returns), the Preparing Party shall make available or cause to be made available drafts of such Tax Return (together with all related work papers) to the other Party. The other Party shall have access to any and all data and information necessary for the preparation of all such Pre-Distribution Income Tax Returns and Straddle Period Income Tax Returns and the Parties shall cooperate fully in the preparation and review of such Tax

Returns. Subject to the preceding sentence, no later than 15 days after receipt of such Pre-Distribution Income Tax Returns and Straddle Period Income Tax Returns (reduced to 5 days for state or local Pre-Distribution Income Tax Returns and Straddle Period Income Tax Returns), the other Party shall have a right to object to such Pre-Distribution Income Tax Return or Straddle Period Income Tax Return (or items with respect thereto) by written notice to the Preparing Party; such written notice shall contain such disputed item (or items) and the basis for its objection.

(ii) With respect to a Pre-Distribution Income Tax Return or Straddle Period Income Tax Return submitted by the Preparing Party to the other Party pursuant to Section 2.1(c)(i), if the other Party does not object by proper written notice described in Section 2.1(c)(i), such Pre-Distribution Income Tax Return or Straddle Period Income Tax Return shall be deemed to have been accepted and agreed upon, and to be final and conclusive, for purposes of this Section 2.1(c)(ii). If a Party does object by proper written notice described in Section 2.1(c)(i), the Parties shall act in good faith to resolve any such dispute as promptly as practicable; provided, however, that, notwithstanding anything to the contrary contained herein, if the Parties have not resolved the disputed item or items by the day 5 days prior to the Due Date of such Pre-Distribution Income Tax Return or Straddle Period Income Tax Return, such Tax Return shall be filed as prepared pursuant to this Section 2.1 (revised to reflect all initially disputed items that the Parties have agreed upon prior to such date).

(iii) In the event that a Pre-Distribution Income Tax Return or Straddle Period Income Tax Return is filed that includes any disputed item for which proper notice was given pursuant to this Section 2.1(c) that was not finally resolved and agreed upon, such disputed item (or items) shall be resolved in accordance with Section 12.2. In the event that the resolution of such disputed item (or items) in accordance with Section 12.2 with respect to a Pre-Distribution Income Tax Return or a Straddle Period Income Tax Return is inconsistent with such Pre-Distribution Income Tax Return or Straddle Period Income Tax Return as filed, the Preparing Party (with cooperation from the other Party) shall, as promptly as practicable, amend such Tax Return to properly reflect the final resolution of the disputed item (or items). In the event that the amount of Taxes shown to be due and owing on a Pre-Distribution Income Tax Return or Straddle Period Income Tax Return is adjusted as a result of a resolution pursuant to Section 12.2, proper adjustment shall be made to the amounts previously paid or required to be paid in accordance with Article III in a manner that reflects such resolution.

(iv) Notwithstanding anything to the contrary in this Section 2.1, in the case of any Income Tax Return for estimated Taxes ("**Estimated Tax Return**") for a Pre-Distribution Tax Period, to the extent not previously filed, as soon as practicable prior to the Due Date of each such Estimated Tax Return, the Preparing Party shall make available or cause to be made available drafts of such Estimated Tax Return (together with all related work papers) to the other Party. The other Party shall have access to any and all data and information necessary for the preparation of such Estimated Tax Returns and the Parties shall cooperate fully in the preparation and review of such Estimated Tax Returns in a manner consistent with past practice. Subject to the preceding sentence, a Party shall have a right to object by written notice to the other Party (and such written notice shall contain such disputed item (or items) and the basis for the objection) and the principles of Section 2.1(c)(ii) shall apply to such Estimated Tax Return.

(v) For the avoidance of doubt, Section 2.1(c) shall only apply to Pre-Distribution Income Tax Returns and Straddle Period Income Tax Returns which could reasonably result in both Parties becoming responsible for a payment of Taxes pursuant to Article III or a payment to the other Party pursuant to Section 9.3.

SECTION 2.2 Responsibility of Parties to Prepare and File Post-Distribution Income Tax Returns and Non-Income Tax Returns. The Party or its Subsidiary responsible under applicable Law for filing a Post-Distribution Income Tax Return or a Non-Income Tax Return shall prepare and timely file or cause to be prepared and timely filed that Tax Return (at that Party's own cost and expense).

SECTION 2.3 Time of Filing Tax Returns; Manner of Tax Return Preparation. Unless otherwise required by a Taxing Authority pursuant to a Final Determination, the Parties shall prepare and file or cause to be prepared and filed all Tax Returns and take all other actions in a manner consistent with (and shall not take any position inconsistent with) any assumptions, representations, warranties, covenants, and conclusions provided by the Parties (or any of their Subsidiaries) in connection with the Plan of Separation, the IRS Ruling, the Tax Representation Letter and the Tax Opinion.

ARTICLE III

RESPONSIBILITY FOR PAYMENT OF TAXES

SECTION 3.1 Responsibility of Fortune Brands for Taxes. Except as otherwise provided in this Agreement, Fortune Brands shall be liable for and shall pay or cause to be paid the following Taxes:

(a) to the applicable Taxing Authority, any Taxes due and payable on all Pre-Distribution Income Tax Returns and Straddle Period Income Tax Returns that Fortune Brands is required to file or cause to be filed with such Taxing Authority pursuant to Section 2.1; and

(b) to the applicable Taxing Authority, any Taxes due and payable on all Post-Distribution Income Tax Returns and Non-Income Tax Returns that Fortune Brands is required to file or cause to be filed with such Taxing Authority pursuant to Section 2.2.

SECTION 3.2 Responsibility of H&S for Taxes. Except as otherwise provided in this Agreement, H&S shall be liable for and shall pay or cause to be paid the following Taxes:

(a) to the applicable Taxing Authority, any Taxes due and payable on all Pre-Distribution Income Tax Returns and Straddle Period Income Tax Returns that H&S is required to file or cause to be filed with such Taxing Authority pursuant to Section 2.1;

(b) to the applicable Taxing Authority, any Taxes due and payable on all Post-Distribution Income Tax Returns and Non-Income Tax Returns that H&S is required to file or cause to be filed with such Taxing Authority pursuant to Section 2.2; and

(c) to Fortune Brands, the H&S Allocable Portion computed with respect to the H&S-Fortune Brands Entities.

SECTION 3.3 Timing of Payments of Taxes. All Taxes required to be paid or caused to be paid by a Party to a Taxing Authority pursuant to this Article III shall be paid or caused to be paid by such Party on or prior to the Due Date of such Taxes. All amounts required to be paid by one Party to another Party pursuant to this Article III shall be paid or caused to be paid by such first Party to such other Party in accordance with Article VIII.

ARTICLE IV

REFUNDS, CARRYBACKS AND AMENDED TAX RETURNS

SECTION 4.1 Refunds.

(a) Each Party (and its Subsidiaries) (the "**Claiming Party**") shall be entitled to Refunds that relate to Taxes for which it (or its Subsidiaries) is liable for hereunder.

(b) Notwithstanding Section 4.1(a), to the extent a claim for a Refund results in a Correlative Detriment to the other Party (or its Subsidiaries), any such Refund that is received by the Claiming Party (or its Subsidiaries) shall, and only to the extent thereof, be paid proportionately to the other Party (or its Subsidiaries) that incurs such Correlative Detriment. A "**Correlative Detriment**" is an increase in a Tax of a Party (or its Subsidiaries) that occurs as a result of the Tax position that is the basis for a claim for Refund by the Claiming Party or for a Final Determination. For the avoidance of doubt, a Correlative Detriment does not include an item that results in a temporary increase in a Tax of a Party (or its Subsidiaries) that will be recovered through a deduction under Section 162 of the Code or a similar provision of Law in one or more subsequent years or recovered through amortization or depreciation deductions allowed under Sections 167, 168, or 197 of the Code or similar provisions of Law (a "**Timing Item**").

(c) Any Refund or portion thereof to which a Claiming Party is entitled pursuant to this Section 4.1 that is received or deemed to have been received as described herein by the other Party (or its Subsidiaries) shall be paid by such other Party to the Claiming Party in immediately available funds in accordance with Article VIII. To the extent a Party (or its Subsidiaries) applies or causes to be applied an overpayment of Taxes as a credit toward or a reduction in Taxes otherwise payable (or a Taxing Authority requires such application in lieu of a Refund) and such Refund, if received, would have been payable by such Party to the Claiming Party pursuant to this Section 4.1, such Party shall be deemed to have actually received a Refund to the extent thereof on the date on which the overpayment is applied to reduce Taxes otherwise payable.

SECTION 4.2 Carrybacks. Each of the Parties shall be permitted (but not required) to carryback (or to cause its Subsidiaries to carryback) a Tax Attribute realized in a Post-Distribution Tax Period or a Straddle Tax Period to a Pre-Distribution Tax Period or a Straddle Tax Period only if such carryback cannot reasonably result in the other Party (or its Subsidiaries) being liable for additional Taxes. If a carryback could reasonably result in the

other Party (or its Subsidiaries) being liable for additional Taxes, such carryback shall be permitted only if such Party consents to such carryback. Notwithstanding anything to the contrary in this Agreement, any Party that has claimed (or caused one or more of its Subsidiaries to claim) a Tax Attribute carryback shall be liable for any Taxes that become due and payable as a result of the subsequent adjustment, if any, to the carryback claim

SECTION 4.3 Amended Tax Returns.

(a) Notwithstanding Section 2.1, any Fortune Brands Party or H&S Party that is entitled to file an amended Tax Return for a Pre-Distribution Tax Period or a Straddle Tax Period shall be permitted to prepare and file such amended Tax Return at its own cost and expense; provided, however, that such amended Tax Return shall be prepared in a manner (i) consistent with the past practice of the Parties (and their Subsidiaries) unless otherwise modified by a Final Determination or required by applicable Law; and (ii) consistent with (and the Parties and their Subsidiaries shall not take any position inconsistent with) the IRS Ruling, the Tax Representation Letter, and the Tax Opinion. Notwithstanding anything to contrary contained herein, if such amended Tax Return could reasonably result in the other Party becoming responsible for a payment of Taxes pursuant to Article III or a payment to a Party pursuant to Section 9.3, then such amended Tax Return shall be permitted only if the consent of such other Party is obtained. The consent of such other Party shall not be unreasonably withheld and shall be deemed to be obtained in the event that a Party (or its Subsidiary) is required to file an amended Tax Return as a result of an Audit adjustment that arose in accordance with Article IX.

(b) A Party (or its Subsidiary) that is entitled to file an amended Tax Return for a Post-Distribution Tax Period shall be permitted to do so without the consent of the other Party.

(c) A Party that is permitted (or whose Subsidiary is permitted) to file an amended Tax Return shall not be relieved of any liability for payments pursuant to this Agreement notwithstanding that the Party consented to the filing of such amended Tax Return giving rise to such liability.

ARTICLE V

DISTRIBUTION TAXES

SECTION 5.1 Liability for Distribution Taxes. In the event that Distribution Taxes become due and payable to a Taxing Authority pursuant to a Final Determination, then, notwithstanding anything to the contrary in this Agreement:

(a) if such Distribution Taxes are attributable to a Tainting Act, as defined in Section 5.3, of any Fortune Brands Party (a "**Fortune Brands Tainting Act**"), then Fortune Brands shall be responsible for any Distribution Tax-Related Losses;

(b) if such Distribution Taxes are attributable to a Tainting Act, as defined in Section 5.3, of any H&S Party (an "**H&S Tainting Act**"), then H&S shall be responsible for any Distribution Tax-Related Losses;

(c) if such Distribution Taxes are attributable to both a Fortune Brands Tainting Act and an H&S Tainting Act, then (i) Fortune Brands shall be responsible for any Distribution Tax-Related Losses if the Fortune Brands Tainting Act occurs prior to the H&S Tainting Act and (ii) H&S shall be responsible for any Distribution Tax-Related Losses if the H&S Tainting Act occurs prior to the Fortune Brands Tainting Act; and

(d) if such Distribution Taxes are not attributable to a Fortune Brands Tainting Act or an H&S Tainting Act, then the Parties shall work in good faith to equitably resolve the matter; provided that in the event the Parties cannot agree, the matter shall be resolved in accordance with Sections 12.2 and 12.4.

SECTION 5.2 Payment for Use of Tax Attributes.

(a) If H&S would have been responsible under Section 5.1 for Distribution Taxes but for the use of Tax Attributes that are attributable to any Fortune Brands Party (the "**Fortune Brands Party's Tax Attributes**"), then H&S shall pay to Fortune Brands the amount of Distribution Taxes that did not become due and payable as a result of the use of the Fortune Brands Party's Tax Attributes.

(b) If Fortune Brands would have been responsible under Section 5.1 for Distribution Taxes but for the use of Tax Attributes that are attributable to any H&S Party (the "**H&S Party's Tax Attributes**"), then Fortune Brands shall pay to H&S the amount of Distribution Taxes that did not become due and payable as a result of the use of the H&S Party's Tax Attributes.

(c) The amount of Distribution Taxes shall be calculated by assuming that (i) no Tax Attribute or other item of income, loss, deduction or credit applies to reduce the amount of the Distribution Tax and (ii) the Distribution Tax is determined at the highest applicable rate of Tax.

SECTION 5.3 Definition of Tainting Act. For purposes of this Agreement, a Tainting Act is:

(a) any act, or failure or omission to act, by any Party following the Distribution that results in any Fortune Brands Party being responsible for such Distribution Taxes pursuant to a Final Determination, regardless of whether such act or failure to act (i) is covered by a Post-Distribution Ruling or Unqualified Tax Opinion, or (ii) occurs during or after the Restricted Period; or

(b) the direct or indirect acquisition of all or a portion of the stock of any Party (or any transaction or series of related transactions that is deemed to be such an acquisition for purposes of Section 355(e) of the Code and the Treasury Regulations promulgated thereunder) by any means whatsoever by any Person including pursuant to an issuance of stock by any Party.

SECTION 5.4 Limits on Proposed Acquisition Transactions and Other Transactions During Restricted Period. During the Restricted Period, neither Fortune Brands nor H&S shall:

(a) enter into, or permit to be entered into on its behalf, any agreement, understanding, arrangement, or substantial negotiations (within the meaning of Section 355(e) of the Code and the Treasury Regulations promulgated thereunder) with a Restricted Person regarding a Proposed Acquisition Transaction;

(b) enter into any Proposed Acquisition Transaction, approve any Proposed Acquisition Transaction for any purpose, or allow any Proposed Acquisition Transaction to occur with respect to Fortune Brands or H&S;

(c) merge or consolidate with any other Person or liquidate or partially liquidate; or approve or allow any merger, consolidation, liquidation, or partial liquidation of any of the Active Business Entities; provided, however, that Section 5.4(c) shall not apply to the merger of Beam Inc. with and into Fortune Brands;

(d) approve or allow the discontinuance, cessation, or sale or other transfer (to an Affiliate or otherwise) of, or a material change in, any Active Business;

(e) approve or allow the sale, issuance, or other disposition (to an Affiliate or otherwise), directly or indirectly, of any share of, or other equity interest or an instrument convertible into an equity interest in, any of the Active Business Entities;

(f) sell or otherwise dispose of more than 35 percent of its consolidated gross or net assets, or approve or allow the sale or other disposition (to an Affiliate or otherwise) of more than 35 percent of its consolidated gross or net assets of Fortune Brands, H&S or more than 35 percent of the consolidated gross or net assets of any of the Active Business Entities (in each case, excluding sales in the ordinary course of business and measured based on fair market values as of the Distribution Date);

(g) amend its certificate of incorporation (or other organizational documents), or take any other action or approve or allow the taking of any action, whether through a stockholder vote or otherwise, affecting the voting rights of Fortune Brands or H&S;

(h) issue shares of a new class of nonvoting stock or approve or allow Fortune Brands or H&S to issue shares of a new class of nonvoting stock;

(i) purchase, directly or through any Affiliate, any of its outstanding stock after the Distribution, other than through stock purchases meeting the requirements of Section 4.05(1)(b) of Revenue Procedure 96-30 (without regard to the effect of Revenue Procedure 2003-48 on Revenue Procedure 96-30);

(j) take any action or fail to take any action, or permit any other Fortune Brands Party or H&S Party to take any action or fail to take any action, that is inconsistent with any representation or covenant made in the IRS Ruling or in any Tax Representation Letter, or that is inconsistent with any ruling or opinion in the IRS Ruling or any Tax Opinion; or

(k) take any action or permit any other Fortune Brands Party or H&S Party to take any action (including any transactions with a third-party or any transaction with any H&S Party) that, individually or in the aggregate (taking into account other transactions described in this Section 5.4) would be reasonably likely to jeopardize Tax-Free Status;

provided, however, that Fortune Brands and H&S shall be permitted to take such action or one or more actions set forth in the foregoing clauses (b) through (k) (but not clause (a)) if, prior to taking any such actions, the Party taking the action (the "**Acting Party**") set forth in the foregoing clauses (b) through (k) shall (1) have received a favorable private letter ruling from the IRS, or a ruling from another Taxing Authority that confirms that such action or actions will not result in Distribution Taxes, taking into account such actions and any other relevant transactions in the aggregate (a "**Post-Distribution Ruling**"), in form and substance satisfactory to the other Party (the "**Non-Acting Party**") in its discretion, which discretion shall be reasonably exercised in good faith solely to prevent the imposition on the Non-Acting Party, or responsibility for payment by the Non-Acting Party, of Distribution Taxes or (2) have received an Unqualified Tax Opinion that confirms that such action or actions will not result in Distribution Taxes, taking into account such actions and any other relevant transactions in the aggregate, in form and substance satisfactory to the Non-Acting Party, acting reasonably and in good faith solely to prevent the imposition on the Non-Acting Party, or responsibility for payment by the Non-Acting Party, of Distribution Taxes. The Acting Party shall provide a copy of the Post-Distribution Ruling or the Unqualified Tax Opinion described in this paragraph to the Non-Acting Party as soon as practicable prior to taking or failing to take any action set forth in the foregoing clause (b) through (k). The Non-Acting Party's evaluation of a Post-Distribution Ruling or Unqualified Tax Opinion may consider, among other factors, the appropriateness of any underlying assumptions, representations, and covenants made in connection with such Post-Distribution Ruling or Unqualified Tax Opinion. The Acting Party shall bear all costs and expenses of securing any such Post-Distribution Ruling or Unqualified Tax Opinion and shall reimburse the Non-Acting Party for all reasonable out-of-pocket costs and expenses that the Non-Acting Party may incur in good faith in seeking to obtain or evaluate any such Post-Distribution Ruling or Unqualified Tax Opinion.

SECTION 5.5 IRS Ruling, Tax Representation Letters, and Tax Opinions; Consistency. Each Party represents that the information and representations furnished by it (or its Subsidiaries) in or with respect to the IRS Ruling, the Tax Representation Letters, or the Tax Opinions are accurate and complete as of the Effective Time. Each Party covenants (1) to use its best efforts, and to cause its Subsidiaries to use their best efforts, to verify that such information and representations are accurate and complete as of the Effective Time; and (2) if, after the Effective Time, any Fortune Brands Party or H&S Party obtains information indicating, or otherwise becomes aware, that any such information or representations is or may be inaccurate or incomplete, to promptly inform the other Party. Except in accordance with Section 5.4, no Fortune Brands Party or H&S Party shall take any action or fail to take any action, or permit any other Fortune Brands Party or H&S Party to take any action or fail to take any action, that is or is reasonably likely to be inconsistent with the IRS Ruling, the Tax Representation Letters, or the Tax Opinions.

SECTION 5.6 Timing of Payment of Distribution Tax-Related Losses. All amounts required to be paid by one Party to the other Party pursuant to this Article V shall be paid or caused to be paid by one Party to the other Party in accordance with Article VIII.

ARTICLE VI

EMPLOYEE BENEFIT MATTERS

SECTION 6.1 Income Tax Deductions in Respect of Certain Equity Awards and Incentive Compensation.

(a) Entitlement to Deduction. For all Post-Distribution Tax Periods, solely the Party (or its Subsidiary) that currently employs the relevant individual or, if such individual is not currently employed by a Party, the Party (or its Subsidiary) that most recently employed such individual, at the time of the vesting, exercise, disqualifying disposition, payment or other relevant taxable event, as appropriate, in respect of the equity awards and other incentive compensation described in Article VI of the Employee Matters Agreement, shall be entitled to claim any Income Tax deduction arising after the Distribution Date in respect of such equity awards and other incentive compensation on its respective Tax Return.

(b) Withholding and Reporting. The Party (or its Subsidiary) that claims the deduction described in Section 6.1(a) shall be responsible for all applicable Taxes (including withholding and excise taxes) and shall satisfy, or shall cause to be satisfied, all applicable Tax reporting obligations in respect of the equity awards and other incentive compensation that gives rise to the deduction. The Parties shall cooperate (and shall cause their Subsidiaries to cooperate) so as to permit the Party (or Subsidiary thereof) claiming such deduction described in Section 6.1(a) to discharge any applicable Tax withholding and Tax reporting obligations, including the appointment of the Party claiming the deduction (or its Subsidiary) as the withholding and reporting agent if that Party (or any of its Subsidiaries) is not otherwise required or permitted to withhold and report under applicable Law.

ARTICLE VII

INDEMNIFICATION

SECTION 7.1 Indemnification Obligations of Fortune Brands. Fortune Brands shall indemnify each of the H&S Parties and hold them harmless from and against:

(a) all Taxes and other amounts for which Fortune Brands is responsible under this Agreement; and

(b) all Taxes and reasonable out-of-pocket costs for advisors and other expenses attributable to a breach of any representation, covenant or obligation of Fortune Brands under this Agreement.

SECTION 7.2 Indemnification Obligations of H&S. H&S shall indemnify each of the Fortune Brands Parties and hold them harmless from and against:

(a) all Taxes and other amounts for which H&S is responsible under this Agreement; and

(b) all Taxes and reasonable out-of-pocket costs for advisors and other expenses attributable to a breach of any representation, covenant or obligation of H&S under this Agreement.

ARTICLE VIII

PAYMENTS

SECTION 8.1 Payments

(a) General. Unless otherwise provided in this Agreement, in the event that an Indemnifying Party is required to make a payment to an Indemnified Party pursuant to this Agreement:

(i) Aggregate Payments of Less than $250,000. If such payments are in the aggregate less than $250,000 (two hundred and fifty thousand dollars) during the calendar quarter, the Indemnified Party shall deliver written notice of the payments to the Indemnifying Party in accordance with Section 12.11 on the first day of the calendar quarter following the calendar quarter in which the obligation giving rise to the indemnification payment must be satisfied, and the Indemnifying Party shall be required to make payment to the Indemnified Party within 10 Business Days after notice of such payment is delivered to the Indemnifying Party.

(ii) Payments Equal to or Greater than $250,000. If such payments are in the aggregate equal to or greater than $250,000 (two hundred and fifty thousand dollars) during the calendar quarter, the Indemnified Party shall deliver written notice of the payments to the Indemnifying Party in accordance with Section 12.11 during the calendar quarter in which the obligation giving rise to the indemnification payment must be satisfied, and the Indemnifying Party shall be required to make payment to the Indemnified Party within 10 Business Days after delivery of the written notice that resulted in aggregate payments for the calendar quarter equaling $250,000 (two hundred and fifty thousand dollars) or greater.

(b) Procedural Matters. The written notice delivered to the Indemnifying Party in accordance with Section 12.11 shall show the amount due and owing together with a schedule calculating in reasonable detail such amount (and shall include any relevant Tax Return, statement, bill or invoice related to Taxes, costs, expenses or other amounts due and owing). All payments required to be made by one Party to the other Party pursuant to this Section 8.1 shall be made by electronic, same day wire transfer. Payments shall be deemed made when received. If the Indemnifying Party fails to make a payment to the Indemnified Party within the time period set forth in Section 8.1(a), such Indemnifying Party shall be considered to be in breach of its covenants and obligations established in this Section 8.1 and the Indemnifying Party shall pay to the Indemnified Party (i) interest that accrues (at a rate equal to the Prime Rate) on the amount of such payment from the time that such payment was due to the Indemnified Party until the date that payment is actually made to the Indemnified Party; and (ii) any costs or expenses (other than consequential damages) incurred by the Indemnified Party to secure such payment or to satisfy the Indemnifying Party's portion of the obligation giving rise to the indemnification payment.

(c) Right of Setoff. It is expressly understood that an Indemnifying Party is hereby authorized to set off and apply any and all amounts required to be paid to an Indemnified Party pursuant to this Section 8.1 against any and all of the obligations of the Indemnified Party to the Indemnifying Party arising under Section 8.1 of this Agreement that are then either due and payable or past due, irrespective of whether such Indemnifying Party has made any demand for payment with respect to such obligations.

SECTION 8.2 Treatment of Payments under this Agreement and the Separation and Distribution Agreement. In the absence of any change in Tax treatment under the Code or other applicable Tax Law, any payments made by a Party under this Agreement or the Separation and Distribution Agreement shall be reported for Tax purposes by the payor and the recipient as distributions or capital contributions, as appropriate, occurring immediately before the Distribution (but only to the extent the payment does not relate to a Tax allocated to the payor in accordance with Section 1552 of the Code or the regulations thereunder or Treasury Regulation Section 1.1502-33(d) (or under corresponding principles of other applicable Tax Laws)) or as payments of assumed or retained liabilities, as appropriate.

SECTION 8.3 Tax Gross Up. If, notwithstanding the manner in which payments were reported, there is an Income Tax incurred by a Party as a result of its receipt of a payment pursuant to this Agreement or the Separation and Distribution Agreement, as applicable, such payment shall be appropriately adjusted so that the amount of such payment, reduced by the amount of Income Taxes payable with respect to the receipt thereof (but taking into account all Tax Benefits resulting from the payment of such Income Taxes), shall equal the amount of the payment that the Party receiving such payment would otherwise be entitled to receive pursuant to this Agreement or the Separation and Distribution Agreement, as applicable. This Section 8.3 shall not apply to any payment (or part thereof) made by an H&S Party to a Fortune Brands Party which is treated by Fortune Brands as nonqualified property for U.S. federal income tax purposes in connection with the Contribution and Conversion.

SECTION 8.4 Interest or Expenses. Anything herein to the contrary notwithstanding, to the extent the Indemnifying Party makes a payment of interest or other expense reimbursement to the Indemnified Party under this Agreement or the Separation and Distribution Agreement, the interest payment shall be treated as an expense under Section 162 or Section 163 of the Code, as applicable, to the Indemnifying Party (deductible to the extent provided by Law) and as income by the Indemnified Party (includible in income to the extent provided by Law). The amount of the payment of interest or other expense reimbursement shall not be adjusted under Section 8.3 to take into account any associated Tax Benefit to the Indemnifying Party or Tax detriment to the Indemnified Party.

SECTION 8.5 Payments Net of Tax Benefits. If not otherwise provided in this Agreement, the amounts payable under this Agreement or the Separation and Distribution Agreement by one Party to another Party shall be reduced by the amount of any Tax Benefit obtained by the Party receiving such payment.

ARTICLE IX

AUDITS

SECTION 9.1 Notice. Within 10 Business Days after a Party or any of its Affiliates receives a written notice from a Taxing Authority of the existence of an Audit that may require indemnification pursuant to this Agreement, that Party shall notify the other Party of such receipt and send such notice to the other Party in accordance with Section 12.11. The failure of one Party to notify the other Party of an Audit shall not relieve such other Party of any liability or obligation that it may have under this Agreement, except to the extent that the Indemnifying Party's rights under this Agreement are materially prejudiced by such failure.

SECTION 9.2 Audit Administration.

(a) Administering Party. Subject to Sections 9.2(b) and 9.2(c):

(i) Fortune Brands and its Subsidiaries shall administer and control all Pre-Distribution U.S. Income Tax Audits.

(ii) Audits other than Pre-Distribution U.S. Income Tax Audits shall be administered and controlled by the Party or Subsidiary thereof that is primarily liable under applicable Law to pay to the applicable Taxing Authority the Taxes resulting from such Audits.

(b) Administration and Control; Cooperation.

(i) Except as provided in Section 9.2(b)(ii), Fortune Brands shall have sole responsibility for administration and control (including settlement authority) over all Pre-Distribution U.S. Income Tax Audits; provided that H&S shall have the right to participate in such Audit pursuant to Section 9.2(c) and as otherwise contemplated by this Section 9.2(b), but only to the extent that such Audit relates to Taxes for which H&S would be liable under Section 9.3(a)(ii).

(ii) In the case of a Pre-Distribution U.S. Income Tax Audit involving Taxes for which each of Fortune Brands and H&S would be liable pursuant to Section 9.3(a) of this Agreement, the Parties agree to use reasonable best efforts to separate the issues for resolution, in which case the Party that would be liable for any Tax relating to such issue shall have sole responsibility for the administration and control (including settlement authority) of the separated issue, provided that—

(1) H&S shall only have sole responsibility for the settlement of the separated issue if (x) the issue, as asserted by the Taxing Authority, would cause an individual payment obligation for H&S of $75,000 (seventy-five thousand dollars) or greater (including tax, interest and penalties) under this Agreement (an "**H&S Separated Issue**") and (y) all H&S Separated Issues and H&S Non-Separated Issues (as defined below) would cause an aggregate payment obligation for H&S of $750,000 (seven hundred and fifty thousand dollars) or greater under this Agreement. In addition to the conditions above, in the case of a Change of Control of H&S, H&S shall provide Fortune Brands an opinion from Qualified Counsel concluding that H&S more likely than not shall prevail on the H&S Separated Issues.

(2) Fortune Brands shall have sole responsibility for the settlement of all separated issues, other than H&S Separated Issues for which H&S has sole settlement responsibility under Section 9.2(b)(ii)(1), except that Fortune Brands shall accept or enter into a settlement of such issues at the reasonable request of H&S unless: (x) the settlement relates to an issue the settlement of which would cause an individual payment obligation for Fortune Brands of $75,000 (seventy-five thousand dollars) or greater (including tax, interest and penalties) (a "**Fortune Brands Separated Issue**") and (y) the settlement of all Fortune Brands Separated Issues and Fortune Brands Non-Separated Issues (as defined below) would cause an aggregate payment obligation for Fortune Brands of $750,000 (seven hundred and fifty thousand dollars) or greater. In addition to the conditions above, in the case of a Change of Control of Fortune Brands, Fortune Brands shall provide H&S an opinion from Qualified Counsel concluding that Fortune Brands more likely than not shall prevail on the Fortune Brands Separated Issues.

(iii) To the extent that issues in a Pre-Distribution Income Tax Audit cannot be separated—

(1) Fortune Brands shall not accept or enter into a settlement without the consent of H&S (which shall not be unreasonably withheld) if: (x) the settlement relates to an issue the settlement of which would cause an individual payment obligation for H&S of $75,000 (seventy-five thousand dollars) or greater (including tax, interest and penalties) under this Agreement (an "**H&S Non-Separated Issue**"); (y) H&S has provided Fortune Brands with H&S's responses to all information document requests or similar requests from the Taxing Authority with respect to all H&S Non-Separated Issues and (z) all H&S Non-Separated Issues and H&S Separated Issues would cause an aggregate payment obligation for H&S of $750,000 (seven hundred and fifty thousand dollars) or greater under this Agreement. In addition to the conditions above, in the case of a Change of Control of H&S, H&S shall provide Fortune Brands an opinion from Qualified Counsel concluding that H&S more likely than not shall prevail on the H&S Non-Separated Issues.

(2) Fortune Brands shall accept or enter into a settlement at the reasonable request of H&S unless: (x) the settlement relates to an issue the settlement of which would cause an individual payment obligation for Fortune Brands of $75,000 (seventy-five thousand dollars) or greater (including tax, interest and penalties) under this Agreement (a "**Fortune Brands Non-Separated Issue**"); (y) Fortune Brands has provided H&S with Fortune Brands' responses to all information document requests or similar requests from the Taxing Authority with respect to all Fortune Brands Non-Separated Issues and (z) the settlement of all Fortune Brands Non-Separated Issues and Fortune Brands Separated Issues would cause an aggregate payment obligation for Fortune Brands of $750,000 (seven hundred and fifty thousand dollars) or greater. In addition to the conditions above, in the case of a Change of Control of Fortune Brands, Fortune Brands shall provide H&S an opinion from Qualified Counsel concluding that Fortune Brands more likely than not shall prevail on the Fortune Brands Non-Separated Issues.

(c) Participation Rights; Information Sharing.

(i) The Parties shall arrange for a meeting or conference call to be held on a monthly basis (or on such other basis as the Parties may agree) in order to facilitate regular communication on the status of any Pre-Distribution U.S. Income Tax Audit. The Parties may determine from time to time to have separate special meetings to discuss significant Audit issues.

(ii) Upon the reasonable request of H&S or Fortune Brands, as the case may be, Fortune Brands and its Subsidiaries or H&S and its Subsidiaries, shall make available relevant personnel to meet with the other Party, its Subsidiaries, or its independent auditor, in order to review the status of any Pre-Distribution U.S. Income Tax Audit.

(iii) H&S shall have access to any written documentation in the possession of any Fortune Brands Party that pertains to any Pre-Distribution U.S. Income Tax Audit (including any written summaries of issues that any Fortune Brands Party has developed in the context of evaluating financial reporting matters) and Fortune Brands shall make such documentation available to H&S in the offices of Fortune Brands. Such access shall be provided at such times and in such manner as the Parties agree, but no less frequently than monthly. Copies of the documentation will be made available to H&S at its sole cost and expense.

(iv) With respect to any Pre-Distribution U.S. Income Tax Audit, H&S's participation rights shall include, but not be limited to, the right to attend all conferences and participate in all conversations with the Taxing Authority relating to both H&S Separated Issues and H&S Non-Separated Issues. Fortune Brands shall provide on a timely basis to H&S copies of all documents, including but not limited to all correspondence with the Taxing Authority, which relates to an H&S Separated Issue or H&S Non-Separated Issue. In addition, Fortune Brands shall provide H&S all submissions to the Taxing Authority which relate to an H&S Separated Issue or a H&S Non-Separated Issue at least 2 Business Days in advance of submitting to the Taxing Authority to allow H&S the opportunity to review and comment on the proposed submission.

(d) Costs and Expenses. Each Party (or its Subsidiaries) shall be responsible for its own costs and expenses (including all costs and expenses of calculating Taxes and other amounts payable and any reporting obligations that arise out of an Audit, such as the reporting of any Audit adjustments to the various U.S. states) incurred with respect to a Pre-Distribution U.S. Income Tax Audit; provided, however, that if a Party (the "**Challenging Party**") incurs costs and expenses related to the contest of an issue with respect to such Pre-Distribution U.S. Income Tax Audit for which the other Party (the "**Non-Challenging Party**") could be liable under this Agreement and the Non-Challenging Party opts to discontinue the contest of the issue, then the Challenging Party shall be permitted to recover from the Non-Challenging Party and the Non-Challenging Party shall pay such costs and expenses incurred by the Challenging Party to contest such issue in an amount equal to (i) the ratio of the Non-Challenging Party's Benefit to the Total Benefit, multiplied by (ii) the costs and expenses incurred by the Challenging Party with respect to the issue; provided, however, that such amount shall not exceed the Non-Challenging Party's Benefit (tax effected at the highest applicable Income Tax rate). For purposes of this Section 9.2(d), the "**Total Benefit**" shall be equal to excess of (i) the amount by which the Taxing

Authority is willing to accept in settlement of the issue (the "**Initial Amount**") over (ii) the amount ultimately included in a Final Determination in respect to the issue (the "**Final Amount**"). For purposes of this Section 9.2(d), the "**Non-Challenging Party's Benefit**" shall equal the excess of (but not below zero) (i) the Non-Challenging Party's allocable portion of the Initial Amount, as determined under this Agreement over (ii) the Non-Challenging Party's allocable portion of the Final Amount, as determined under this Agreement.

SECTION 9.3 Payment of Audit Amounts.

(a) Pre-Distribution U.S. Income Tax Audits. In connection with any Final Determination with respect to a Pre-Distribution U.S. Income Tax Audit:

(i) Fortune Brands shall be liable for and shall pay or cause to be paid to the applicable Taxing Authority the additional Taxes due and payable as a result of such Final Determination that are attributable to a Pre-Distribution Tax Period or the portion of a Straddle Tax Period ending on the Distribution Date.

(ii) H&S shall be liable for and shall pay or cause to be paid to the applicable Taxing Authority or Fortune Brands (as the case may be) an amount equal to the H&S Allocable Audit Portion of the additional Taxes due and payable as a result of such Final Determination that are attributable to a Pre-Distribution Tax Period or the portion of a Straddle Tax Period ending on the Distribution Date.

(b) Audits Other than Pre-Distribution U.S. Income Tax Audits. In connection with any Final Determination with respect to an Audit other than a Pre-Distribution U.S. Income Tax Audit:

(i) Fortune Brands shall be liable for and shall pay or cause to be paid to the applicable Taxing Authority the amount due and payable as a result of such Final Determination to the extent Fortune Brands is responsible for such amounts under applicable Law.

(ii) H&S shall be liable for and shall pay or cause to be paid to the applicable Taxing Authority the amount due and payable as a result of such Final Determination to the extent H&S is responsible for such amounts under applicable Law.

(c) Adjustments to Refunds. Notwithstanding Section 9.3(a) or 9.2(b), if a Final Determination with respect to an Audit includes an adjustment to a Refund previously received by a Party (or its Subsidiary) in accordance with Section 4.1, such Party shall pay any Taxes that become due and payable as a result of such adjustment.

(d) Payment Procedures.

(i) Preliminary Determination. In connection with any Final Determination with respect to an Audit that results in an amount to be paid pursuant to Section 9.3(a), Fortune Brands shall, within 30 Business Days following a final resolution of such Audit, submit in writing to H&S a preliminary determination (calculated and explained in detail reasonably sufficient to enable H&S to fully understand the basis for such determination and to permit H&S to satisfy its financial reporting requirements) of the portion of such amount to be paid by each of the Parties pursuant to Section 9.3(a), as applicable.

(ii) Access to Data. Fortune Brands shall have access to all data and information necessary to calculate such amounts and H&S shall cooperate fully in the determination of such amounts.

(iii) Objection Rights. Within 20 Business Days following the receipt by H&S of the information described in Section 9.3(d)(i), H&S shall have the right to object only to the calculation of the amount of the payment (but not the basis for the payment) by written notice to Fortune Brands; such written notice shall contain such disputed item or items and the basis for the objection. If H&S does not object by proper written notice to Fortune Brands within such 20 day period, the calculation of the amounts due and owing from H&S shall be deemed to have been accepted and agreed upon, and final and conclusive, for purposes of Section 9.3(d). If H&S objects by proper written notice to Fortune Brands within such time period, the Parties shall act in good faith to resolve any such dispute as promptly as practicable, and if any such dispute is not resolved within 30 days, such dispute shall be deemed not to have been resolved pursuant to Section 12.2(a) and shall be resolved in accordance with Section 12.2(b). Notwithstanding any pending dispute with respect to the H&S Allocable Audit Portion, Fortune Brands is responsible for paying to the applicable Taxing Authority under applicable Law amounts owed pursuant to a Final Determination and shall make such payments to such Taxing Authority prior to the due date for such payments. H&S shall reimburse Fortune Brands in accordance with Article VIII for the portion of such payments for which H&S is liable (including interest thereon determined pursuant to Section 8.1(b) commencing from the date Fortune Brands made the payment described in the preceding sentence), if any, pursuant to this Section 9.3.

SECTION 9.4 Correlative Adjustments. If a Pre-Distribution U.S. Income Tax Audit results in a Final Determination that causes a Correlative Adjustment to one Party (or its Subsidiary) and a corresponding Tax Benefit to the other Party (or its Subsidiary), such other Party shall pay the amount of the Tax Benefit to the first Party.

ARTICLE X

COOPERATION AND EXCHANGE OF INFORMATION

SECTION 10.1 Cooperation and Exchange of Information. The Parties shall each cooperate fully (and each shall cause its respective Subsidiaries to cooperate fully) and in a timely manner (considering the other Party's normal internal processing or reporting requirements) with all reasonable requests from the other Party, or from an agent, representative, or advisor to the other Party, in connection with the preparation and filing of Tax Returns, claims for Refund, Audits, determinations of Tax Attributes and the calculation of Taxes or other amounts required to be paid hereunder, and any applicable financial reporting requirements of a Party or any Subsidiary thereof, in each case, related or attributable to or arising in connection with Taxes or Tax Attributes of either Party or Subsidiary thereof. Such cooperation shall include:

(a) the retention until the expiration of the applicable statute of limitations or, if later, until the expiration of all relevant Tax Attributes (in each case taking into account all waivers and extensions), and the provision upon request, of copies of Tax Returns of the Parties and their respective Subsidiaries for periods up to and including the Distribution Date, books, records (including information regarding ownership and Tax basis of property), documentation, and other information relating to such Tax Returns, including accompanying schedules, related work papers, and documents relating to rulings or other determinations by Taxing Authorities;

(b) the execution of any document that may be necessary or reasonably helpful in connection with any Audit of either of the Parties or their respective Subsidiaries, or the filing of a Tax Return or Refund claim of the Parties or any of their respective Subsidiaries (including the signature of an officer of a Party or any Subsidiary thereof);

(c) at the other Party's sole cost and expense, the use of the Party's reasonable best efforts to obtain any documentation and provide additional facts, insights or views as requested by the other Party that may be necessary or reasonably helpful in connection with any of the foregoing (including any information contained in Tax or other financial information databases);

(d) at the other Party's sole cost and expense, the use of the Party's reasonable best efforts to obtain any Tax Returns (including accompanying schedules, related work papers, and documents), documents, books, records, or other information that may be necessary or helpful in connection with any Tax Returns of any of the other Party or any Subsidiary thereof; and

(e) such services as described on Schedule 10.1(e).

Each Party shall make its and its Subsidiaries' employees and facilities available on a reasonable and mutually convenient basis in connection with the foregoing matters. Except as explicitly provided in this Agreement, no reimbursement shall be made for costs and expenses incurred by the Parties as a result of cooperating pursuant to this Section 10.1. Notwithstanding the foregoing, in no event shall the H&S Parties be required to comply with the foregoing provisions of this Section 10.1 to the extent that compliance would require the H&S Parties to exceed the limitations set forth on Schedule 10.1(e).

SECTION 10.2 Retention of Records. Subject to Section 10.1, if either of the Parties or their respective Subsidiaries intends to dispose of any documentation (including documentation that is being retained pursuant to IRS guidelines, such as Revenue Procedure 98-25 and Revenue Procedure 97-22) relating to the Taxes of the Parties or their respective Subsidiaries for which the other Party may be responsible pursuant to the terms of this Agreement (including Tax Returns, books, records, documentation, and other information, accompanying schedules, related work papers, and documents relating to rulings or other determinations by Taxing Authorities), such Party shall or shall cause written notice to the other Party describing the documentation to be destroyed or disposed of 60 Business Days prior to taking such action. The other Party may arrange to take delivery of the documentation described in the notice at its expense during the succeeding 60 day period.

SECTION 10.3 Confidentiality. For the avoidance of doubt, to the extent applicable, the obligations imposed pursuant to the Separation and Distribution Agreement (including those specified in Section 11.8 of the Separation and Distribution Agreement) with respect to confidentiality shall apply with respect to any information relating to Tax matters.

ARTICLE XI

ALLOCATION OF TAX ATTRIBUTES AND OTHER TAX MATTERS

SECTION 11.1 Allocation of Tax Attributes. Each Party shall make its own determination as to the existence and the amount of the Tax Attributes to which it is entitled after the Effective Time; provided, however, that such determination shall be made in a manner that is (a) reasonably consistent with the past practices of the Parties; (b) in accordance with the rules prescribed by applicable Law, including the Code and the Treasury Regulations; (c) consistent with the IRS Ruling, the Tax Representation Letters, and the Tax Opinions; and (d) reasonably determined by the Party to minimize the aggregate cash Tax liability of the Parties for all Pre-Distribution Tax Periods and the portion of all Straddle Tax Periods ending on the Distribution Date. Each Party agrees to provide the other Party with all of the information supporting the Tax Attribute determinations made by that Party pursuant to this Section 11.1.

SECTION 11.2 Third Party Tax Indemnities and Benefits.

(a) Notwithstanding anything to the contrary in this Agreement, to the extent that pursuant to any agreement to which any H&S Party is a party, any H&S Party has the right to indemnification by any Person (other than any H&S Party or Fortune Brands Party) with respect to Taxes that arise or are attributable to a period (or portion thereof) ending on or prior to the Distribution Date, H&S shall be responsible for such Taxes and shall be entitled to receive all Tax indemnities related thereto.

(b) Notwithstanding anything to the contrary in this Agreement, to the extent that pursuant to any agreement to which any Fortune Brands Party is a party, any Fortune Brands Party has the right to indemnification by any Person (other than any H&S Party or Fortune Brands Party) with respect to Taxes that arise or are attributable to a period (or portion thereof) ending on or prior to the Distribution Date, Fortune Brands shall be responsible for such Taxes and shall be entitled to receive all Tax indemnities related thereto.

SECTION 11.3 Allocation of Tax Items. All determinations (whether for purposes of preparing Tax Returns or for purposes of determining a Party's responsibility for Taxes under this Agreement) regarding the allocation of Tax items between the portion of a Straddle Tax Period that ends on the Distribution Date and the portion of such Straddle Tax Period that begins the day after the Distribution Date shall be made pursuant to the principles of Treasury Regulations Section 1.1502-76(b) or of a corresponding provision under the Laws of the applicable taxing jurisdiction; provided, however, that Tax items may be ratably allocated to the extent provided by and pursuant to the principles of Treasury Regulations Section 1.1502-76(b)(2)(ii). Any such allocation of Tax items shall initially be determined by Fortune Brands. To the extent that H&S disagrees with such determination, the dispute shall be resolved pursuant to the provisions of Section 12.2.

ARTICLE XII

MISCELLANEOUS

SECTION 12.1 Entire Agreement; Exclusivity. This Agreement, including the Schedules and Exhibits referred to herein contains the entire understanding of the Parties with regard to the subject matter contained herein, and supersedes all prior agreements, negotiations, discussions, understandings, writings and commitments between any of the Fortune Brands Parties, on the one hand, and any of the H&S Parties, on the other hand, with respect to all matters related to Taxes or Tax Returns of the Fortune Brands Parties or the H&S Parties. Except as specifically set forth in the Separation and Distribution Agreement or any other Transaction Agreement, all matters related to Taxes or Tax Returns of any of the Fortune Brands Parties or the H&S Parties shall be governed exclusively by this Agreement.

SECTION 12.2 Dispute Resolution; Mediation.

(a) Subject to Section 12.2(c), either Party seeking resolution of any dispute, controversy or claim arising out of or relating to this Agreement, or the validity, interpretation, breach or termination of this Agreement (a "**Dispute**"), shall provide written notice thereof to the other Party, and following delivery of such notice, the Parties shall attempt in good faith to negotiate a resolution of the Dispute. The negotiations shall be conducted by executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for the subject matter of the Dispute. All such negotiations shall be confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. If the Parties are unable for any reason to resolve a Dispute within 30 days after the delivery of such notice, the Dispute shall be submitted to mediation in accordance with Section 12.2(b).

(b) Any Dispute not resolved pursuant to Section 12.2(a) shall, at the written request of any Party (a "**Mediation Request**"), be submitted to non-binding mediation in accordance with the then current International Institute for Conflict Prevention and Resolution ("**CPR**") Mediation Procedure (the "**Procedure**"), except as modified herein. The mediation shall be held in Chicago, Illinois. The parties shall have 20 days from receipt by a party (or parties) of a Mediation Request to agree on a mediator. If no mediator has been agreed upon by the parties within 20 days of receipt by a party (or parties) of a Mediation Request, then any party may request (on written notice to the other party), that the CPR appoint a mediator in accordance with the Procedure. All mediation pursuant to this clause shall be confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence, and no oral or documentary representations made by the parties during such mediation shall be admissible for any purpose in any subsequent proceedings. No Party shall disclose or permit the disclosure of any information about the evidence adduced or the documents produced by any other party in the mediation proceedings or about the existence, contents or results of the mediation without the prior written consent of such other party except in the course of a judicial or regulatory proceeding or as may be required by Law or requested by a Governmental Authority or securities exchange. Before making any disclosure permitted by the preceding sentence, the party intending to make such disclosure shall, to the extent reasonably practicable, give the other party reasonable written notice of the intended disclosure and afford the other

party a reasonable opportunity to protect its interests. If the Dispute has not been resolved within 60 days of the appointment of a mediator, or within 90 days of receipt by a party (or parties) of a Mediation Request (whichever occurs sooner), or within such longer period as the parties may agree to in writing, then any party may file an action on the Dispute in any court having jurisdiction in accordance with Section 12.4.

(c) Notwithstanding the foregoing provisions of this Section 12.2, (i) any party may seek preliminary provisional or injunctive judicial relief without first complying with procedures set forth in Section 12.2(a) and Section 12.2(b) if such action is necessary to avoid irreparable damage and (ii) either party my initiate litigation before the expiration of the periods specified in Section 12.2(b) if such party has submitted a Mediation Request and the other party has failed to participate.

SECTION 12.3 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws (as opposed to the conflicts of law provisions) of the State of Delaware.

SECTION 12.4 Submission to Jurisdiction; Waiver of Jury Trial. Each of Fortune Brands and H&S, on behalf of itself and each of its Affiliates, hereby irrevocably (a) submits in any Dispute to the exclusive jurisdiction of the United States District Court for the Northern District of Illinois and the jurisdiction of any court of the State of Illinois located in Chicago, Illinois, (b) waives any and all objections to jurisdiction that they may have under the Laws of the State of Illinois or the United States, (c) agrees that service of any process, summons, notice or document by U.S. registered mail to its respective address set forth in Section 12.11 shall be effective service of process for any litigation brought against it in any such court and (d) UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN CONNECTION WITH ANY DISPUTE (AS DEFINED HEREIN).

SECTION 12.5 Amendment. This Agreement shall not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each of Fortune Brands and H&S.

SECTION 12.6 Waiver. Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or parties entitled to the benefit thereof. Any such waiver shall be validly and sufficiently given for the purposes of this Agreement if, as to either party, it is in writing signed by an authorized representative of such party. The failure of either party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, or in any way to affect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

SECTION 12.7 Partial Invalidity. Wherever possible, each provision hereof shall be construed in a manner as to be effective and valid under applicable Law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provision hereof, unless such a construction would be unreasonable.

SECTION 12.8 Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original instrument, but both of which shall be considered one and the same agreement, and shall become binding when the counterparts have been signed by and delivered to each of the Parties.

SECTION 12.9 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns; provided, however, that the rights and obligations of either party under this Agreement shall not be assignable by such party without the prior written consent of the other party. The successors and permitted assigns hereunder shall include any permitted assignee as well as the successors in interest to such permitted assignee (whether by merger, liquidation (including successive mergers or liquidations) or otherwise).

SECTION 12.10 Third-Party Beneficiaries. This Agreement is solely for the benefit of the Parties and their respective Subsidiaries, Affiliates, successors and permitted assigns, and nothing herein express or implied shall give or be construed to give to any other Person any legal or equitable rights hereunder.

SECTION 12.11 Notices. All notices, requests, claims, demands and other communications required or permitted hereunder shall be in writing and shall be deemed given or delivered (a) when delivered personally, (b) if transmitted by facsimile when confirmation of transmission is received, (c) if sent by registered or certified mail, postage prepaid, return receipt requested, on the third Business Day after mailing or (d) if sent by nationally recognized overnight courier, on the first Business Day following the date of dispatch; and shall be addressed as follows:

If to Fortune Brands prior to the Effective Time, to:

Fortune Brands, Inc.
520 Lake Cook Road
Deerfield, Illinois 60015
Attention: General Counsel
Facsimile: 847-484-4490

If to Fortune Brands at or after the Effective Time, to:

Fortune Brands, Inc.
510 Lake Cook Road
Deerfield, Illinois 60015
Attention: General Counsel
Facsimile: 847-948-8610

If to H&S, to:

Fortune Brands Home & Security, Inc.
520 Lake Cook Road
Deerfield, Illinois 60015
Attention: General Counsel
Facsimile: 847-484-4490

or to such other address as such party may indicate by a notice delivered to the other party.

SECTION 12.12 Performance. Fortune Brands will cause to be performed and hereby guarantees the performance of all actions, agreements and obligations set forth herein to be performed by any Fortune Brands Party. H&S will cause to be performed and hereby guarantees the performance of all actions, agreements and obligations set forth herein to be performed by any H&S Party.

SECTION 12.13 Force Majeure. No party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations under this Agreement results from any cause beyond its reasonable control and without its fault or negligence, including acts of God, acts of civil or military authority, embargoes, acts of terrorism, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, unusually severe weather conditions, labor problems or unavailability of parts, or, in the case of computer systems, any failure in electrical or air conditioning equipment. In the event of any such excused delay, the time for performance shall be extended for a period equal to the time lost by reason of the delay.

SECTION 12.14 Termination. Notwithstanding anything to the contrary contained herein, this Agreement may be terminated at any time prior to the Distribution by and in the sole discretion of the Fortune Board without the prior approval of any Person. In the event of such termination, this Agreement shall forthwith become void, and no Party shall have any liability to any Person by reason of this Agreement.

SECTION 12.15 Limited Liability. Notwithstanding any other provision of this Agreement, no individual who is a stockholder, director, employee, officer, agent or representative of H&S or Fortune Brands, in such individual's capacity as such, shall have any liability in respect of or relating to the covenants or obligations of H&S or Fortune Brands, as applicable, under this Agreement and, to the fullest extent legally permissible, each of H&S and Fortune Brands, for itself and its stockholders, directors, employees, officers and Affiliates, waives and agrees not to seek to assert or enforce any such liability that any such individual otherwise might have pursuant to applicable Law.

SECTION 12.16 Survival. Except as otherwise expressly provided herein, all covenants, conditions and agreements of the Parties contained in this Agreement shall remain in full force and effect and shall survive the Distribution Date.

SECTION 12.17 No Circumvention. Each Party agrees not to directly or indirectly take any actions, act in concert with any Person who takes any action, or cause or allow any of its Subsidiaries to take any actions (including the failure to take any reasonable action) such that the resulting effect is to materially undermine the effectiveness of any of the provisions of this Agreement (including adversely affecting the rights or ability of any Party to successfully pursue indemnification or payment pursuant to the provisions of this Agreement).

SECTION 12.18 Changes in Law. If, due to any change in applicable Law or regulations or their interpretation by any Governmental Authority having jurisdiction subsequent to the date hereof, performance of any provision of this Agreement or any transaction contemplated hereby shall become impracticable or impossible, the Parties shall use their commercially reasonable best efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such provision.

SECTION 12.19 Authority. Each of the Parties represents to the other Party that (a) it has the corporate power (corporate or otherwise) and authority to execute, deliver and perform this Agreement, (b) the execution, delivery and performance of this Agreement by it have been duly authorized by all necessary corporate or other action, (c) it has duly and validly executed and delivered this Agreement, and (d) this Agreement is a legal, valid, and binding obligation, enforceable against it in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium, or other similar Laws affecting creditors' rights generally and general equity principles.

SECTION 12.20 Tax Allocation Agreements. All Tax sharing, indemnification and similar agreements, written or unwritten, as between any of the Fortune Brands Parties, on the one hand, and any of the H&S Parties, on the other hand (other than this Agreement or in any other Transaction Agreement), shall automatically terminate as of the Distribution Date and, after the Distribution Date, no Party to any such Tax sharing, indemnification or similar agreement shall have any further rights or obligations under any such agreement.

SECTION 12.21 No Duplication; No Double Recovery. Nothing in this Agreement is intended to confer or impose upon any Party a duplicative right, entitlement, obligation, or recovery with respect to any matter arising out of the same facts and circumstances.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their authorized representatives as of the date first written above.

FORTUNE BRANDS, INC.

By: /s/ Bruce A. Carbonari
Name: Bruce A. Carbonari
Title: Chairman of the Board and Chief Executive Officer

FORTUNE BRANDS HOME & SECURITY, INC.

By: /s/ Christopher J. Klein
Name: Christopher J. Klein
Title: President and Chief Executive Officer

EXHIBIT A

Plan of Separation

Step	Description
1	Fortune Brands, Inc. (“FO”) contributes the Master Lock Company LLC (“ML”) intercompany receivable to ML.
2	FO transfers the Fortune Brands Home & Security, LLC (“FOHS”) intercompany note receivable to FOHS.
3	ML elects to be treated as an association by filing Form 8832 effective as of the day following step 1.
4	Fortune Brands Finance Canada, Ltd. (“Canada FinCo”) settles its intercompany positions with all non-FOHS Canadian companies.
5	Beam Global Spirits & Wine Europe S.a.r.l. (“Lux FinCo”) repays its intercompany loans with Home & Security foreign entities.
6	Jim Beam Brands Canada, L.P. (“JBB Canada”) settles its outstanding intercompany debt with FOHS foreign group of companies (including Canada FinCo).
7	Fortune Brands Finance UK plc (“Irish FinCo”) settles intercompany amounts with all FOHS companies.
8	FO and the various FOHS US subsidiaries restructure the Home & Security intercompany financing.
	a. FO transfers any net additional intercompany notes receivable from FOHS to FOHS (incurred subsequent to step 2).
	b. Simonton subgroup intercompany financing restructuring transactions -contribution to FOHS.
	c. MasterBrand Cabinets, Inc. (“MBCI”) subgroup intercompany financing restructuring transactions - contribution to FOHS.
	d. Moen Incorporated (“Moen”) subgroup intercompany financing restructuring transactions - contribution to FOHS.
	e. Therma-Tru (“TT”) subgroup intercompany financing restructuring transactions - contribution to FOHS.
	f. Waterloo Industries (“Waterloo”) intercompany financing restructuring transactions - contribution to FOHS.
9	Bulrad Illinois, Inc. is merged into Omega Cabinets Inc.
10	Omega Cabinets Inc. is merged into MBCI.
11	a. 20th Century Holdings Companies, Inc. and 21st Century Companies, Inc. are merged with and into Moen.
	b. Dixie Pacific Manufacturing LLC is merged with and into Simonton Holdings Inc.
	c. Hy-Lite Products Inc. is merged with and into Simonton Holdings Inc.
12	FO transfers the shares of 1700 Insurance Co. Ltd. (“Insurance”) to FOHS.

EXHIBIT A

Plan of Separation

13 FO transfers the shares of Canada FinCo to FOHS.

14 Wood Terminal Co. is converted to a Delaware limited liability company.

15 BGSW is converted to a Delaware limited liability company ("BGSW LLC").

16 FO incorporates Beam Inc., a Delaware corporation.

17 Transfer & capitalize intercompany debt balance between FO and FOHS as of the close of the day prior to step 19.

18 FO transfers the assets associated with the H&S business to FOHS and FOHS assumes from FO any liabilities associated with the H&S business (excluding step 17 amount).

19 FOHS is converted from a Delaware LLC to a Delaware corporation ("SpinCo").

20 FO contributes a short-term receivable from Fortune Brands International Corp. ("FBIC") to FBIC.

21 FO contributes all stock in FBIC to SpinCo in exchange for additional share(s) of SpinCo stock.

22 FBIC is converted from a Delaware corporation to a Delaware LLC.

23 SpinCo issues additional shares to FO in order for the total outstanding shares of SpinCo to be equal to the number of shares to be distributed in the step 26 distribution.

24 FO/SpinCo settle final intercompany amounts, with FO contributing to SpinCo the net intercompany receivable, if any, due from SpinCo. To the extent that there is no intercompany receivable and SpinCo has excess U.S. cash balances, such cash will be distributed by SpinCo as described in step 25.

25 SpinCo borrows from a third-party lender pursuant to a short-term note (the "Short-Term Debt") and distributes the borrowed cash plus all U.S. cash balances (referenced in step 24) in SpinCo and affiliates to FO. FO guarantees SpinCo's obligations under the Short-Term Debt (the "Guarantee") in exchange for an arm's length guarantee fee.

26 FO distributes 100% of the outstanding shares of SpinCo pro-rata to the FO shareholders in a tax-free spin-off transaction. FO does not distribute fractional shares of SpinCo stock in the distribution, but transfers any such interest on behalf of the FO shareholders to a distribution agent. The distribution agent aggregates fractional shares of SpinCo stock into whole shares and sells the whole shares on the open market at prevailing market prices. The distribution agent then distributes the aggregate cash proceeds, net of brokerage fees and other costs, pro rata to each FO shareholder who would otherwise have been entitled to receive a fractional share of SpinCo stock in the distribution.

27 SpinCo refinances the Short-Term Debt with a long-term third-party credit facility and the Guarantee expires.

EXHIBIT A

Plan of Separation

Step	Description
28	Beam Inc. merges with and into FO, with FO surviving. As a result of the merger, FO changes its name to Beam Inc.
29	FO transfers the cash received from SpinCo to FO’s creditors in repayment of outstanding debt.

Schedule 10.1(e)

Services to be Provided by H&S to Fortune Brands

Service	Service Description	Expiration Date[1]	Fee
Tax Audit Support	• Assistance of tax personnel with respect to Pre-Distribution U.S. Income Tax Audits and combined/consolidated/unitary state or foreign audits related to any Pre-Distribution Income Tax Returns or any Straddle Period Income Tax Returns. Assistance shall include: • responding to document requests • meetings and/or calls necessary to formulate historical bases, and, • support for tax return positions, however such referenced services are with respect to entities other than H&S Parties.	December 31, 2021 (approx. 600 hours)	$200

[1] The estimated number of hours is provided merely to provide guidance with respect to the scope of the service. In no event shall the estimate be deemed to be a cap on the number of hours of services to be provided at the fee indicated, and Fortune Brands shall not be entitled to any refund if the actual number of hours of services provided is less than the estimate set forth herein.

Schedule 2.1(a)

Preparation of Pre-Distribution Income Tax Returns and Straddle Period Income Tax Returns

Pursuant to Section of 2.1 of the Tax Allocation Agreement, the responsibility to prepare or cause to be prepared Pre-Distribution Income Tax Returns and Straddle Period Income Tax Returns, in accordance to the Agreement, shall be as follows:

Tax Return	Responsible Party
U.S. Federal Income Tax Return	Fortune Brands
State Combined / Consolidated / Unitary Income Tax Returns – Income Tax Returns That Include Both Fortune Brands Parties and H&S Parties	Fortune Brands
Separate State Income Tax Returns Other Than Combined / Consolidated / Unitary	Income Tax Returns that do not include both Fortune Brands Parties and H&S Parties will be separately prepared by each party as applicable
Foreign Income Tax Returns	Income Tax Returns that do not include both Fortune Brands Parties and H&S Parties will be separately prepared by each party as applicable

Exhibit 10.2

EMPLOYEE MATTERS AGREEMENT

THIS EMPLOYEE MATTERS AGREEMENT is made as of September 28, 2011 by and between Fortune Brands, Inc., a Delaware corporation, which intends to change its name to Beam Inc. after the Distribution (**"Fortune Brands"** or **"Beam"**), and Fortune Brands Home & Security, Inc., a Delaware corporation (**"H&S"**), and, as of the date hereof, a wholly-owned subsidiary of Fortune Brands.

WHEREAS, Fortune Brands and H&S have entered into a Separation and Distribution Agreement dated as of September 27, 2011 (the **"Distribution Agreement"**) pursuant to which Fortune Brands will distribute on a *pro rata* basis to the holders of shares of Fortune Brands' common stock, par value $3.125 per share (**"Fortune Brands Shares"**), without any consideration being paid by the holders of such Fortune Brands Shares, all of the outstanding post-Conversion shares of H&S common stock, par value $0.01 per share (**"H&S Shares"**), owned by Fortune Brands as of the Distribution Date (as defined in the Distribution Agreement); and

WHEREAS, in connection with the Distribution, Fortune Brands and H&S desire to enter into this Employee Matters Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and in the Distribution Agreement, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.01 Definitions. Unless otherwise defined herein, each capitalized term shall have the meaning specified for such term in the Distribution Agreement. As used in this Agreement:

"Adjusted Fortune Brands Option" has the meaning set forth in Section 6.01(b) of this Agreement.

"Adjusted Fortune Brands RSU Award" has the meaning set forth in Section 6.02(b) of this Agreement.

"Agreement" means this Employee Matters Agreement together with those parts of the Distribution Agreement referenced herein and all schedules hereto and all amendments, modifications and changes hereto and thereto.

"Beam" has the meaning set forth in the recitals of this Agreement.

"Beam FSA" has the meaning set forth in Section 4.05 of this Agreement.

"Business Employee" means (i) each individual who immediately prior to the Distribution Date is employed by an H&S Party, including each Transferred Employee, and (ii) each former employee of a Fortune Brands Party or an H&S Party whose last employment with any of such parties prior to termination was with an H&S Party.

"Code" means the Internal Revenue Code of 1986.

"CSOC" means the Compensation and Stock Option Committee of the Fortune Brands Board of Directors or the Compensation Committee of the H&S Board of Directors, as the case may be.

"DB Master Trust" has the meaning set forth in Section 3.02(a) of this Agreement.

"DC Master Trust" has the meaning set forth in Section 3.01(b) of this Agreement.

"Departing Employee" means an employee of a Fortune Brands Party listed on Exhibit A who will retire or be involuntarily terminated as a result of the Distribution.

"Distribution Agreement" has the meaning set forth in the recitals of this Agreement.

"ERISA" means the Employee Retirement Income Security Act of 1974.

"Fortune Brands" has the meaning set forth in the recitals of this Agreement.

"Fortune Brands FSA" has the meaning set forth in Section 4.05 of this Agreement.

"Fortune Brands LTIPs" means the Fortune Brands, Inc. 1999 Long-Term Incentive Plan, the Fortune Brands, Inc. 2003 Long-Term Incentive Plan, the Fortune Brands, Inc. 2007 Long-Term Incentive Plan, the Fortune Brands, Inc. 2011 Long-Term Incentive Plan, the Fortune Brands, Inc. Non-Employee Director Stock Option Plan, the Fortune Brands, Inc. 2002 Non-Employee Director Stock Option Plan, the Fortune Brands, Inc. 2005 Non-Employee Director Stock Plan, the Fortune Brands, Inc. Stock Plan for Non-Employee Directors and the Fortune Brands, Inc. 2010 Non-Employee Director Stock Plan.

"**Fortune Brands Non-ERISA Benefit Arrangement**" means any Non-ERISA Benefit Arrangement sponsored or maintained by a Fortune Brands Party.

"Fortune Brands Options" means stock options granted under the Fortune Brands LTIPs.

"Fortune Brands Plan" means any Pension Plan or Welfare Plan sponsored or maintained by a Fortune Brands Party.

"Fortune Brands Post-Distribution Stock Price" means the per share price of Fortune Brands Shares immediately after the Distribution, which shall be equal to the average of the volume weighted average price of Fortune Brands Shares for each of the three consecutive trading days immediately following the Distribution Date.

"Fortune Brands Pre-Distribution Stock Price" means the per share price of Fortune Brands Shares immediately prior to the Distribution, which shall be equal to the per share closing price of Fortune Brands Shares on Distribution Date, trading "with due bills."

"Fortune Brands RSUs" means restricted stock units granted under any of the Fortune Brands LTIPs.

"Fortune Brands Shares" has the meaning set forth in the recitals of this Agreement.

"Fortune Brands Supplemental Plan" means the Fortune Brands, Inc. Supplemental Plan.

"Fortune Brands Welfare Plans" means a Welfare Plan sponsored or maintained by a Fortune Brands Party.

"Fortune FSA Participant" has the meaning set forth in Section 4.05 of this Agreement.

"H&S" has the meaning set forth in the recitals of this Agreement.

"H&S Employee" means a person who is employed by an H&S Party immediately following the Distribution Date.

"H&S FSA" has the meaning set forth in Section 4.05 of this Agreement.

"H&S Hourly RSP" has the meaning set forth in Section 3.01(c) of this Agreement.

"H&S LTIP" has the meaning set forth in Section 6.01(a) of this Agreement.

"H&S Pension Plans" means the Master Lock Pension Plan, the Moen Incorporated Pension Plan, the Masterbrand Cabinets Inc. Pension Plan and the Aristokraft Inc. Jasper Indiana Service Related Pension Plan.

"H&S Post-Distribution Stock Price" means the per share price of H&S Shares immediately after the Distribution, which shall be equal to the average of the volume weighted average price of H&S common stock for each of the three consecutive trading days immediately following the Distribution Date.

"H&S Salaried RSP" has the meaning set forth in Section 3.01 of this Agreement.

"H&S Shares" has the meaning set forth in the recitals of this Agreement.

"H&S Supplemental Plans" means the Masterbrand Cabinets, Inc. Supplemental Retirement Plan, the Master Lock Company LLC Supplemental Retirement Plan, the Moen Incorporated Supplemental Retirement Plan, the Therma-Tru Corp. Supplemental Executive Retirement Plan and the Waterloo Industries, Inc. Supplemental Retirement Plan.

"H&S Welfare Plan" means a Welfare Plan sponsored or maintained by an H&S Party.

"Intrinsic Value" means (a) in the case of a Fortune Brands Option immediately prior to the Distribution, the difference between the Fortune Brands Pre-Distribution Stock Price and the per share exercise price of such Fortune Brands Option, (b) in the case of an Adjusted Fortune Brands Option or Split Fortune Brands Option immediately after the Distribution, the difference between the Fortune Brands Post-Distribution Stock Price and the per share exercise price of such Adjusted Fortune Brands Option or Split Fortune Brands Option and (c) in the case of a

Substitute H&S Option or Split H&S Option immediately after the Distribution, the difference between the H&S Post-Distribution Stock Price and the per share exercise price of such Substitute H&S Option or Split H&S Option, in each case multiplied by the number of Fortune Brands Shares or H&S Shares, as the case may be, subject to such option.

"IRS" means the Internal Revenue Service.

"Nominating Committee" means the Nominating and Corporate Governance Committee of the Fortune Brands Board of Directors.

"Non-ERISA Benefit Arrangement" means any contract, agreement, policy, practice, program, plan, trust or arrangement, other than a Pension Plan or Welfare Plan, providing for benefits, perquisites or compensation of any nature to any Business Employee, or to any family member, dependent or beneficiary of any such Business Employee, including tuition reimbursement, supplemental unemployment, vacation, sick, personal or bereavement days, holidays, retirement, deferred compensation, profit sharing, bonus, stock-based compensation or other forms of incentive compensation.

"Pension Plan" means any pension plan as defined in Section 3(2) of ERISA, without regard to Section 4(b)(4) or 4(b)(5) of ERISA.

"Split Fortune Brands Option" has the meaning set forth in Section 6.01(c) of this Agreement.

"Split Fortune Brands RSU Award" has the meaning set forth in Section 6.02(c) of this Agreement.

"Split H&S Option" has the meaning set forth in Section 6.01(c) of this Agreement.

"Split H&S RSU Award" has the meaning set forth in Section 6.02(c) of this Agreement.

"Substitute H&S Option" has the meaning set forth in Section 6.01(a) of this Agreement.

"Substitute H&S RSU Award" has the meaning set forth in Section 6.02(a) of this Agreement.

"Transferred Employee" means each employee of a Fortune Brands Party or any of its Affiliates (other than H&S or any H&S Subsidiary) listed on Exhibit B hereto whose employment shall be transferred to an H&S Party immediately prior to the Distribution Date.

"Welfare Plan" means any employee welfare plan as defined in Section 3(1) of ERISA, without regard to Section 4(b)(4) or 4(b)(5) of ERISA.

1.02 Rules of Construction.

(a) In this Agreement, unless the context clearly indicates otherwise:

(i) words used in the singular include the plural and words used in the plural include the singular;

(ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement;

(iii) reference to any Person's "Affiliates" shall be deemed to mean such Person's Affiliates following the Distribution;

(iv) reference to any gender includes the other gender;

(v) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation;"

(vi) references to any Article, Section or schedule means such Article or Section of, or such schedule to, this Agreement, as the case may be;

(vii) the words "herein," "hereunder," "hereof," "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Section or other provision hereof;

(viii) reference to any agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and by this Agreement;

(ix) reference to any law (including statutes and ordinances) means such law (including all rules and regulations promulgated thereunder) as amended, modified, codified or reenacted, in whole or in part, and in effect at the time of determining compliance or applicability;

(x) relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding" and "through" means "through and including;"

(xi) accounting terms used herein shall have the meanings ascribed to them by Fortune Brands and its Subsidiaries, including H&S, in its and their internal accounting and financial policies and procedures in effect immediately prior to the date of this Agreement;

(xii) if there is any conflict between the provisions of the Distribution Agreement and this Agreement, the provisions of this Agreement shall control with respect to the subject matter hereof; if there is any conflict between the provisions of the body of this Agreement and any schedule hereto, the provisions of the body of this Agreement shall control unless explicitly stated otherwise in such schedule;

(xiii) titles to Articles and headings of Sections contained in this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of or to affect the meaning or interpretation of this Agreement;

(xiv) any portion of this Agreement obligating a Party to take any action or refrain from taking any action, as the case may be, shall mean that such Party shall also be obligated to cause its relevant Subsidiaries to take such action or refrain from taking such action, as the case may be; and

(xv) unless otherwise specified in this Agreement, all references to dollar amounts herein shall be in respect of lawful currency of the United States.

(b) The titles to Articles and headings of Sections contained in this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of or to affect the meaning or interpretation of this Agreement, and this Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

ARTICLE II

ASSIGNMENT OF EMPLOYEES

Effective immediately prior to the Distribution Date, the employment of the Transferred Employees by the Fortune Brands Parties shall be terminated and thereupon the employment of the Transferred Employees shall commence with and shall be assigned and transferred to an H&S Party. Notwithstanding anything to the contrary contained herein, nothing in this Agreement shall create any obligation on the part of any H&S Party to continue the employment of any employee for any definite period following the Distribution Date or to change the employment status of any employee from "at will."

ARTICLE III

PENSION, RETIREMENT AND DEFERRED COMPENSATION PLANS

3.01 Defined Contribution Plans.

(a) **Establishment of H&S Retirement Savings Plan.** On or before, but effective as of the close of business on, the Distribution Date, H&S shall adopt, establish and maintain a 401(k) profit sharing Pension Plan and trust for the benefit of salaried employees of the H&S Parties, which is intended to be qualified under Section 401(a) of the Code and exempt from federal income tax under Section 501(a) of the Code (the "**H&S Salaried RSP**"). As soon as practicable after the adoption of the H&S Salaried RSP, H&S shall submit an application for determination to the IRS for a determination that the H&S Salaried RSP is qualified under Section 401(a) of the Code and that the related trust is exempt from federal income tax under Section 501(a) of the Code, and

shall take any actions not inconsistent with H&S's other general commitments contained in this Agreement and make any amendments necessary to receive such determination. As of the Distribution Date, each Business Employee employed by the H&S Parties shall be eligible to participate in the H&S Salaried RSP, which shall recognize the service of such Business Employee with Fortune Brands and its subsidiaries in accordance with Section 7.05. Following the end of the 2011 plan year, the H&S Parties shall make a profit sharing contribution to the H&S Salaried RSP on behalf of each eligible Business Employee with respect to the aggregate amount of his or her 2011 compensation from the Fortune Brands Parties and the H&S Parties, as determined in accordance with the terms of the H&S Salaried RSP; provided that prior to the date of such contribution the Fortune Brands Parties shall pay to the H&S Parties, in the manner reasonably designated by H&S, the portion of such contribution that relates to the 2011 compensation of the Transferred Employees that was paid by the Fortune Brands Parties prior to the Distribution Date.

(b) **Transfer from Fortune Brands, Inc. Retirement Savings Plan**. As of the Distribution Date, Fortune Brands shall cause the Fortune Brands Master Defined Contribution Trust (the "**DC Master Trust**") to transfer to the trust established under the H&S Salaried RSP assets having a value as of the applicable valuation date that is equal to the value of the account balances of, and liabilities with respect to, all Business Employees with an account balance under the Fortune Brands Retirement Savings Plan as of such valuation date. In addition, on or as soon as administratively practicable after the Distribution Date, a pro rata share of all unallocated amounts shall be transferred from the DC Master Trust to the trust established by H&S under the H&S Salaried RSP, determined based upon the ratio of the sum of the account balances of the Business Employees described in the immediately preceding sentence as of the applicable valuation date to the sum of all account balances held in the DC Master Trust as of such valuation date. Such transferred assets shall be in cash or in kind, including shares of securities, promissory notes evidencing outstanding plan loans, Fortune Brands Shares or H&S Shares, and such transfer shall be made in accordance with Section 414(l) of the Code. Liabilities under any qualified domestic relations orders (as defined in Section 414(p) of the Code) received with respect to any accounts transferred to the H&S Salaried RSP shall be transferred to and assumed by the H&S Salaried RSP at the time such assets attributable to such accounts are transferred. H&S shall assume and thereafter be solely responsible for all then existing and future employer liabilities related to such Business Employees under the H&S Salaried RSP and the administration thereof and, except as provided in Section 3.01(a), the Fortune Brands Parties shall have no liability whatsoever therefor.

(c) **Transfer of Fortune Brands Hourly Employee Retirement Savings Plan.** As of the Distribution Date, Fortune Brands will transfer sponsorship of the Fortune Brands Hourly Employee Retirement Savings Plan to H&S (the "**H&S Hourly RSP**"). On or as soon as administratively practicable after the Distribution Date, the DC Master Trust shall transfer all assets and liabilities relating to the H&S Hourly RSP to the trust established under the H&S Hourly RSP. Such transferred assets shall be in cash or in kind, including shares of securities, promissory notes evidencing outstanding plan loans, Fortune Brands Shares or H&S Shares, and such transfer shall be made in accordance with Section 414(1) of the Code. Liabilities under any qualified domestic

relations orders (as defined in Section 414(p) of the Code) received with respect to any assets relating to the H&S Hourly RSP shall be transferred to and assumed by the H&S Hourly RSP at the time such plan is transferred. H&S shall assume and thereafter be solely responsible for all then existing and future employer liabilities and administration related to all H&S Hourly RSP participants and Business Employees under the H&S Hourly RSP, and the Fortune Brands Parties shall have no liability whatsoever therefor.

(d) **Liquidation of Company Stock Funds.** Subject to the fiduciary and other requirements of ERISA, and any other applicable laws, Fortune Brands shall take such actions as are reasonably necessary to ensure that any liquidation of H&S Shares held in the Fortune Brands Retirement Savings Plan after the Distribution Date is orderly and periodic. Subject to the exercise of its fiduciary duties or other requirements of ERISA and any other applicable laws, as soon as administratively practicable after the Distribution Date, Fortune Brands shall permit participants in the Fortune Brands Retirement Savings Plan to transfer the investment of their plan accounts out of the H&S Share fund maintained under such plan and shall prohibit participants from transferring the investment of their plan accounts or electing the investment of new contributions into such H&S Share fund, but shall not otherwise require the liquidation of any H&S Shares from the Fortune Brands Retirement Savings Plan until June 30, 2012. Subject to the fiduciary and other requirements of ERISA, and any other applicable laws, H&S shall take such actions as are reasonably necessary to ensure that any liquidation of the shares of Fortune Brands Shares held in the H&S Salaried RSP and the H&S Hourly RSP is orderly and periodic. Subject to the exercise of its fiduciary duties or other requirements of ERISA and any other applicable laws, as soon as administratively practicable after the Distribution Date, H&S shall permit participants in the H&S Salaried RSP and H&S Hourly RSP to transfer the investment of their plan accounts out of the Fortune Brands Share fund maintained under such plan and shall prohibit participants from transferring the investment of their plan accounts or electing the investment of new contributions into such Fortune Brands Share fund, but shall not otherwise require the liquidation of any Fortune Brands Shares from the H&S Salaried RSP or the H&S Hourly RSP until June 30, 2012.

3.02 Defined Benefit Pension Plans.

(a) **Transfer of Assets from Master Trust.** Following the Distribution Date, the H&S Parties shall continue to be the plan sponsors of each of the H&S Pension Plans. Prior to the Distribution Date, (i) the H&S Parties shall establish one or more trusts to be a source of providing benefits under the H&S Pension Plans and (ii) Fortune Brands shall cause the assets held in the Fortune Brands Master Retirement Trust (the **"DB Master Trust"**) and allocated to the subaccounts for the H&S Pension Plans to be transferred to the trusts established by the H&S Parties. Following the date of the transfer contemplated by the immediately preceding sentence, the Fortune Brands Parties shall have no liability or obligation with respect to any of the H&S Pension Plans or any participants or former participants in any H&S Pension Plan with respect to their participation therein.

(b) **Transfer of Benefits From Fortune Brands Pension Plan.** As soon as administratively practicable following the Distribution Date, the Fortune Brands Parties

shall cause the Fortune Brands Pension Plan to transfer assets and liabilities to the Moen Incorporated Pension Plan with regard to benefits earned through the Distribution Date that relate to Transferred Employees. Such transfer shall conform to the requirements of Section 414(l) of the Code and Section 4044 of ERISA. Liabilities under any qualified domestic relations orders (defined in Section 414(p) of the Code) received with regard to any benefits for Transferred Employees shall be transferred to and assumed by the Moen Incorporated Pension Plan as of the pension asset transfer. As of the first business day following the Distribution Date, the H&S Parties shall assume and thereafter be solely responsible for all existing and future liabilities, as well as for the investment performance of assets, relating to such Transferred Employees' benefits (1) accrued under the Fortune Brands Pension Plan, to the extent that such assets and liabilities are transferred from the Fortune Brands Pension Plan to the Moen Incorporated Pension Plan; and (2) future benefits under the Moen Incorporated Pension Plan.

3.03 Supplemental Nonqualified Deferred Compensation Plan. Following the Distribution Date, the H&S Parties shall continue to sponsor and maintain each of the H&S Supplemental Plans. In addition, the H&S Parties shall assume the obligations of the Fortune Brands Parties under the Fortune Brands Supplemental Plan with respect to all Transferred Employees that participate in such plan. The H&S Parties shall be solely responsible for all liabilities and shall fully perform, pay and discharge all obligations, when such obligations become due, to the Business Employees under the H&S Supplemental Plans and to the Transferred Employees under the Fortune Brands Supplemental Plan.

3.04 Non-U.S. Retirement Plans. Following the Distribution Date, the H&S Parties shall cause the applicable non-U.S. H&S Subsidiaries to continue to maintain in full force and effect retirement plans as were sponsored and maintained by such H&S Subsidiaries immediately prior to the Distribution Date. Following the Distribution Date, the Fortune Brands Parties shall have no liability or obligation with respect to any of such plans or any participants or former participants in any of such plans with respect to their participation therein.

ARTICLE IV

WELFARE PLANS

4.01 Continuation of H&S Welfare Plans. Following the Distribution Date, the H&S Parties shall continue to be the plan sponsors of the H&S Welfare Plans. Following the Distribution Date, the Fortune Brands Parties shall have no liability or obligation with respect to such H&S Welfare Plans or any participants or former participants in such plans with respect to their participation therein.

4.02 Coverage of Transferred Employees. As of the Distribution Date, each Transferred Employee shall become eligible to participate in the H&S Welfare Plans established by H&S prior to the Distribution Date for their participation, subject to the terms of such plans. To the extent applicable to any H&S Welfare Plans in which Transferred Employees become eligible as of the Distribution Date that provide benefits similar to the benefits that had been provided to such employees under a Fortune Brands Welfare Plan immediately prior to such date, H&S shall cause the H&S Welfare Plans to recognize all coverage and contribution elections made by the Transferred Employees under the Fortune Brands Welfare Plans in effect for the

period immediately prior to the Distribution Date and shall apply such elections under the H&S Welfare Plans for the remainder of the period or periods for which such elections are by their terms applicable, in each case to the extent practicable. All beneficiary designations made by Transferred Employees under the Fortune Brands Welfare Plans shall, to the extent applicable, be transferred to, and be in full force and effect under, the H&S Welfare Plans until such beneficiary designations are replaced or revoked by the Transferred Employee who made the beneficiary designation.

4.03 Welfare Plan Liabilities.

(1) H&S Liabilities. Except as provided in clause (2) of this Section 4.03, the H&S Parties and the H&S Welfare Plans, as applicable, shall retain and be responsible for all claims for welfare benefits (and for any Liabilities arising as a result of such claims) incurred with respect to any Business Employee on or after the Distribution Date under the H&S Welfare Plans, and none of the Fortune Brands Parties or the Fortune Brands Welfare Plans shall assume or retain any such Liabilities.

(2) Fortune Brands Liabilities. Fortune Brands and the Fortune Brands Welfare Plans shall continue to be responsible for all claims for welfare benefits (and for any Liabilities arising as a result of such claims) incurred by any Transferred Employee prior to the Distribution Date, whether such claims have been paid or remain unpaid as of such date, and neither H&S nor the H&S Welfare Plans shall assume or retain any such Liabilities.

(3) Claims Incurred. Claims for health benefits shall be considered to be incurred prior to the Distribution Date if the services related to such claims were provided prior to the Distribution Date. Claims for all other welfare benefits shall be considered to be incurred prior to the Distribution Date if the date of loss occurred prior to the Distribution Date.

4.04 COBRA and HIPAA Liabilities. From and after the Distribution Date, the H&S Parties and the H&S Welfare Plans shall be responsible for the continuation coverage requirements under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and the portability requirements under the Health Insurance Portability and Accountability Act of 1996 with respect to all Business Employees (including Transferred Employees) and their qualified beneficiaries.

4.05 Flexible Spending Accounts. Effective as of the Distribution Date, H&S shall assume the flexible spending account plan maintained by Fortune Brands for the benefit of Transferred Employees (the **"Fortune Brands FSA"**), and shall continue the elections of Transferred Employees thereunder. Effective as of the Distribution Date, each employee of a Fortune Brands Party other than the Transferred Employees who as of the Distribution Date is a participant in the Fortune Brands FSA (a **"Fortune FSA Participant"**) shall participate in the flexible spending account plan maintained by Jim Beam Brands Co. (the **"Beam FSA"**). Effective as of the Distribution Date, the Beam FSA shall credit or debit the applicable account of each such Fortune FSA Participant under the Beam FSA with an amount equal to the balance of his or her account under the Fortune Brands FSA as of the Distribution Date, and shall continue

his or her elections thereunder. If the claims made against a Transferred Employee's Fortune Brands FSA account prior to the Distribution Date exceed the amounts credited to such account at the Distribution Date, H&S shall reimburse Fortune Brands for the amount of such difference. If the amounts credited to a Transferred Employee's Fortune Brands FSA account at the Distribution Date exceed the claims made against such account prior to the Distribution Date, Fortune Brands shall reimburse H&S for the amount of such difference.

4.06 Stop Loss Adjustment. Pursuant to the self-funded stop-loss arrangement maintained as of the Distribution Date among the Fortune Brands Parties and the H&S Parties, not later than 60 days after the Distribution Date, Fortune Brands and H&S shall determine the health claims arising prior to the Distribution Date the allocation of such claims among the Fortune Brands Parties and the H&S Parties, and true up payments shall be made among such parties in accordance with such stop-loss arrangement as though the plan year ended on the Distribution Date. Each of the Fortune Brands Parties and the H&S Parties shall be responsible separately for the stop-loss coverage of claims arising under their respective group health plans on and after the Distribution Date.

ARTICLE V

NON-ERISA BENEFIT ARRANGEMENTS

5.01 H&S Non-ERISA Benefit Arrangements. Following the Distribution Date, the H&S Parties shall continue to be the plan sponsor of each Non-ERISA Benefit Arrangement maintained for the benefit of the Business Employees. Following the Distribution Date, the Fortune Brands Parties shall have no liability or obligation with respect to such arrangements or any participants or former participants in such arrangements with respect to their participation therein.

5.02 2011 Annual Bonuses. On or before March 15, 2012, the H&S Parties shall pay to each Transferred Employee a cash bonus payment equal to the full annual bonus amount earned by such Transferred Employee for 2011 pursuant to the terms of the applicable Fortune Brands annual incentive plan; provided that the Transferred Employee's service with and compensation from the H&S Parties shall be taken into account for purposes of determining the amount of such bonus and the Transferred Employee's eligibility for such bonus. Prior to the date of such payment, the Fortune Brands Parties shall (i) provide to H&S documentation detailing the amount of the bonus payable to each Transferred Employee and (ii) pay to the H&S Parties, in the manner reasonably designated by H&S, an amount equal to the fraction of such bonus representing the portion of 2011 during which such Transferred Employee was employed by a Fortune Brands Party.

5.03 Success Bonuses. If and when amounts become payable to Transferred Employees under the success bonus agreements in effect between Fortune Brands and Transferred Employees, the Fortune Brands Parties shall forward to H&S the amounts necessary to satisfy Fortune Brands' obligations to Transferred Employees under the success bonus agreements. H&S shall pay the success bonuses to the appropriate Transferred Employees through regular payroll, and all applicable withholdings from such payments shall be taken as required by law.

ARTICLE VI

EQUITY COMPENSATION PLANS

6.01 Stock Options.

(a) **Unvested Options Held by H&S Employees.** Except as otherwise specifically provided in Section 6.01(c), Fortune Brands and H&S shall take any and all action as shall be necessary or appropriate, including approval of the provisions of this Section 6.01(a) by the H&S Board of Directors and the Fortune Brands CSOC, so that each unvested Fortune Brands Option held at the close of business on the Distribution Date by any H&S Employee (or any transferee thereof) shall be, pursuant to the terms of the applicable Fortune Brands LTIP and the applicable H&S equity compensation plan (the **"H&S LTIP"**) and this Agreement, replaced with a substitute option to purchase H&S Shares granted under the H&S LTIP (a **"Substitute H&S Option"**), pursuant to which:

(i) the Intrinsic Value of each Substitute H&S Option immediately after the Distribution shall be equal to the Intrinsic Value of the corresponding Fortune Brands Option immediately prior to the Distribution;

(ii) the ratio of the per share exercise price of each Substitute H&S Option to the H&S Post-Distribution Stock Price shall not exceed the ratio of the per share exercise price of the corresponding Fortune Brands Option to the Fortune Brands Pre-Distribution Stock Price; and

(iii) the Substitute H&S Option shall become exercisable and terminate based on the holder's service with the H&S Parties.

Each Substitute H&S Option shall have the same terms and conditions as the corresponding Fortune Brands Option, except as provided herein. It is intended that the adjustment and substitution set forth herein shall satisfy the requirements of Section 424 of the Code and avoid treatment as nonqualified deferred compensation subject to Section 409A of the Code.

(b) **Unvested Options Held by Persons Other Than H&S Employees and Departing Employees.** Except as otherwise specifically provided in Section 6.01(c), Fortune Brands shall take any and all action as shall be necessary or appropriate, including approval of the provisions of this Section 6.01(b) by the Fortune Brands CSOC and the Nominating Committee so that each unvested Fortune Brands Option held at the close of business on the Distribution Date by any person who is not an H&S Employee (or any transferee of such person) shall be replaced pursuant to the terms of the Fortune Brands LTIPs and this Agreement with an adjusted Fortune Brands Option **("Adjusted Fortune Brands Options")**, pursuant to which:

(i) the Intrinsic Value of each Adjusted Fortune Brands Option immediately after the Distribution shall be equal to the Intrinsic Value of the corresponding Fortune Brands Option immediately prior to the Distribution; and

(ii) the ratio of the per share exercise price of each Adjusted Fortune Brands Option to the Fortune Brands Post-Distribution Stock Price shall not exceed the ratio of the per share exercise price of the corresponding Fortune Brands Option to the Fortune Brands Pre-Distribution Stock Price.

Each Adjusted Fortune Brands Option shall have the same terms and conditions as the corresponding Fortune Brands Option, except as provided herein. It is intended that the adjustment set forth herein shall satisfy the requirements of Section 424 of the Code and avoid treatment as nonqualified deferred compensation subject to Section 409A of the Code.

(c) **Vested Options and Options Held by Departing Employees.** Fortune Brands and H&S shall take any and all action as shall be necessary or appropriate, including approval of the provisions of this Section 6.01(c) by the Fortune Brands CSOC, the Nominating Committee and the H&S Board of Directors, so that (i) each unvested Fortune Brands Stock Option held at the close of business on the Distribution Date by a Departing Employee (or any transferee thereof) shall become fully vested as of the date of such Departing Employee's termination of employment and (ii) as of the Distribution Date, all vested Fortune Brands Stock Options and all Fortune Brands Stock Options described in clause (i) of this Section 6.01(c) outstanding at the close of business on the Distribution Date shall be, pursuant to the terms of the applicable Fortune Brands LTIP, the applicable H&S LTIP and this Agreement, replaced with one substitute H&S option granted under the H&S LTIP (a **"Split H&S Option"**) and one adjusted Fortune Brands Option (a **"Split Fortune Brands Option"**), pursuant to which:

(i) the aggregate Intrinsic Value of the Split H&S Option and Split Fortune Brands Option immediately after the Distribution shall be equal to the Intrinsic Value of the corresponding Fortune Brands Option immediately prior to the Distribution;

(ii) neither the ratio of the per share exercise price of the Split H&S Option to the H&S Post-Distribution Stock Price nor the ratio of the per share exercise price of the Split Fortune Brands Option to the Fortune Brands Post-Distribution Stock Price shall exceed the ratio of the per share exercise price of the corresponding Fortune Brands Option to the Fortune Brands Pre-Distribution Stock Price; and

(iii) each Split H&S Option and Split Fortune Brands Option shall be exercisable and terminate based on the holder's employment with the Fortune Brands Party or H&S Party with which such holder is employed after the Distribution Date.

Each Split H&S Option and Split Fortune Brands Option shall have the same terms and conditions as the corresponding Fortune Brands Option, except as provided herein. It is intended that the adjustment set forth herein shall satisfy the requirements of Section 424 of the Code and avoid treatment as nonqualified deferred compensation subject to Section 409A of the Code.

6.02 Restricted Stock Units.

(a) **RSUs Held by H&S Employees.** Except as otherwise specifically provided in Section 6.02(c), Fortune Brands and H&S shall take any and all action as

shall be necessary or appropriate, including approval of the provisions of this Section 6.02(a) by the H&S Board of Directors and the Fortune Brands CSOC pursuant to the terms of the applicable Fortune Brands LTIP, the applicable H&S LTIP and this Agreement, so that each Fortune Brands RSU held at the close of business on the Distribution Date by any H&S Employee shall be replaced with a substitute H&S restricted stock unit award granted under the H&S LTIP (**"Substitute H&S RSU Award"**). The number of H&S restricted stock units subject to the Substitute H&S RSU Award will be equal to the number of Fortune Brands restricted stock units subject to the Fortune Brands RSU Award held by the participant at the close of business on the Distribution Date multiplied by a fraction, the numerator of which is the Fortune Brands Pre-Distribution Stock Price, and the denominator of which is the H&S Post-Distribution Stock Price. Each Substitute H&S RSU Award shall vest and be payable based on the holder's employment with the H&S Parties. Each Substitute H&S RSU Award shall have the same terms and conditions as the corresponding Fortune Brands RSU Award, except as provided herein.

(b) **RSUs Held by Persons Other Than H&S Employees and Departing Employees.** Except as otherwise specifically provided in Section 6.02(c), Fortune Brands shall take any and all action as shall be necessary or appropriate, including approval of the provisions of this Section 6.02(b) by the Fortune Brands CSOC pursuant to the terms of the applicable Fortune Brands LTIP and this Agreement, so that each Fortune Brands RSU Award held at the close of business on the Distribution Date by any person who is not an H&S Employee shall be adjusted (**"Adjusted Fortune Brands RSU Award"**). The number of Fortune Brands restricted stock units subject to the Adjusted Fortune Brands RSU Award will be equal to the number of Fortune Brands restricted stock units subject to the Fortunate Brands RSU Award held by the holder at the close of business on the Distribution Date multiplied by a fraction, the numerator of which is the Fortune Brands Pre-Distribution Stock Price, and the denominator of which is the Fortune Brands Post-Distribution Stock Price. Each Adjusted Fortune Brands RSU Award shall have the same terms and conditions as the corresponding Fortune Brands RSU Award, except as provided herein.

(c) **RSUs Held by Departing Employees.** Fortune Brands and H&S shall take any and all action as shall be necessary or appropriate, including approval of the provisions of this Section 6.02(c) by the Fortune Brands CSOC and the H&S Board of Directors pursuant to the terms of the applicable Fortune Brands LTIP, the applicable H&S LTIP and this Agreement, so that each Fortune Brands RSU Award held at the close of business on the Distribution Date by any Departing Employee shall be replaced with one adjusted Fortune Brands restricted stock unit award (**"Split Fortune Brands RSU Award"**) and one substitute H&S restricted stock unit award (**"Split H&S RSU Award"**), in each case, as set forth in this Section 6.02. The number of Fortune Brands restricted stock units subject to the Split Fortune Brands RSU Award and the number of H&S restricted stock units subject to the Split H&S RSU Award will each be equal to the number of Fortune Brands RSUs held by the holder as of the close of business on the Distribution Date. Each Split Fortune Brands RSU Award and each Split H&S RSU Award shall have the same terms and conditions as the corresponding Fortune Brands RSU Award, except as provided herein.

6.03 Performance Share Awards.

(a) **Performance Share Awards Held by H&S Employees.** Except as otherwise specifically provided in Section 6.03(c), Fortune Brands and H&S shall take any and all action as shall be necessary or appropriate, including approval of the provisions of this Section 6.03(a) by the H&S Board of Directors pursuant to the terms of the applicable H&S LTIP and this Agreement, so that each Fortune Brands performance share award held at the close of business on the Distribution Date by any H&S Employee will be replaced with a Substitute H&S RSU Award granted under the H&S LTIP. For purposes of determining the number of H&S restricted stock units subject to the Substitute H&S RSU Award, the number of pre-Distribution Fortune Brands RSUs that are considered earned with respect to such performance share award shall be the sum of (i) plus (ii), where (i) is the total number of Fortune Brands performance shares which would have been granted to the participant for the full performance period, determined using actual performance results as of the Distribution Date, multiplied by a fraction, the numerator of which is the number of days elapsed between the first day of the applicable performance period and the Distribution Date, and the denominator of which is the total number of days in the applicable performance period; and (ii) is the number of Fortune Brands performance shares which would have been granted to the participant for the full Performance Period, assuming "target" performance throughout the Performance Period, multiplied by a fraction, the numerator of which is the number of days between the Distribution Date and the end of the applicable performance period, and the denominator of which is the total number of days in the applicable performance period. The number of pre-Distribution Fortune Brands RSUs that are deemed to have been earned shall then be converted into Substitute H&S RSU Awards in accordance with Section 6.02(a). Each Substitute H&S RSU Award shall vest on the last day of the performance period to which it relates based on the holder's service with the H&S Parties, and shall have the same terms and conditions as the corresponding Fortune Brands performance share award, except as provided herein.

(b) **Performance Share Awards Held by Persons Other Than H&S Employees and Departing Employees.** Except as otherwise specifically provided in Section 6.03(c), Fortune Brands shall take any and all action as shall be necessary or appropriate, including approval of the provisions of this Section 6.03(b) by the Fortune Brands CSOC pursuant to the terms of the applicable Fortune Brands LTIP and this Agreement, so that each Fortune Brands performance share award held at the close of business on the Distribution Date by any person who is not an H&S Employee or a Departing Employee will be replaced with an Adjusted Fortune Brands RSU Award granted under the applicable Fortune Brands LTIP. For purposes of determining the number of Fortune Brands restricted stock units subject to the Adjusted Fortune Brands RSU Award, the number of pre-Distribution Fortune Brands RSUs that are considered earned with respect to such performance share award shall be the sum of (i) plus (ii), where (i) is the total number of Fortune Brands performance shares which would have been granted to the participant for the full performance period, determined using actual performance results as of the Distribution Date, multiplied by a fraction, the numerator of which is the number of days elapsed between the first day of the applicable performance period and the Distribution Date, and the denominator of which is the total number of days in the applicable performance period; and (ii) is the number of Fortune Brands

performance shares which would have been granted to the participant for the full Performance Period, assuming "target" performance throughout the Performance Period, multiplied by a fraction, the numerator of which is the number of days between the Distribution Date and the end of the applicable performance period, and the denominator of which is the total number of days in the applicable performance period. The number of pre-Distribution Fortune Brands RSUs that are deemed to have been earned shall then be converted into an Adjusted Fortune Brands RSU Award in accordance with Section 6.02(b). Each Adjusted Fortune Brands RSU Award shall vest on the last day of the performance period to which it relates and shall have the same terms and conditions as the corresponding Fortune Brands performance share award, except as provided herein.

(c) **Performance Share Awards Held by Departing Employees**. Fortune Brands shall take any and all action as shall be necessary or appropriate, including approval of the provisions of this Section 6.03(c) by the Fortune Brands CSOC and the H&S Board of Directors pursuant to the terms of the applicable Fortune Brands LTIP, the applicable H&S LTIP and this Agreement, so that each Fortune Brands performance share award held at the close of business on the Distribution Date by any Departing Employee will be replaced with a Split Fortune Brands RSU Award and a Split H&S RSU Award. For purposes of determining the number of restricted stock units subject to the Split Fortune Brands RSU Award and the Split H&S RSU Award, the number of pre-Distribution Fortune Brands RSUs that are considered earned with respect to such performance share award shall be the sum of (i) plus (ii), where (i) is the total number of Fortune Brands performance shares which would have been granted to the participant for the full performance period, determined using actual performance results as of the Distribution Date, multiplied by a fraction, the numerator of which is the number of days elapsed between the first day of the applicable performance period and the Distribution Date, and the denominator of which is the total number of days in the applicable performance period; and (ii) is the number of Fortune Brands performance shares which would have been granted to the participant for the full Performance Period, assuming "target" performance throughout the Performance Period, multiplied by a fraction, the numerator of which is the number of days between the Distribution Date and the end of the applicable performance period, and the denominator of which is the total number of days in the applicable performance period. The number of pre-Distribution Fortune Brands RSUs that are deemed to have been earned shall then be converted into a Split Fortune Brands RSU Award and a Split H&S RSU Award in accordance with Section 6.02(c). Each Split Fortune Brands RSU Award and Split H&S RSU Award shall vest on the last day of the performance period to which it relates and shall have the same terms and conditions as the corresponding Fortune Brands performance share award, except as provided herein.

6.04 Deferred Shares Held by Directors. Fortune Brands and H&S shall take any and all action as shall be necessary or appropriate, including approval of the provisions of this Section 6.04 by the Nominating Committee and the H&S Board of Directors pursuant to the terms of the applicable Fortune Brands LTIP, the applicable H&S LTIP and this Agreement, so that each Fortune Brands deferred share held at the close of business on the Distribution Date by a non-employee director of Fortune Brands shall be replaced with one adjusted Fortune Brands deferred share (**"Split Fortune Brands Deferred Share"**) and one substitute H&S deferred share (**"Split H&S Deferred Share"**), in each case, as set forth in this Section 6.04. The number of Split

Fortune Brands Deferred Shares and the number of Split H&S Deferred Shares will each be equal to the number of Fortune Brands deferred shares held by the holder as of the close of business on the Distribution Date. Each Split Fortune Brands Deferred Share and each Split H&S Deferred Share shall have the same terms and conditions as the corresponding Fortune Brands deferred share, except as provided herein.

6.05 Approval and Terms of Equity Awards. By approval of the H&S Board of Directors, the Fortune Brands CSOC and the Nominating Committee pursuant to Sections 6.01, 6.02, 6.03 and 6.04, H&S, as issuer of substitute and replacement awards provided hereunder, and Fortune Brands, as sole shareholder of H&S, shall adopt and approve, respectively, the issuance of the substitute and replacement options and awards provided for herein. Except as set forth above, the terms of the Fortune Brands LTIPs and of the outstanding equity compensation awards held by participants under the Fortune Brands LTIPs and the substitute H&S equity awards shall be subject to the terms of such plans and applicable award agreements, except that references in such outstanding substitute and replacement H&S awards to "Board" and "Committee" shall mean the Board, CSOC or any other designated committee of H&S (as applicable) and references to the "Company" shall mean H&S. Notwithstanding the foregoing, substitute awards made under the H&S LTIP pursuant to H&S's obligations under this Agreement shall take into account all employment and service with both Fortune Brands and H&S, and their respective Subsidiaries and Affiliates, for purposes of determining when such awards vest and terminate. Neither H&S nor Fortune Brands shall change the administrator or recordkeeper of the H&S LTIP or Fortune Brands LTIPs, respectively, without the prior written consent of the other party, such consent not to be unreasonably withheld, conditioned or delayed.

6.06 No Change in Control. The Distribution will not constitute a "change in control" for purposes of Fortune Brands equity awards that are outstanding as of the Distribution Date.

ARTICLE VII

COMPENSATION MATTERS AND GENERAL BENEFIT MATTERS

7.01 Cessation of Participation in Fortune Brands Plans and Non-ERISA Benefit Arrangements. Except as otherwise provided in this Agreement or as required by the terms of any Fortune Brands Plan or Fortune Brands Non-ERISA Benefit Arrangement, or by applicable law, Fortune Brands and H&S shall take any and all action as shall be necessary or appropriate so that participation in Fortune Brands Plans and Fortune Brands Non-ERISA Benefit Arrangements by all Business Employees shall terminate as of the close of business on the Distribution Date and the H&S Parties shall cease to be participating employers under the terms of such Fortune Brands Plans and Fortune Brands Non-ERISA Benefit Arrangements as of such time.

7.02 Assumption of Certain Employee Related Obligations. Except as otherwise provided in this Agreement, effective as of the close of business on the Distribution Date, H&S shall assume, and no Fortune Brands Party shall have any further liability for, the following agreements, obligations and liabilities, and H&S shall indemnify, defend and hold harmless each of the Fortune Brands Indemnified Parties from and against any and all Expenses or Losses incurred or suffered by one or more of the Fortune Brands Indemnified Parties in connection with, relating to, arising out of or due to, directly or indirectly, any of the following:

(a) all agreements entered into between any Fortune Brands Party and any independent contractor providing services to the extent they are related to the Transferred Business;

(b) all collective bargaining agreements, collective agreements, trade union agreements or works council agreements entered into between any Fortune Brands Party and any union, works council or other body to the extent they are related to the Business Employees;

(c) all wages, salary, incentive compensation, commissions and bonuses payable to Business Employees on or after the Distribution Date, without regard to when such wages, salary, incentive compensation, commissions or bonuses are or may have been earned;

(d) all moving expenses and obligations related to relocation, repatriation, transfers or similar items incurred by or owed to any Business Employee;

(e) all immigration-related, visa, work application or similar rights, obligations and liabilities to the extent they are related to any Business Employees; and

(f) all liabilities and obligations whatsoever of the Transferred Business with respect to claims made by or with respect to Business Employees, or any other to the extent their employment duties related to the Transferred Business, relating to any employee benefit plan, program or policy not otherwise retained or assumed by Fortune Brands pursuant to this Agreement, including such liabilities relating to actions or omissions of or by the H&S Parties or any officer, director, employee or agent thereof prior to the Distribution Date.

7.03 Restrictive Covenants in Employment and Other Agreements. To the extent permitted under applicable law, following the Distribution, the H&S Parties shall be considered to be successors to the Fortune Brands Parties for purposes of all agreements containing restrictive covenants (including confidentiality and non-competition provisions) between any Fortune Brands Party and any Business Employee executed prior to the Distribution Date such that each Fortune Brands Party and each H&S Party shall all enjoy the rights and benefits under such agreements, with respect to their respective business operations; provided, however, that (a) in no event shall any Fortune Brands Party be permitted to enforce the restrictive covenant agreements against any Business Employees in their capacity as employees of any H&S Party, and (b) in no event shall any H&S Party be permitted to enforce the restrictive covenant agreements against any Fortune Brands employees in their capacity as employees of any Fortune Brands Party.

7.04 Severance. Effective as of the Distribution Date, H&S may establish one or more severance plans and policies with respect to Business Employees as H&S deems appropriate in its discretion. Effective as of the Distribution Date, H&S shall assume, and Fortune Brands shall have no liability or obligation with respect to the severance benefits provided to Business Employees. Following the Distribution Date, H&S shall be solely responsible for administering and paying all benefits under the applicable severance plans, policies or agreements with Business Employees, including Business Employees whose employment terminated prior to the Distribution Date for an eligible reason under such policies or in accordance with such

agreements, and H&S shall indemnify each of the Fortune Brands Parties for any amounts payable to Business Employees under such plans, policies and agreements. It is not intended that any Business Employee will be eligible for termination or severance payments or benefits from any Fortune Brands Party as a result of the transfer or change of employment from Fortune Brands to any H&S Party. Notwithstanding the preceding sentence, in the event that any such termination or severance payments or benefits become payable on account of such transfer, change or the refusal of a Business Employee to accept employment with any H&S Party, H&S shall indemnify each of the Fortune Brands Parties for the amount of such termination or severance payments or benefits.

7.05 Past Service Credit. With respect to all Business Employees, as of the Distribution Date, the H&S Parties shall recognize all service recognized under the comparable Fortune Brands Plans and Fortune Brands Non-ERISA Benefit Arrangements for purposes of determining eligibility, participation, vesting and calculation of benefits under comparable plans and programs maintained by the H&S Parties, provided that there shall be no duplication of benefits for Business Employees under such H&S Party plans and programs. Fortune Brands will provide to H&S copies of any records available to Fortune Brands to document such service, plan participation and membership and cooperate with H&S to resolve any discrepancies or obtain any missing data for purposes of determining benefit eligibility, participation, vesting and calculation of benefits with respect to the Business Employees. With respect to retaining, destroying, transferring, sharing, copying and permitting access to all such information, Fortune Brands and H&S shall each comply with all applicable laws, regulations and internal policies and each party shall indemnify and hold harmless the other party from and against any and all liability, claims, actions and damages that arise from a failure (by the indemnifying party) to so comply with all applicable laws, regulations and internal policies applicable to such information.

7.06 Accrued Vacation Days Off. Effective as of the Distribution Date, the H&S Parties shall recognize and assume all liability for all vacation, holiday, sick leave, flex days and personal days off, including banked vacation, accrued by Business Employees as of the Distribution Date, and the H&S Parties shall credit each Business Employee with such days off accrual.

7.07 Leaves of Absence. The H&S Parties shall continue to apply all leave of absence policies as in effect immediately prior to the Distribution to inactive Business Employees who are on an approved leave of absence as of the Distribution Date. Leaves of absence taken by Business Employees prior to the Distribution Date shall be deemed to have been taken as employees of H&S.

7.08 Fortune Brands Assets. Except as otherwise set forth herein, Fortune Brands shall retain all reserves, bank accounts, trust funds or other balances maintained with respect to Fortune Brands' Non-ERISA Benefit Arrangements.

7.09 Further Cooperation; Personnel Records; Data Sharing. The parties shall provide each other such records and information as reasonably necessary or appropriate to carry out their obligations under law, this Agreement, or for the purposes of administering their respective plans and policies, including without limitation information relating to the vesting, exercise and employment status of persons holding equity compensation awards in the common stock of the other party. Each party shall be responsible for the accuracy of records and information provided to the other party pursuant to this Section 7.09, and shall indemnify such

other party for any losses caused by inaccurate information that it has provided. Subject to applicable law, all information and records regarding employment and personnel matters of Business Employees shall be accessed, retained, held, used, copied and transmitted after the Distribution Date by H&S in accordance with all laws and policies relating to the collection, storage, retention, use, transmittal, disclosure and destruction of such records. Access to such records after the Distribution Date will be provided to Fortune Brands in accordance with Article XI of the Distribution Agreement. Notwithstanding the foregoing, Fortune Brands shall retain reasonable access to those records necessary for Fortune Brands' continued administration of any plans or programs on behalf of Business Employees after the Distribution Date, and H&S shall retain reasonable access to those records necessary for H&S's administration of any equity award or other compensation or benefit payable or administered by the H&S Parties after the Distribution Date, provided that such access shall be limited to individuals who have a job-related need to access such records. Fortune Brands shall also retain copies of all confidentiality and non-compete agreements with any Business Employee in which Fortune Brands has a valid business interest. With respect to retaining, destroying, transferring, sharing, copying and permitting access to all such information, Fortune Brands and H&S shall each comply with all applicable laws, regulations and internal policies, and each party shall indemnify and hold harmless the other party from and against any and all liability, claims, actions, and damages that arise from a failure (by the indemnifying party) to so comply with all applicable laws, regulations and internal policies applicable to such information.

ARTICLE VIII

GENERAL PROVISIONS

8.01 Employment and Plan Rights. Notwithstanding anything to the contrary in this Agreement, the Parties expressly acknowledge and agree that (a) this Agreement is not intended to create an employment-related contract between any of the Fortune Brands Parties or the H&S Parties, on the one hand, and any employee or service provider, on the other, nor may any current or former employee or service provider rely on this Agreement as the basis for any breach of any employment-related contract claim against any of the Fortune Brands Parties or H&S Parties, (b) nothing in this Agreement shall be deemed or construed to require any of the Fortune Brands Parties or H&S Parties to continue to employ any particular employee or service provider for any period before or after the Distribution Date, (c) nothing in this Agreement shall be deemed or construed to limit the right of the Fortune Brands Parties or H&S Parties to terminate the employment of any employee or service provider at any time before or after the Distribution Date and (d) nothing in this Agreement shall be construed as establishing or amending any Pension Plan, Welfare Plan or Non-ERISA Benefit Arrangement, or any other plan, policy, agreement or arrangement for the benefit of any employee or any other person.

8.02 Confidentiality. Each Party agrees that any information conveyed or otherwise received by or on behalf of a Party in conjunction herewith is confidential and is subject to the terms of the confidentiality provisions set forth in Section 11.8 of the Distribution Agreement.

8.03 Administrative Complaints/Litigation. Except as otherwise provided in this Agreement, following the Distribution Date, H&S shall assume, and be solely liable for, the handling, administration, investigation and defense of actions, including ERISA, occupational safety and health, employment standards, union grievances, wrongful dismissal, discrimination or

human rights and unemployment compensation claims, asserted at any time against Fortune Brands or H&S by any Business Employee (including any dependent or beneficiary of any Business Employee), or any other person to the extent such actions or claims arise out of or relate to employment or the provision of services (whether as an employee, contractor, consultant or otherwise) to or with the Transferred Business. Any Losses arising from such actions shall be deemed Assumed Actions under the Distribution Agreement.

8.04 Reimbursement and Indemnification. The parties hereto agree to reimburse each other, within 30 days of receipt from the other party of appropriate verification, for all costs and expenses which each may incur on behalf of the other as a result of any of the Welfare Plans, Pension Plans and Non-ERISA Benefit Arrangements and, as contemplated by Section 7.04, any termination or severance payments or benefits. All liabilities retained, assumed or indemnified against by H&S pursuant to this Agreement, and all liabilities retained, assumed or indemnified against by Fortune Brands pursuant to this Agreement, shall in each case shall be subject to the indemnification procedures set forth in Article X of the Distribution Agreement.

8.05 Entire Agreement. This Agreement, including any schedules hereto and the sections of the Distribution Agreement referenced herein, constitutes the entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior agreements, negotiations, discussions, understandings, writings and commitments between the Parties with respect to such subject matter.

8.06 Choice of Law. This Agreement shall be governed by and construed and enforced in accordance with the substantive laws of the State of Delaware, as though all acts and omissions related hereto occurred in Delaware.

8.07 Amendment. This Agreement shall not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each of Fortune Brands and H&S.

8.08 Waiver. Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the Party or Parties entitled to the benefit thereof. Any such waiver shall be validly and sufficiently given for the purposes of this Agreement if, as to any Party, it is in writing signed by an authorized representative of such Party. The failure of any Party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, or in any way to affect the validity of this Agreement or any part hereof or the right of any Party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

8.09 Partial Invalidity. Wherever possible, each provision hereof shall be interpreted in such a manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision or provisions shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.

8.10 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by and delivered to each of the Parties.

8.11 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns; provided, however, that the rights and obligations of either Party under this Agreement shall not be assignable by such Party without the prior written consent of the other Party. The successors and permitted assigns hereunder shall include any permitted assignee as well as the successors in interest to such permitted assignee (whether by merger, liquidation (including successive mergers or liquidations) or otherwise).

8.12 Notices. All notices or other communications under this Agreement shall be in writing and shall be deemed to be duly given when delivered or mailed in accordance with the terms of Section 12.11 of the Distribution Agreement.

8.13 Performance. Each Party shall cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth herein to be performed by any Affiliate of such Party.

8.14 No Public Announcement. Neither Fortune Brands nor H&S shall, without the approval of the other, make any press release or other public announcement concerning the transactions contemplated by this Agreement, except as and to the extent that either Party shall be so obligated by law or the rules of any regulatory body, stock exchange or quotation system, in which case the other Party shall be advised and the Parties shall use commercially reasonable efforts to cause a mutually agreeable release or announcement to be issued; provided, however, that the foregoing shall not preclude communications or disclosures necessary to implement the provisions of this Agreement or to comply with applicable law, accounting and SEC disclosure obligations or the rules of any stock exchange.

8.15 Limited Liability. Notwithstanding any other provision of this Agreement, no individual who is a stockholder, director, employee, officer, agent or representative of an H&S Party or a Fortune Brands Party, in its capacity as such, shall have any liability in respect of or relating to the covenants or obligations of such Party under this Agreement, and, to the fullest extent legally permissible, each of H&S and Fortune Brands, for itself and its respective stockholders, directors, employees, officers and Affiliates, waives and agrees not to seek to assert or enforce any such liability that any such Person otherwise might have pursuant to applicable law.

8.16 Mutual Drafting. This Agreement shall be deemed to be the joint work product of Fortune Brands and H&S and any rule of construction that a document shall be interpreted or construed against a drafter of such document shall not be applicable.

8.17 Dispute Resolution. The Parties agree that any dispute, controversy or claim between them with respect to the matters covered hereby shall be governed by and resolved in accordance with the procedures set forth in Section 12.2 of the Distribution Agreement.

8.18 No Third-Party Beneficiaries. No Business Employee or other current or former employee of the Fortune Brands Parties or H&S Parties (or his/her spouse, dependent or beneficiary), or any other person not a party to this Agreement, shall be entitled to assert any claim hereunder. The provisions of this Agreement are solely for the benefit of the Parties and their respective Affiliates, successors and permitted assigns and shall not confer upon any third Person any remedy, claim, liability, reimbursement or other right in excess of those existing without reference to this Agreement.

8.19 Effect if Distribution Does Not Occur. Notwithstanding anything in this Agreement to the contrary, if the Distribution Agreement is terminated prior to the Distribution Date, this Agreement shall be of no further force and effect.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their names by a duly authorized officer as of the date first written above.

FORTUNE BRANDS, INC.

By: /s/ Bruce A. Carbonari
Name: Bruce A. Carbonari
Title: Chairman of the Board and Chief Executive Officer

FORTUNE BRANDS HOME & SECURITY, INC.

By: /s/ Christopher J. Klein
Name: Christopher J. Klein
Title: President and Chief Executive Officer

Exhibit 99.1

MEDIA CONTACT:
Gary Ross
847-484-4456
gary.ross@fbhs.com

INVESTOR CONTACT:
Brian Lantz
847-484-4574
brian.lantz@fbhs.com

JOHN G. MORIKIS ELECTED TO FORTUNE BRANDS HOME & SECURITY BOARD OF DIRECTORS

DEERFIELD, Ill. – September 30, 2011 – Fortune Brands Home & Security (FBHS), the industry-leading home and security products unit of Fortune Brands, Inc. (NYSE: FO), today announced John G. Morikis has been elected to the company's Board of Directors, effective December 1, 2011.

Morikis is president and chief operating officer of The Sherwin-Williams Company, an $8 billion global leader in the paint and coatings industry. He was elected COO of Sherwin-Williams in 2006.

"John is an accomplished executive whose operational and industry experience will be an asset to our Board," said David Thomas, non-executive chairman of the board, Fortune Brands Home & Security, Inc. "His achievements in growing Sherwin-Williams' business and building upon its leadership position are impressive, and I am looking forward to his contributions and insight as Fortune Brands Home & Security moves forward as an independent company."

As previously announced, FBHS is expected to spin off from Fortune Brands after the close of business on October 3, 2011 and will trade on the New York Stock Exchange as an independent public company under the ticker symbol FBHS effective October 4, 2011.

As COO at Sherwin-Williams, Morikis has helped transform the company's operating model, leading to increased operating performance and productivity, as well as improved utilization of fixed assets and more sharing of best practices. Prior to his current role, Morikis served as president of the Paint Stores Group, whose revenue increased from approximately $3 billion to nearly $5 billion during his tenure. Morikis served in key positions of increasing responsibility at Sherwin-Williams since joining the company in 1985.

Morikis is a member of the Joint Center for Housing Studies Policy Advisory Board at Harvard University and is a member of the Board of Directors of the American Red Cross. He also serves on the Board of Trustees for the Maryland Institute College of Art and the Board of Directors of the University Hospitals Ahuja Medical Center. Morikis is also a member of the Young Presidents Organization.

Morikis holds Bachelor's degrees in Business Administration and Psychology from St. Joseph's College in Rensselaer, Ind., and a Master's degree in Business from National-Louis University in Evanston, Ill.

About Fortune Brands Home & Security, Inc.

Fortune Brands Home & Security, Inc. (NYSE: FBHS), headquartered in Deerfield, Ill., creates products and services that help fulfill the dreams of homeowners and help people feel more secure. The company's trusted brands include Master Lock, MasterBrand cabinets, Moen faucets, Simonton windows and Therma-Tru entryway systems. FBHS holds market leadership positions in all of its segments. The company's 16,000 associates generated more than $3.2 billion in net sales in 2010. For more information, please visit www.fbhs.com.

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