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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549**

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**FORM 8-K**

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

Date of report (Date of earliest event reported): **June 29, 2015**

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**TopBuild Corp.**  
(Exact name of registrant as specified in its charter)

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**DELAWARE**  
(State or other Jurisdiction of  
Incorporation)

**001-36870**  
(Commission  
File Numbers)

**47-3096382**  
(IRS Employer  
Identification Nos.)

**260 Jimmy Ann Drive, Daytona Beach, Florida**  
(Addresses of Principal Executive Offices)

**32114**  
(Zip Code)

Registrant's telephone number, including area code: **(386) 304-2200.**

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01. Entry into a Material Definitive Agreement.**

***Completion of Separation of TopBuild from Masco***

On June 30, 2015 (the "Distribution Date"), after the New York Stock Exchange market closing, the previously-announced separation (the "Separation") of TopBuild Corp. ("TopBuild") from Masco Corporation ("Masco") was completed. The Separation of TopBuild, which comprises Masco's former installation and other services businesses (the "Services Business"), was achieved through Masco's distribution (the "Distribution") of 100% of the shares of TopBuild to holders of Masco common stock as of the close of business on the record date of June 19, 2015 (the "Record Date"). Masco stockholders of record received one share of TopBuild common stock for every nine shares of Masco common stock. Following the Distribution, TopBuild became an independent, publicly-traded company, and Masco retains no ownership interest in TopBuild.

In connection with the Separation, TopBuild entered into several agreements with Masco on June 29, 2015 that, among other things, effect the Separation and provide a framework for its relationship with Masco after the Separation, including the following agreements:

- a Separation and Distribution Agreement;
- a Tax Matters Agreement;
- a Transition Services Agreement; and
- an Employee Matters Agreement.

***Separation and Distribution Agreement***

The Separation and Distribution Agreement governs the overall terms of the Separation. Generally, the Separation and Distribution Agreement includes Masco's and TopBuild's agreements relating to the restructuring steps to be taken to complete the Separation, including the assets and rights to be transferred, liabilities to be assumed and related matters.

The Separation and Distribution Agreement provided for Masco and TopBuild to transfer specified assets to TopBuild and its subsidiaries that will operate the Services Business after the Distribution, on the one hand, and to Masco's remaining businesses, on the other hand. The Separation and Distribution Agreement requires Masco and TopBuild to use reasonable efforts to obtain consents, approvals and amendments required to novate or assign the assets and liabilities that were transferred pursuant to the Separation and Distribution Agreement.

Unless otherwise provided in the Separation and Distribution Agreement or any of the related ancillary agreements, all assets were transferred on an "as is, where is" basis. Generally, if the transfer of any assets or any claim or right or benefit arising thereunder requires a consent that was not obtained before the Distribution, or if the transfer or assignment of any such asset or such claim or right or benefit arising thereunder was ineffective or adversely affects the rights of the transferor thereunder so that the intended transferee did not in fact receive all such rights, each of Masco and TopBuild agree to cooperate in a mutually agreeable arrangement under which the intended transferee will obtain the benefits and assume the obligations thereunder (including by sub-contract, sub-license or sub-lease to such transferee) or under which the transferor will enforce for the benefit of the transferee, with the transferee assuming the transferor's obligations, the rights of the transferor against any third party.

The Separation and Distribution Agreement specifies those conditions that were required to be satisfied or waived by Masco prior to the completion of the Separation. In addition, Masco had the right to determine the date and terms of the Separation, and had the right, at any time until completion of the Distribution, to determine to abandon or modify the Distribution and to terminate the Separation and Distribution Agreement.

In addition, the Separation and Distribution Agreement governs the treatment of indemnification, insurance and litigation responsibility and management. Generally, the Separation and Distribution Agreement provides for uncapped cross-indemnities principally designed to place financial responsibility for the obligations and liabilities of TopBuild's business with TopBuild and financial responsibility for the obligations and liabilities of Masco's retained businesses with Masco. The Separation and Distribution Agreement also establishes procedures for handling claims subject to indemnification and related matters.

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### ***Tax Matters Agreement***

In connection with the Separation (together with certain related transactions), TopBuild and Masco entered into a Tax Matters Agreement that governs the parties' respective rights, responsibilities and obligations with respect to taxes, including taxes arising in the ordinary course of business, and taxes, if any, incurred as a result of any failure of the Separation (or certain related transactions) to qualify as tax-free for U.S. federal income tax purposes. The Tax Matters Agreement also sets forth the respective obligations of the parties with respect to the filing of tax returns, the administration of tax contests and assistance and cooperation on tax matters.

In general, the Tax Matters Agreement governs the rights and obligations that TopBuild and Masco have after the Separation with respect to taxes for both pre- and post-closing periods. Under the Tax Matters Agreement, Masco generally will be responsible for all of TopBuild's pre-Separation income taxes that are reported on combined tax returns with Masco or any of its affiliates after the Separation. TopBuild will generally be responsible for all other income taxes and all non-income taxes primarily related to TopBuild's assets and businesses that are due and payable after the Separation.

In the event that the Separation and certain related transactions fail to qualify for their intended tax treatment, in whole or in part, and Masco is subject to tax as a result of such failure, the Tax Matters Agreement determines whether Masco must be indemnified for any such tax by TopBuild. As a general matter, under the terms of the Tax Matters Agreement, TopBuild is required to indemnify Masco for any tax-related losses in connection with the Separation due to any action by TopBuild or any of its subsidiaries following the Separation. Therefore, in the event that the Separation and/or related transactions fail to qualify for their intended tax treatment due to any action by TopBuild or any of its subsidiaries, TopBuild will generally be required to indemnify Masco for the resulting taxes.

The Tax Matters Agreement further provides that:

- Without duplication of TopBuild's indemnification obligations described in the prior paragraph, TopBuild will generally indemnify Masco against (i) taxes for which TopBuild is responsible; and (ii) any liability or damage resulting from a breach by TopBuild or any of its affiliates of a covenant made in the Tax Matters Agreement; and
- Masco will indemnify TopBuild against taxes for which Masco is responsible.

In addition to the indemnification obligations described above, the indemnifying party will generally be required to indemnify the indemnified party against any interest, penalties, additions to tax, losses, assessments, settlements or judgments arising out of or incident to the event giving rise to the indemnification obligation, along with costs incurred in any related contest or proceeding.

Further, the Tax Matters Agreement generally prohibits TopBuild and its affiliates from taking certain actions that could cause the Separation and certain related transactions to fail to qualify for their intended tax treatment. In particular:

- from and until the second anniversary of the Separation, neither TopBuild nor any of its subsidiaries may sell, exchange, distribute or otherwise dispose of any assets held by TopBuild or its subsidiaries, except for assets that, in the aggregate, do not constitute more than 15% of TopBuild's total assets;
- from and until the second anniversary of the Separation (or otherwise pursuant to a "plan" within the meaning of Section 355(e) of the Internal Revenue Code of 1986, as amended (the "Code")), TopBuild may not cause or permit any business combination or transaction which, individually or in the aggregate, could result in one or more persons acquiring directly or indirectly a forty percent (40%) or greater interest in TopBuild for purposes of Section 355(e) of the Code;
- from and until the second anniversary of the Separation, TopBuild may not discontinue the active conduct of its business (within the meaning of Section 355(b) (2) of the Code);
- from and until the second anniversary of the Separation, TopBuild may not sell or otherwise issue its common stock, other than pursuant to issuances that satisfy certain regulatory safe harbors set forth in Treasury Regulations related to stock issued to employees and retirement plans;

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- from and until the second anniversary of the Separation, TopBuild may not redeem or otherwise acquire any of its common stock, other than pursuant to open-market repurchases of less than 20% of its common stock (in the aggregate);
- from and until the second anniversary of the Separation, TopBuild may not amend its certificate of incorporation (or other organizational documents) or take any other action, whether through a stockholder vote or otherwise, affecting the voting rights of its common stock; and
- more generally, TopBuild may not take any action that could reasonably be expected to cause the Separation and certain related transactions to fail to qualify as tax-free transactions under Section 368(a)(1)(D) and Section 355 of the Code.

As described above, if TopBuild takes any of the foregoing actions and such actions result in the failure of the Separation and certain related transactions to qualify for their intended tax treatment, TopBuild will be required to indemnify Masco against tax-related losses suffered in connection with the Separation. The amount of any such potential tax-related losses would generally be a function of the fair market value of TopBuild shares, Masco's historical tax basis in TopBuild's assets and Masco's general tax profile, in each case as of the time of the Separation. Such amount is not subject to any cap or similar limitation under the Tax Matters Agreement.

**Transition Services Agreement**

The Transition Services Agreement sets forth the terms on which Masco will provide to TopBuild, and TopBuild will provide to Masco, on a transition basis, certain corporate services or functions that the companies historically have shared. The agreement provides for the provision of specified transition services, generally for a period of up to 12 months, with a possible extension of 12 months (an aggregate of 24 months). Compensation for transition services will be determined using an internal cost allocation methodology based on fully loaded cost (e.g., including an allocation of corporate overhead), or, in certain cases, may be based on terms and conditions comparable to those that would have been arrived at by parties bargaining at arm's-length.

**Employee Matters Agreement**

The Employee Matters Agreement governs Masco's and TopBuild's compensation and employee benefit obligations with respect to the current and former employees and non-employee directors of each company, and generally will allocate liabilities and responsibilities relating to employee compensation and benefit plans and programs. The Employee Matters Agreement provides for the treatment of outstanding Masco equity awards and certain other outstanding annual and long-term incentive awards. The Employee Matters Agreement provides that, following the Distribution, TopBuild's active employees generally will no longer participate in benefit plans sponsored or maintained by Masco and will commence participation in TopBuild's benefit plans. The Employee Matters Agreement also sets forth the general principles relating to employee matters, including with respect to the assignment of employees, the assumption and retention of liabilities and related assets, expense reimbursements, workers' compensation, leaves of absence, the provision of comparable benefits, employee service credit, the sharing of employee information and the duplication or acceleration of benefits.

The Employee Matters Agreement also provides that (i) the Distribution does not constitute a change in control under Masco's plans, programs, agreements or arrangements and (ii) the Distribution and the assignment, transfer or continuation of the employment of employees with another entity will not constitute a severance event under applicable severance plans, programs, agreements or arrangements.

The foregoing descriptions are summaries of the material terms of these agreements; for the complete text of these agreements, please see the agreements filed with this Current Report on Form 8-K as Exhibits 2.1, 10.1, 10.2 and 10.3, each of which is incorporated herein by reference.

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

On June 30, 2015, Masco completed the previously-announced Separation from TopBuild. Effective as of 11:59 p.m. Eastern time on the Distribution Date, the common stock of TopBuild was distributed, on a pro rata basis, to Masco's stockholders of record as of the close of business on the Record Date. On the Distribution Date, each of the stockholders of Masco received one share of TopBuild for every nine shares of Masco's common stock held by such stockholder on the Record Date. Fractional shares of TopBuild common stock were not distributed. Any fractional share of TopBuild common stock otherwise issuable to a Masco stockholder was sold in the open market on such stockholder's behalf, and

such stockholder received a cash payment for the fractional share based on the stockholder's pro rata portion of the net cash proceeds from sales of all fractional shares.

The separation was completed pursuant to the Separation and Distribution Agreement. The description of the Separation included under Item 1.01 and the Separation and Distribution Agreement attached as Exhibit 2.1 to this Current Report on Form 8-K are incorporated herein by reference.

**Item 5.01 Changes in Control of Registrant.**

TopBuild was a wholly-owned subsidiary of Masco immediately prior to the Distribution. On June 30, 2015, Masco completed the Distribution of 100% of the outstanding capital stock of TopBuild to holders of Masco common stock on the Record Date. Masco holders of record received one share of TopBuild common stock for every nine shares of Masco common stock. Following completion of the Distribution, TopBuild became an independent, publicly-traded company, and Masco retains no ownership interest in TopBuild. The description of the Separation included under Item 1.01 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.**

As described below, on June 30, 2015, certain actions previously taken by the board of directors of TopBuild, and Masco, as TopBuild's sole stockholder, in connection with the Separation, became effective:

**Officer Appointments and Resignations**

Kenneth G. Cole and John G. Szniewajs tendered their resignations as Vice President and Secretary and President and Treasurer of TopBuild, respectively, effective as of the filing of TopBuild's Amended and Restated Certificate of Incorporation with the Delaware Secretary of State, which occurred on June 30, 2015.

The following individuals became the executive officers of TopBuild (the "Officers"), effective as of the filing of TopBuild's Amended and Restated Certificate of Incorporation with the Delaware Secretary of State, which occurred on June 30, 2015:

Name	Office
Gerald Volas	Chief Executive Officer (principal executive officer)
Robert M. Buck	President and Chief Operating Officer (president and principal operating officer)
John S. Peterson	Vice President and Chief Financial Officer (principal financial and accounting officer)
David Cushen	Senior Vice President of Operations, TruTeam Contractor Services
Michelle A. Friel	Vice President, General Counsel and Secretary
Mark R. Moore	President, Service Partners, LLC
Robin L. Reininger	Vice President, Chief Human Resource Officer
Nicholas R. Thompson, Jr.	Corporate Contoller

Biographical information for the Officers can be found in the Information Statement filed as an exhibit to the Form 10 (the "Information Statement") under the section entitled "Management—Executive Officers Following the Separation," which is incorporated herein by reference. Information relating to TopBuild's compensation structure, including its arrangements with and initial equity grants to its principal executive officer, president and principal operating officer and principal financial and accounting officer, are described in the Information Statement under the section entitled "Compensation Discussion and Analysis," which is incorporated herein by reference.

### *Appointments and Resignations of Directors*

Prior to the Distribution Date, TopBuild's board of directors consisted of Messrs. Cole and Szniewajs and Joseph S Cantie. Mr. Cantie also served as the sole member of each of TopBuild's Audit, Organizational and Compensation and Corporate Governance and Nominating Committees. Messrs. Cole and Szniewajs tendered their resignations as TopBuild's directors, effective as of the filing of TopBuild's Amended and Restated Certificate of Incorporation with the Delaware Secretary of State, which occurred on June 30, 2015.

On June 30, 2015, effective upon the effectiveness of TopBuild's Amended and Restated Certificate of Incorporation, the following individuals were appointed as the TopBuild board of directors, as described in the Information Statement:

<u>Name</u>	<u>Class</u>
Gerald Volas	III
Dennis W. Archer	I
Carl T. Camden	III
Joseph S. Cantie	III
Alec C Covington	I
Mark A. Petrarca	II
Margaret M. Whelan	II

Effective on their appointment to the board of directors, each of Mr. Cantie, Mr. Archer, Mr. Camden, Mr. Covington, Mr. Petrarca and Ms. Whelan were appointed to each of our Audit Committee (with Mr. Cantie as chair), Organizational and Compensation Committee (with Mr. Petrarca as chair) and Corporate Governance and Nominating Committee (with Mr. Covington as chair). Mr. Covington will serve as chairman of the board of directors.

TopBuild's board of directors will be divided into three classes, each of roughly equal size. The directors designated as Class I directors will have terms expiring at the first annual meeting of stockholders following the Separation; the directors designated as Class II directors will have terms expiring at the following year's annual meeting of stockholders; the directors designated as Class III directors will have terms expiring at the following year's annual meeting of stockholders after that. Commencing with the first annual meeting of stockholders held following the Separation, directors for each class will be elected at the annual meeting of stockholders held in the year in which the term for that class expires and thereafter will serve for a term of three years. We have not yet set the date of the first annual meeting of stockholders to be held following the Separation.

Biographical information for the directors can be found in the Information Statement under the section entitled "Management—Composition of the Board of Directors," which is incorporated herein by reference. Information relating to TopBuild's non-employee director compensation structure is described in the Information Statement under the section entitled "Director Compensation," which is incorporated herein by reference.

### *Commencement of TopBuild 2015 Benefits Plans*

On June 30, 2015, TopBuild's 2015 Long-Term Incentive Plan (the "LTIP"), which was previously approved by the board of directors of TopBuild and Masco, as TopBuild's sole stockholder, became effective. A description of the LTIP can be found in the Information Statement under the section entitled "Compensation of Executive Officers—TopBuild Long-Term Incentive Plan," which is incorporated herein by reference. The foregoing description of the LTIP is only a summary of the LTIP. For the complete text of the LTIP, please see the LTIP filed with the Form 10 as Exhibit 10.17, which is incorporated herein by reference.

### **Item 5.03 Amendments to Articles of Incorporation or Bylaws**

In connection with the completion of the Separation, on June 30, 2015, TopBuild's Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws became effective. A summary of the Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws is included in the Information Statement under the heading "Description of Capital Stock," which is incorporated herein by reference. The Amended and Restated Certificate

of Incorporation and Amended and Restated Bylaws were approved by the board of directors of TopBuild and by its sole stockholder on June 11, 2015.

The foregoing descriptions of the Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws are summaries of their material terms; the complete text of the Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws are filed with this Current Report on Form 8-K as Exhibits 3.1 and 3.2, each of which is incorporated herein by reference.

### **Item 8.01 Other Events.**

On July 1, 2015, TopBuild issued a press release announcing the completion of the Separation. The full text of the press release is filed as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

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

#### **(d) Exhibits**

<u>Exhibit Number</u>	<u>Title</u>
2.1*	Separation and Distribution Agreement dated June 29, 2015
3.1	Amended and Restated Certificate of Incorporation of TopBuild Corp.
3.2	Amended and Restated Bylaws of TopBuild Corp.
10.1	Tax Matters Agreement dated June 29, 2015
10.2	Transition Services Agreement dated June 29, 2015
10.3	Employee Matters Agreement dated June 29, 2015
99.1	Press release issued by TopBuild, dated July 1, 2015, announcing the completion of the Separation

\* The schedules to this agreement are omitted pursuant to Item 601(b)(2) of Regulation S-K. TopBuild agrees to supplementally furnish to the Securities and Exchange Commission, upon request, a copy of any omitted schedule.

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**SIGNATURES**

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.

TOPBUILD CORP.

By: /s/ John S. Peterson

Name: John S. Peterson

Title: Vice President and Chief Financial Officer

Dated: July 6, 2015

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**EXHIBIT INDEX**

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## SEPARATION AND DISTRIBUTION AGREEMENT

dated as of June 29, 2015

by and between

MASCO CORPORATION

and

TOPBUILD CORP.

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**SEPARATION AND DISTRIBUTION AGREEMENT**

SEPARATION AND DISTRIBUTION AGREEMENT dated as of June 29, 2015 (as the same may be amended from time to time in accordance with its terms and together with the schedules and exhibits hereto, this “**Agreement**”) between Masco Corporation, a Delaware corporation (“**Masco**”), and TopBuild Corp., a Delaware corporation (“**TopBuild**”).

**WITNESSETH**

WHEREAS, TopBuild is a wholly owned Subsidiary of Masco;

WHEREAS, the Board of Directors of Masco has determined that it is in the best interests of Masco and the stockholders of Masco to distribute to the holders of the issued and outstanding shares of common stock, par value \$1.00 per share, of Masco (the “**Masco Common Stock**”) as of the Record Date (as defined below), by means of a *pro rata* dividend, 100% of the issued and outstanding shares of common stock, par value \$0.01 per share, of TopBuild (the “**TopBuild Common Stock**”), on the basis of 1 share of TopBuild Common Stock for every 9 then issued and outstanding shares of Masco Common Stock (the “**Distribution**”);

WHEREAS, Masco and TopBuild have prepared, and TopBuild has filed with the Commission (as defined below), the Form 10 (as defined below), which includes the Information Statement (as defined below), and which sets forth appropriate disclosure concerning TopBuild and the Distribution, and the Form 10 has become effective under the Exchange Act (as defined below);

WHEREAS, the Distribution will be preceded by, among other things, the Restructuring (as defined below) in which all of the stock of Masco Administrative Services Inc. (“**MAS**”), Masco Home Services Inc. (“**MHS**”) and TopBuild Services Group Corporation (“**TSG**”) will be contributed to TopBuild;

WHEREAS, for United States federal and state income tax purposes, it is intended that (i) the Restructuring and the Distribution, taken together, will qualify as a “reorganization” within the meaning of Section 368(a)(1)(D) of the Internal Revenue Code of 1986, as amended (the “**Code**”), and (ii) the Distribution will qualify as a tax-free transaction under Sections 355(a) and 361(c) of the Code (in each case, qualifying for such treatment under the corresponding provisions of state law), and it is a condition to the Distribution that Masco will have obtained a legal opinion to such effect as contemplated by Section 3.01(a)(xi); and

WHEREAS, the parties hereto have determined to set forth the principal actions required to effect the Distribution and to set forth certain agreements that will govern the relationship between those parties following the Distribution.

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ACCORDINGLY, in consideration of the mutual covenants contained in this Agreement, the parties hereby agree as follows:

#### ARTICLE 1 DEFINITIONS

Section 1.01. *Definitions.* As used in this Agreement, the following terms have the following meanings:

“**Action**” means any demand, claim, suit, action, arbitration, inquiry, investigation or other proceeding by or before any Governmental Authority or any arbitration or mediation tribunal.

“**Affiliate**” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such other Person. For the purposes of this definition, “**control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and the terms “**controlling**” and “**controlled**” have meanings correlative to the foregoing. Notwithstanding any provision of this Agreement to the contrary (except where the relevant provision states explicitly to the contrary), no member of the Masco Group, on the one hand, and no member of the TopBuild Group, on the other hand, shall be deemed to be an Affiliate of the other.

“**Agreement**” has the meaning set forth in the preamble.

“**Ancillary Agreement**” means each of the Tax Matters Agreement, the Transition Services Agreement and the Employee Matters Agreement, (in each case, together with the schedules, exhibits, annexes and other attachments thereto).

“**Antitrust Laws**” means any laws designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolizing or restraining trade or lessening competition, including the Hart-Scott Rodino Act and other similar competition or antitrust laws of any jurisdiction.

“**Applicable Law**” means, with respect to any Person, any federal, state, local or foreign law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling, directive, guidance, instruction, direction, permission, waiver, notice, condition, limitation, restriction or prohibition or other similar requirement enacted, adopted, promulgated, imposed, issued or applied by a Governmental Authority that is binding upon or applicable to such Person, its properties or assets or its business or operations, as amended unless expressly specified otherwise.

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“**Assignment and Assumption Agreement**” has the meaning set forth in Section 4.09.

“**Business**” means, with respect to the Masco Group, the Masco Business and, with respect to the TopBuild Group, the TopBuild Business.

“**Business Day**” means any day, other than Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by Applicable Law to close.

“**Claim**” has the meaning set forth in Section 6.04(a).

“**Claims Administration**” means the processing of claims made under Shared Policies or of TopBuild Matching Deductible Claims, as applicable, including, but not limited to, the reporting of claims to the insurance carrier, management and defense of claims, providing for appropriate releases upon settlement of claims.

“**Claims Made Policies**” has the meaning set forth in Section 4.04(a).

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

“**Commission**” means the United States Securities and Exchange Commission.

“**Confidential Information**” means, with respect to a Group, (i) any proprietary information that is competitively sensitive, material or otherwise of value to the members of such Group and not generally known to the public, including product planning information, marketing strategies, financial information, information regarding operations, consumer and/or customer relationships, consumer and/or customer profiles, sales estimates, business plans and internal performance results relating to the past, present or future business activities of the members of such Group and the consumers, customers, clients and suppliers of the members of such Group, (ii) any proprietary scientific or technical information, design, invention, process, procedure, formula, or improvement that is commercially valuable and secret in the sense that its confidentiality affords any member of such Group a competitive advantage over its competitors and (iii) all confidential or proprietary concepts, documentation, reports, data, specifications, computer software, source code, object code, flow charts, databases, inventions, information, and trade secrets, in the case of each of clauses (i), (ii) and (iii) of this definition, that are related primarily to such Group’s Business; *provided* that to the extent both the Masco Business and the TopBuild Business use or rely upon any of the information



described in any of the foregoing clauses (i), (ii) and/or (iii), subject to Section 5.07, such information shall be deemed the Confidential Information of both the Masco Group and the TopBuild Group.

“**Credit Facility**” means that certain credit agreement dated as of June 9, 2015, as it may be amended from time to time, by and among TopBuild as borrower, PNC Bank, National Association, as administrative agent and the other lenders from time to time party thereto.

“**Disposing Party**” has the meaning set forth in Section 5.05.

“**Distribution**” has the meaning set forth in the recitals to this Agreement.

“**Distribution Agent**” means Computershare, Inc.

“**Distribution Date**” means June 30, 2015, the date on which the Distribution shall be effected.

“**Distribution Documents**” means this Agreement and the Ancillary Agreements.

“**Distribution Time**” means the time at which the Distribution is effective on the Distribution Date, which shall be deemed to be 11:59 p.m. Eastern Daylight Time, on the Distribution Date.

“**Employee Matters Agreement**” means the Employee Matters Agreement dated as of the date hereof between Masco and TopBuild substantially in the form of Exhibit A, as such agreement may be amended from time to time in accordance with its terms.

“**Environmental Law**” means any Applicable Law relating to pollution, protection or restoration of or prevention of harm to the environment or natural resources, or the effect on the environment of the use, handling, transportation, treatment, storage, disposal, release or discharge of, or any human exposure to, any toxic or hazardous materials.

“**Environmental Liabilities**” means all Liabilities relating to, arising out of or resulting from the effect on the environment of the use, handling, transportation, treatment, storage, disposal, release or discharge of, or any human exposure to, any toxic or hazardous materials, Environmental Law or contract or agreement relating to any such matters (including related removal, remediation or cleanup costs, investigatory costs, response costs, natural resources damages, property damages, personal injury damages, costs of compliance and indemnity, contribution or similar obligations), including, but not limited to, the Liabilities listed on Schedule 5(a), and all costs and expenses, interest, fines, penalties or other monetary sanctions in connection therewith.

“**Equity Compensation Registration Statement**” means the Registration Statement on Form S-8 or such other form or forms as may be appropriate, as amended and supplemented, including all documents incorporated by reference therein, to effect the registration under the Securities Act of TopBuild Common Stock subject to certain equity awards granted to current and former officers,

employees, directors and consultants of the Masco Group to be assumed or replaced by TopBuild pursuant to the Employee Matters Agreement.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Existing Credit Facility**” means the credit agreement dated March 28, 2013, among Masco, Masco Europe S.A.R.L., the lenders from time to time party thereto, JPMorgan Chase Bank, N.A. as administrative agent and the other signatories thereto, as amended.

“**FIFO Basis**” means, with respect to the payment of Related Claims or Unrelated Claims pursuant to the same Shared Policy, the payment in full of each successful claim (regardless of whether a Masco Insured Party or a TopBuild 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.

“**Form 10**” means the registration statement on Form 10 filed by TopBuild with the Commission to effect the registration of TopBuild Common Stock pursuant to the Exchange Act in connection with the Distribution, as such registration statement may be amended or supplemented from time to time.

“**Former Business**” means any corporation, partnership, entity, division, business unit, business or set of business operations that has been sold, conveyed, assigned, transferred or otherwise disposed of or divested (other than solely in connection with the Restructuring), in whole or in part, or the operations, activities or production of which has been discontinued, abandoned, liquidated, completed or otherwise terminated, in whole or in part, in each case, by either Group prior to the Distribution Time.

“**Fundamental Claim**” means any Third Party Claim or Action asserted in whole or in part against any member of the TopBuild Group (i) brought by or on behalf of any Governmental Authority, (ii) any Third Party Claim or Action alleging criminal misconduct, (iii) involving a class of plaintiffs seeking certification or (iv) that could, in Masco’s good faith opinion, have an adverse impact on the Masco Business or interests of any member of the Masco Group in any material respect.

“**Gallagher**” has the meaning set forth in Section 4.10.

“**Governmental Authority**” means any multinational, foreign, federal, state, local or other governmental, statutory or administrative authority, regulatory body or commission or any court, tribunal or judicial or arbitral authority which has any jurisdiction or control over either party (or any of their Affiliates).

“**Group**” means, as the context requires, the TopBuild Group, the Masco Group or either or both of them.

“**Indemnified Party**” has the meaning set forth in Section 6.04(a).

“**Indemnifying Party**” has the meaning set forth in Section 6.04(a).

“**Indemnitees**” means, as the context requires, the Masco Indemnitees or the TopBuild Indemnitees.

“**Information Statement**” means the Information Statement to be sent to each holder of Masco Common Stock in connection with the Distribution.

“**Insured Party**” means, as the context requires, a Masco Insured Party, a TopBuild Insured Party or either or both of them.

“**Intercompany Accounts**” has the meaning set forth in Section 2.05.

“**IRS**” means the Internal Revenue Service.

“**LC Consent**” has the meaning set forth in Section 2.09.

“**Liabilities**” means any and all Claims, debts, liabilities, damages and/or obligations of any kind, character or description, whether absolute or contingent, matured or not matured, liquidated or unliquidated, accrued or unaccrued, known or unknown, whenever arising, including all costs and expenses (including attorneys’ fees and expenses and associated investigation costs) relating thereto, and including, without limitation, those Claims, debts, liabilities, damages and/or obligations arising under this Agreement, any Applicable Law, any Action or threatened Action, any order or consent decree of any Governmental Authority or any award of any arbitrator of any kind, and those arising under any agreement, commitment or undertaking, including in connection with the enforcement of rights hereunder or thereunder.

“**Masco**” has the meaning set forth in the preamble.

“**Masco Accounts**” has the meaning set forth in Section 2.07.

“**Masco Assumed Actions**” has the meaning set forth in Section 5.02(b).

“**Masco Business**” means (i) the businesses conducted by the Masco Group from time to time, whether before, on or after the Distribution (but excluding the TopBuild Business and any TopBuild Former Business) and (ii) all Masco Former Businesses. For the avoidance of doubt, the TopBuild Contributed Assets (and all assets and properties owned, directly or indirectly, by entities forming all or part of such assets) will not be considered part of the Masco Business.

“**Masco Common Stock**” has the meaning set forth in the recitals to this Agreement.

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“**Masco Former Business**” means (i) the Former Businesses previously owned, in whole or in part, or previously operated, in whole or in part, primarily by any member of the Masco Group or otherwise primarily related to the Masco Business, including, but not limited to, the Former Business listed on Schedule 2, but excluding, for the sake of clarity, the TopBuild Former Businesses, and (ii) all factories (and related facilities, other assets or operations transferred prior to the Distribution Time in connection with the transfer of any such factories) owned, in whole or in part, or operated, in whole or in part, prior to the Distribution Time by Masco or any of its current or former Subsidiaries or other Affiliates (excluding, for this purpose, members of the TopBuild Group).

“**Masco Group**” means Masco and its Subsidiaries (other than any member of the TopBuild Group) and, where applicable, the Masco Former Businesses, including all predecessors and successors to such Persons (excluding, for the sake of clarity, all TopBuild Former Businesses).

“**Masco Group Privileged Materials**” has the meaning set forth in Section 5.07(e).

“**Masco Indemnitees**” has the meaning set forth in Section 6.02(a).

“**Masco Insured Party**” means any member of the Masco Group that is named insured, additional named insured or insured under any Shared Policy.

“**Masco Liabilities**” means (without duplication) all of the following:

(a) all Liabilities that are expressly contemplated by this Agreement or any other Ancillary Agreement as Liabilities to be retained or assumed by Masco or any other member of the Masco Group, and all agreements, obligations and other Liabilities of Masco or any member of the Masco Group under this Agreement or any of the other Ancillary Agreements;

(b) any and all Liabilities to the extent relating to, arising out of or resulting from the Masco Business; *provided* that, except as expressly specified otherwise in this Agreement or in any Ancillary Agreement, any and all Liabilities that are primarily related to the Masco Business shall be 100% allocated to the Masco Group as Masco Liabilities; and

(d) all Liabilities of the Masco Group and/or the TopBuild Group arising from or relating to any Masco Former Business or any disposition thereof;

*provided* that, notwithstanding the foregoing, the Masco Liabilities shall not include (i) any Liabilities for Taxes, which shall be governed by the Tax Matters Agreement or (ii) any Liabilities for the employment, employee benefits and employee compensation matters expressly covered by the Employee Matters Agreement, all of which shall be governed by the Employee Matters Agreement.

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“**Masco Policies**” has the meaning set forth in Section 4.02.

“**Matching Deductible Policies**” means (i) the policies issued to TopBuild under the Assignment and Assumption Agreement and (ii) the Pre-Distribution Matching Deductible Policies, including, but not limited to, the policies set forth on Schedule 4.10.

“**NYSE**” means The New York Stock Exchange, Inc.

“**Occurrence Based Policies**” has the meaning set forth in Section 4.04(a).

“**Person**” means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a Governmental Authority.

“**Post-Distribution Insurance Arrangements**” has the meaning set forth in Section 4.03.

“**Pre-Distribution Matching Deductible Policies**” means the Masco Policies in effect prior to the Distribution Date that (x) cover or otherwise relate to the TopBuild Business and (y) are addressed under the Assignment and Assumption Agreement.

“**Post-Distribution Non-Matching Deductible Policies**” has the meaning set forth in Section 4.11.

“**Pre-Distribution Time Communications**” has the meaning set forth in Section 5.07(e).

“**Prior Company Counsel**” has the meaning set forth in Section 5.07(c).

“**Privilege**” has the meaning set forth in Section 5.07(a).

“**Privileged Information**” has the meaning set forth in Section 5.07(a).

“**Receiving Party**” has the meaning set forth in Section 5.05.

“**Record Date**” means the close of business on June 19, 2015, the date determined by the Board of Directors of Masco as the record date for the Distribution.

“**Related Claims**” means a claim or claims against a Shared Policy made by one or more TopBuild Insured Parties, on the one hand, and one or more Masco Insured Parties, on the other hand, filed in connection with Liabilities suffered by either a TopBuild Insured Party or a Masco Insured Party, as the case may be, arising out of the same underlying transaction or series of transactions, the same event or series of events or the same facts, circumstances, policies,

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procedures or actions that have also given rise to Liabilities suffered by a Masco Insured Party or a TopBuild Insured Party, as the case may be, which Liabilities are the subject of a claim or claims by such Person against a Shared Policy.

“**Representatives**” has the meaning set forth in Section 5.06.

“**Restructuring**” means the reorganization of certain businesses, assets and liabilities of the Masco Group and the TopBuild Group to be completed before the Distribution Time, as described in Schedule 1.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“**Shared Policies**” has the meaning set forth in Section 4.04(a).

“**Subsidiary**” means, with respect to any Person, any other entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person.

“**Tax**” or “**Taxes**” has the meaning set forth in the Tax Matters Agreement.

“**Tax Matters Agreement**” means the Tax Matters Agreement dated as of the date hereof between Masco and TopBuild substantially in the form of Exhibit B, as such agreement may be amended from time to time in accordance with its terms.

“**Third Party Claim**” has the meaning set forth in Section 6.04(b).

“**Third Party**” means any Person that is not a member or an Affiliate of the TopBuild Group or the Masco Group.

“**TopBuild**” has the meaning set forth in the preamble.

“**TopBuild Accounts**” has the meaning set forth in Section 2.07.

“**TopBuild Assumed Actions**” has the meaning set forth in Section 5.02(a).

“**TopBuild Business**” means (i) the business conducted by the TopBuild Group from time to time, whether before, on or after the Distribution (excluding any Masco Former Business), (ii) the TopBuild Former Businesses and (iii) the TopBuild Contributed Assets.

“**TopBuild Cash Distribution**” has the meaning set forth in Section 2.02(b).

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“**TopBuild Common Stock**” has the meaning set forth in the recitals to this Agreement.

“**TopBuild Contributed Assets**” means all of the stock of MAS, MHS and TSG.

“**TopBuild Financing Transactions**” has the meaning set forth in Section 2.02(b).

“**TopBuild Former Business**” means each Former Business previously owned, in whole or in part, or previously operated, in whole or in part, primarily by any member of the TopBuild Group or otherwise primarily related to the TopBuild Business, including, but not limited to the Former Businesses listed on Schedule 3, but excluding, for the sake of clarity, all Masco Former Businesses.

“**TopBuild Group**” means TopBuild and its Subsidiaries, including, for the sake of clarity, MAS, MHS and TSG (and, in each case, the Subsidiaries thereof) and, where applicable, the TopBuild Former Businesses, including all predecessors and successors to such Persons (excluding, for the sake of clarity, all Masco Former Businesses).

“**TopBuild Indemnites**” has the meaning set forth in Section 6.03.

“**TopBuild Insured Party**” means any member of the TopBuild Group that is named insured, additional named insured or insured under any Shared Policy.

“**TopBuild Liabilities**” means (without duplication) all of the following:

(a) all Liabilities that are expressly contemplated by this Agreement or any other Ancillary Agreement as Liabilities to be retained or assumed by TopBuild or any other member of the TopBuild Group, and all agreements, obligations and other Liabilities of TopBuild or any member of the TopBuild Group under this Agreement or

any of the other Ancillary Agreements;

(b) all Liabilities to the extent relating to, arising out of or resulting from the TopBuild Business;*provided* that, except as expressly specified otherwise in this Agreement or in any Ancillary Agreement, any and all Liabilities that are primarily related to the TopBuild Business shall be 100% allocated to the TopBuild Group as TopBuild Liabilities;

(c) all Liabilities listed or generally described on Schedule 4;

(d) all Liabilities of the Masco Group and/or the TopBuild Group arising from or relating to any TopBuild Former Business or any disposition thereof; and

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(e) all Liabilities to the extent relating to, arising out of or resulting from any of the following (but, excluding all Liabilities of the Masco Group and/or the TopBuild Group arising from or relating to the sale of any Masco Former Business or any disposition thereof):

(i) the operation of the TopBuild Business, as conducted at any time before, at or after the Distribution Time (including any Liability relating to, arising out of or resulting from any act or failure to act by any director, officer, employee, agent or representative (whether or not such act or failure to act is or was within such Person's authority) with respect to the TopBuild Business);

(ii) the operation of any business conducted by any member of the TopBuild Group at any time after the Distribution Time (including any Liability relating to, arising out of or resulting from any act or failure to act by any director, officer, employee, agent or representative (whether or not such act or failure to act is or was within such Person's authority) with respect to the TopBuild Business);

(iii) any assets or properties of any member of the TopBuild Group (including any Liability relating to, arising out of or resulting from any agreements, arrangements, commitments or understandings to which any member of the TopBuild Group is a party (except to the extent such Liabilities are expressly assumed or retained by a member of the Masco Group under any Ancillary Agreement); and

(iv) any and all decisions with respect to, or matters relating to any and all Matching Deductible Policies, in each case, as such decisions or matters relate to the TopBuild Business;

*provided* that, notwithstanding the foregoing, the TopBuild Liabilities shall not include (i) any Liabilities for Taxes, which shall be governed by the Tax Matters Agreement or (ii) any Liabilities for the employment, employee benefits and employee compensation matters expressly covered by the Employee Matters Agreement, all of which shall be governed by the Employee Matters Agreement.

“**TopBuild Matching Deductible Claim**” has the meaning set forth in Section 4.10.

“**TopBuild Post-Distribution Non-Matching Deductible Insurance Claim**” has the meaning set forth in Section 4.11.

“**TopBuild Surety Bond**” means any bond, undertaking or instrument of guarantee (together with any renewals or extensions thereof) and any agreements related thereto (including any indemnity agreements entered into pursuant thereto), pursuant to which any surety bond company or reinsurer guarantees or

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insures that TopBuild or any member of the TopBuild Group will perform the contractual obligations set forth therein.

“**TPA Agreement**” has the meaning set forth in Section 4.10.

“**TPA Instructions**” means the service instructions referenced in the TPA Agreement, as such instructions may, in accordance with the terms thereof, be amended from time to time.

“**Transition Services Agreement**” means the Transition Services Agreement dated as of the date hereof between Masco and TopBuild substantially in the form of Exhibit C, as such agreement may be amended from time to time in accordance with its terms.

“**Unrelated Claims**” means a claim or claims against a Shared Policy that is not a Related Claim.

“**Unreleased Masco Liability**” has the meaning set forth in Section 2.08(d).

“**Unreleased TopBuild Liability**” has the meaning set forth in Section 2.08(b).

Section 1.02. *Interpretation.* (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) references to any Person include such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement;

(iii) except as otherwise clearly indicated, reference to any gender includes the other gender;

(iv) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”;

(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, and references in any Section or definition to any clause means such clause of such Section or definition;

(vi) 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;

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- (vii) 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;
- (viii) 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;
- (ix) relative to the determination of any period of time, “from” means “from and including,” “to” means “to and including” and “through” means “through and including”;
- (x) 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;
- (xi) unless otherwise specified in this Agreement, all references to dollar amounts herein shall be in respect of lawful currency of the United States; and
- (xii) any capitalized term used in an Exhibit or Schedule but not otherwise defined therein shall have the meaning set forth in this Agreement.

ARTICLE 2  
PRIOR TO THE DISTRIBUTION

On or prior to the Distribution Date:

Section 2.01. *Information Statement; Listing.* Masco shall mail (or shall have mailed) the Information Statement to the holders of Masco Common Stock as of the Record Date. Masco and TopBuild shall take (or shall have taken) all such actions as may be necessary or appropriate under the securities or blue sky laws of states or other political subdivisions of the United States and shall use reasonable efforts to comply with all applicable foreign securities laws in connection with the transactions contemplated by this Agreement and the Ancillary Agreements. TopBuild shall prepare, file and pursue (or shall have prepared, filed and pursued) an application to permit listing of the TopBuild Common Stock on the NYSE.

Section 2.02. *Restructuring and Other Actions prior to the Distribution Time.*

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- (a) Restructuring. The Restructuring shall have been consummated on or prior to the Distribution Time.
- (b) Borrowings and TopBuild Distribution. In connection with the Restructuring, (i) TopBuild shall enter into (or shall have entered into) the Credit Agreement and related financing transactions described in the Information Statement as occurring prior to the Distribution Date (the “**TopBuild Financing Transactions**”), and (ii) TopBuild shall have made a cash distribution to Masco in an amount equal to \$200 million (the “**TopBuild Cash Distribution**”), as partial consideration for the contribution of assets to TopBuild and its Subsidiaries pursuant to the Restructuring and the other terms and conditions hereof.
- (c) Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws. (i) Masco and TopBuild shall each take (or shall have taken) all necessary action that may be required to provide for the adoption by TopBuild of an amended and restated certificate of incorporation of TopBuild, in a form to be agreed by TopBuild and Masco (the “**Amended and Restated Certificate of Incorporation**”), and amended and restated bylaws of TopBuild, in a form to be agreed by TopBuild and Masco (the “**Amended and Restated Bylaws**”), and (ii) TopBuild shall file (or shall have filed) the Amended and Restated Certificate of Incorporation of TopBuild with the Secretary of State of the State of Delaware.
- (d) The Distribution Agent. Masco shall enter (or shall have entered) into a distribution agent agreement with the Distribution Agent or otherwise provide instructions to the Distribution Agent regarding the Distribution.
- (e) Stock-Based Employee Benefit Plans. At or prior to the Distribution Time, Masco and TopBuild shall take (or shall have taken) all actions as are necessary to approve the stock-based employee benefit plans of TopBuild (and the grants of awards under such plans in connection with the Distribution) in order to satisfy the requirements of Rule 16b-3 under the Exchange Act and the applicable rules and regulations of the NYSE.
- (f) Satisfying Conditions to the Distribution. Masco and TopBuild shall cooperate (or shall have cooperated) to cause the conditions to the Distribution set forth in Section 3.01 to be satisfied and to effect the Distribution at the Distribution Time upon such satisfaction (or waiver).

Section 2.03. *Transfers of Certain Other Assets and Liabilities.* Unless otherwise provided in this Agreement or in any Ancillary Agreement and to the extent not previously effected in accordance with Section 2.02, effective as of and after the Distribution Time, (a) Masco hereby agrees, and hereby causes the relevant member of the Masco Group, to assign, contribute, convey, transfer and deliver (or shall have assigned, contributed, conveyed, transferred and delivered) to TopBuild or any Subsidiary of TopBuild as of the Distribution Time designated

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by TopBuild (a “**TopBuild Designee**”) all of the right, title and interest of Masco or such member of the Masco Group in and to all assets, if any, held by any member of the Masco Group that relate solely to the TopBuild Business (and not to the Masco Business), and TopBuild, on behalf of itself or such TopBuild Designee, hereby assumes and takes transfer of all Liabilities to the extent associated with such assets, (b) Masco hereby agrees, and hereby causes the relevant member of the Masco Group, to assume any and all of the Masco Liabilities to the extent such Liabilities would otherwise remain obligations of any member of the TopBuild Group, (c) Masco and TopBuild hereby agree, and hereby causes the relevant member of the TopBuild Group, to assign, contribute, convey, transfer and deliver to Masco or any Subsidiary of Masco as of the Distribution Time designated by Masco (a “**Masco Designee**”) all of the right, title and interest of TopBuild or such member of the TopBuild Group in and to all assets, if any, held by any member of the TopBuild Group that relate solely to the Masco Business (and not to the TopBuild Business), and Masco, on behalf of itself or such Masco Designee hereby, assumes and takes transfer of all Liabilities to the extent associated with such assets and (d) TopBuild hereby agrees, and hereby causes the relevant member of the TopBuild Group, to assume any and all of the TopBuild Liabilities to the extent such Liabilities would otherwise remain obligations of any member of the Masco Group. To the extent any assignment, contribution, conveyance, transfer, delivery or assumption of any asset or Liability of either Group as of the Distribution Time is not effected in accordance with this Section 2.03 as of the Distribution Time for any reason (including as a result of the failure of the parties to identify it as being required to be transferred pursuant to this Section 2.03, but subject to Section 2.04), the relevant party shall use all reasonable efforts to effect such transfer as promptly thereafter as practicable.

Section 2.04. *Agreement Relating to Consents Necessary to Transfer Assets and Liabilities.* Notwithstanding any provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to transfer or assign any asset (including any contract, agreement or instrument but excluding the direct or indirect transfer of capital stock of any member of any Group) or any claim or right or any benefit arising thereunder or resulting therefrom, or to assume any Liability associated therewith, if

such transfer, assignment, or assumption without the necessary consent of a Third Party or a Governmental Authority, would result in a breach, or constitute a default (or an event which, with the giving of notice or lapse of time, or both, would become a default), under any contract, agreement or other material instrument or would otherwise adversely affect the rights of a member of the Masco Group or the TopBuild Group thereunder. Masco and TopBuild will use their respective reasonable efforts to obtain the consent of any Third Party or any Governmental Authority, if any, required in connection with the transfer or assignment pursuant to Section 2.03 of any such asset or any such claim or right or benefit arising thereunder and the assumption of any Liability associated therewith; *provided* that in no event shall any member of a Group have any Liability whatsoever to any member of the other Group for any failure to obtain any such consent. If and when such consent

is obtained, the absence of which caused the deferral of the transfer or assignment of any asset or any claim or right or benefit arising thereunder, or the assumption of any Liability associated therewith, pursuant to Section 2.03 (and assuming any other legal impediments for such transfer, assignment and/or assumption have been removed), such transfer, assignment and/or assumption shall be effected in accordance with the terms of this Agreement and/or the applicable Ancillary Agreement. During the period in which any transfer, assignment or assumption is delayed pursuant to this Section 2.04 as a result of the absence of a required consent, Masco and TopBuild will cooperate in a mutually agreeable arrangement under which the intended transferee would, to the maximum extent possible, obtain the benefits and assume the obligations of the relevant asset, claim, right, benefit and/or Liability in accordance with this Agreement as if the relevant transfer, assignment or assumption had taken place, including by sub-contract, sub-license, sub-lease or indemnification to or by such transferee, or under which the transferor would, with respect to an agreement, enforce for the benefit and at the cost of the transferee, with the transferee assuming the transferor's obligations, any and all rights of the transferor against any Third Party thereunder.

Section 2.05. *Intercompany Accounts.* The parties shall use reasonable efforts to settle on or prior to the Distribution Date (to the extent practicable), all intercompany receivables, payables and other balances, in each case, that arise prior to the Distribution Time between members of the Masco Group, on the one hand, and members of the TopBuild Group, on the other hand ("**Intercompany Accounts**"), by way of capitalization and/or one or more cash payments (whether or not on a net basis) in satisfaction of such amounts. From and after the Distribution Time, the parties shall use reasonable efforts to settle any Intercompany Accounts that are not settled as of the Distribution Time within 90 days of the Distribution Date and in the manner set forth in the first sentence of this Section 2.05; *provided* that any claim by any member of either Group with respect to an Intercompany Account must be made in writing (which writing shall be provided in accordance with Section 7.01 and be reasonably specific as to the applicable Intercompany Account and the amount thereof) to the applicable member of the other Group within 90 days of the Distribution Date.

Section 2.06. *Intercompany Agreements.* (a) Except as set forth in Section 2.06(b), all agreements, arrangements, commitments or understandings, whether or not in writing, between members of the Masco Group, on the one hand, and members of the TopBuild Group, on the other hand, in effect immediately prior to the Distribution are hereby agreed by Masco (on behalf of itself and each member of the Masco Group) and by TopBuild (on behalf of itself and each member of the TopBuild Group) to be terminated, cancelled and of no further force and effect from and after the Distribution Time (including any provision thereof that purports to survive termination).

(b) The provisions of Section 2.06(a) shall not apply to any of the following agreements, arrangements, commitments or understandings: (i) this Agreement and the Ancillary Agreements (and each other agreement or

instrument expressly contemplated by this Agreement or any Ancillary Agreement (A) to be entered into by any of the parties hereto or any of the members of their respective Groups or (B) to survive the Distribution Date); (ii) any agreements, arrangements, commitments or understandings to which any Person, other than solely the parties hereto and the members of their respective Groups is a party; (iii) any Intercompany Accounts to the extent such Intercompany Accounts were not satisfied and/or settled in accordance with the first sentence of Section 2.05 (it being understood that such Intercompany Accounts shall be satisfied or settled in accordance with the second sentence of Section 2.05); and (iv) the agreements, arrangements, commitments and understanding set forth on Schedule 2.06(b).

Section 2.07. *Bank Accounts; Cash Balances.* (a) Masco and TopBuild each agrees to take, or cause the respective members of their respective Groups to take (or, in each case, shall have taken), at the Distribution Date (or such earlier date as Masco and TopBuild may agree or may have agreed), all actions necessary to amend all contracts or agreements governing each bank and brokerage account owned by TopBuild or any other member of the TopBuild Group (collectively, the "**TopBuild Accounts**") so that such TopBuild Accounts, if currently linked (whether by automatic withdrawal, automatic deposit or any other authorization to transfer funds from or to, hereinafter "**linked**") to any bank or brokerage account owned by Masco or any other member of the Masco Group (collectively, the "**Masco Accounts**"), are de-linked from the Masco Accounts.

(b) Masco and TopBuild each agrees to take, or cause the respective members of their respective Groups to take (or shall have taken), at the Distribution Date (or such earlier date as Masco and TopBuild may agree or may have agreed), all actions necessary to amend all contracts or agreements governing the Masco Accounts so that such Masco Accounts, if currently linked to a TopBuild Account, are de-linked from the TopBuild Accounts.

(c) With respect to any outstanding payments initiated by Masco, TopBuild, or any of their respective Subsidiaries prior to the Distribution Time, such outstanding payments shall be honored following the Distribution by the Person or Group owning the account from which the payment was initiated.

(d) As between Masco and TopBuild (and the members of their respective Groups) all payments received after the Distribution Date by either party (or member of its Group) that relate to a business, asset or Liability of the other party (or member of its Group), shall be held by such party for the use and benefit and at the expense of the party entitled thereto. Each party shall maintain an accounting of any such payments, and the parties shall have a monthly reconciliation, whereby all such payments received by each party are calculated and the net amount owed to Masco or TopBuild, as applicable, shall be paid over with a mutual right of set-off. If at any time the net amount owed to either party exceeds \$500,000, an interim payment of such net amount owed shall be made to the party entitled thereto within three (3) Business Days of such amount

exceeding \$500,000. Notwithstanding the foregoing, neither Masco nor TopBuild shall act as collection agent for the other party, nor shall either party act as surety or endorser with respect to non-sufficient funds checks or funds to be returned in a bankruptcy or fraudulent conveyance action.

Section 2.08. *Novation of Liabilities.* (a) Each of Masco and TopBuild, at the request of the other, shall endeavor, if reasonably practicable, to obtain, or to cause to be obtained, if reasonably practicable, any consent, substitution, approval or amendment required to novate or assign all obligations under agreements, leases, licenses and other Liabilities of any nature whatsoever that constitute TopBuild Liabilities, or to obtain in writing the unconditional release of all parties to such arrangements other than any member of the TopBuild Group so that, in any such case, the members of the TopBuild Group will be solely responsible for the TopBuild Liabilities (including by providing a substitute letter of credit of like amount or substitute guaranty for any existing letter of credit or guaranty, respectively); *provided, however*, that neither Masco nor TopBuild shall be obligated to contribute any capital or pay any consideration in any form (including providing any letter of credit, guaranty or other financial accommodation, except for a substitute letter of credit or substitute guaranty as referenced in the prior parenthetical or as otherwise expressly provided herein) to any third Person from whom any such consent, substitution, approval, amendment or release is requested. Notwithstanding the foregoing, neither Masco nor TopBuild shall be required to obtain, or to cause to be obtained, any consent, substitution, approval or amendment required to novate or assign any obligations or other Liabilities if the amounts

related thereto are under \$250,000; *provided* that, for the avoidance of doubt, all such obligations shall be TopBuild Liabilities under this Agreement.

(b) If Masco or TopBuild is unable to obtain, or to cause to be obtained, any such required consent, substitution, approval, amendment or release referred to in Section 2.08(a) and the applicable member of the Masco Group continues to be bound by such agreement, lease, license or other Liability (each, an “**Unreleased TopBuild Liability**”), TopBuild shall, to the extent not prohibited by Applicable Law, as indemnitor, guarantor, agent or subcontractor for such member of the Masco Group, as the case may be, (i) on a timely basis pay, perform and discharge fully all the Liabilities of such member of the Masco Group that constitute Unreleased TopBuild Liabilities and (ii) use its commercially reasonable efforts to effect such payment, performance, or discharge prior to any demand for such payment, performance or discharge is permitted to be made by the obligee thereunder on any member of the Masco Group. If and when such consent, substitution, approval, amendment or release shall be obtained or the Unreleased TopBuild Liabilities shall otherwise become assignable or able to be novated, Masco shall promptly assign, or cause to be assigned, and TopBuild or the applicable member of the TopBuild Group shall assume, such Unreleased TopBuild Liabilities without exchange of further consideration.

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(c) Each of Masco and TopBuild, at the request of the other, shall endeavor, if reasonably practicable, to obtain, or to cause to be obtained, if reasonably practicable, any consent, substitution, approval or amendment required to novate or assign all obligations under agreements, leases, licenses and other Liabilities of any nature whatsoever that constitute Masco Liabilities, or to obtain in writing the unconditional release of all parties to such arrangements other than any member of the Masco Group, so that, in any such case, the members of the Masco Group will be solely responsible for the Masco Liabilities (including by providing a substitute letter of credit of like amount or substitute guaranty for any existing letter of credit or guaranty, respectively); *provided, however*, that neither Masco nor TopBuild shall be obligated to contribute any capital or pay any consideration in any form (including providing any letter of credit, guaranty or other financial accommodation, except for a substitute letter of credit or substitute guaranty as referenced in the prior parenthetical or as otherwise expressly provided herein) to any third Person from whom any such consent, substitution, approval, amendment or release is requested. Notwithstanding the foregoing, neither Masco nor TopBuild shall be required to obtain, or to cause to be obtained, any consent, substitution, approval or amendment required to novate or assign any obligations or other Liabilities if the amounts related thereto are under \$250,000; *provided* that, for the avoidance of doubt, all such obligations shall be Masco Liabilities under this Agreement.

(d) If Masco or TopBuild is unable to obtain, or to cause to be obtained, any such required consent, substitution, approval, amendment or release referred to in Section 2.08(c) and the applicable member of the TopBuild Group continues to be bound by such agreement, lease, license or other Liability (each, an “**Unreleased Masco Liability**”), Masco shall, to the extent not prohibited by Applicable Law, as indemnitor, guarantor, agent or subcontractor for such member of the TopBuild Group, as the case may be, (i) on a timely basis pay, perform and discharge fully all the obligations or other Liabilities of such member of the TopBuild Group that constitute Unreleased Masco Liabilities and (ii) use its commercially reasonable efforts to effect such payment, performance, or discharge prior to any demand for such payment, performance or discharge is permitted to be made by the obligee thereunder on any member of the TopBuild Group. If and when such consent, substitution, approval, amendment or release shall be obtained or the Unreleased Masco Liabilities shall otherwise become assignable or able to be novated, TopBuild shall promptly assign, or cause to be assigned, and Masco or the applicable member of the Masco Group shall assume, such Unreleased Masco Liabilities without exchange of further consideration.

Section 2.09. *Obligations under Surety Bonds; Letters of Credit.* TopBuild agrees to take, or cause to be taken, all actions and to do, or cause to be done, all things reasonably necessary or advisable to obtain, or cause to be obtained, as promptly as practicable following the date hereof, any consent, authorization, amendment, substitution or approval required to (i) replace any member of the Masco Group as the guarantor under any customer contract, including those listed on Schedule 2.09(i), (ii) name TopBuild as the principal

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under any TopBuild Surety Bond (including, for the sake of clarity, any indemnity agreement entered into pursuant thereto), including those listed on Schedule 2.09(ii), and forever discharge and release the applicable member of the Masco Group from any Liability thereunder and (iii) with respect to any Liability related to the TopBuild Business supported by letters of credit issued pursuant to the Existing Credit Agreement, including those letters of credit listed on Schedule 2.09(iii), replace the applicable member of the Masco Group with TopBuild as the applicant thereunder or provide a new letter of credit under which TopBuild is the applicant, so long as such new letter of credit is sufficient to cause the beneficiary of the existing letter of credit to agree to release Masco of any Liability arising under, in connection with or related to such existing letter of credit (the “**LC Consent**”); *provided* that, if, with respect to any outstanding letter of credit described in the foregoing clause (iii), TopBuild does not obtain the LC Consent prior to the Distribution Date, then TopBuild hereby agrees to deliver to Masco a “back-to-back” letter of credit issued by the issuing bank pursuant to the Credit Agreement.

Section 2.10. *Further Assurances and Consents.* In addition to the actions specifically provided for elsewhere in this Agreement, each of the parties hereto shall use its reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things, reasonably necessary, proper or advisable under Applicable Laws and agreements or otherwise to consummate and make effective any transfers of assets, assignments and assumptions of Liabilities and any other transactions contemplated hereby, including, but not limited to, using its reasonable efforts to obtain any consents and approvals and to make any filings and applications necessary or desirable in order to consummate the transactions contemplated by this Agreement; *provided* that in no event shall any member of a Group have any Liability whatsoever to any member of the other Group for any failure to obtain any such consent or approval.

### ARTICLE 3 DISTRIBUTION

Section 3.01. *Conditions Precedent to Distribution.* (a) In no event shall the Distribution occur unless each of the following conditions shall have been satisfied (or waived by Masco in its sole discretion):

(i) the Restructuring shall have been completed;

(ii) (A) the TopBuild Financing Transactions shall have been consummated, (B) Masco shall have (x) entered into a new credit facility and/or (y) amended the Existing Credit Facility, in each case, on such terms and for such amount as may be acceptable to Masco, and (C) the TopBuild Cash Distribution contemplated by Section 2.02(b) shall have been paid to Masco;

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(iii) All of the Post-Distribution Insurance Arrangements shall be in full force and effect, and any actions required thereunder to have been taken as a condition to their effectiveness shall have been taken, in each case, to Masco’s sole satisfaction;

(iv) the Board of Directors of Masco shall be satisfied that each of the Distribution and the TopBuild Cash Distribution will be made out of surplus within the meaning of Section 170 of the General Corporation Law of the State of Delaware;

(v) the Board of Directors of Masco shall have approved the Distribution and shall not have abandoned the Distribution or terminated this Agreement at any time prior to the Distribution;

(vi) the Form 10 shall have been filed with the Commission and declared effective by the Commission, no stop order suspending the effectiveness of the Form 10 shall be in effect, no proceedings for such purpose shall be pending before or threatened by the Commission, and the Information Statement shall have been mailed to holders of the Masco Common Stock as of the Record Date;

(vii) all actions and filings necessary or appropriate under applicable federal, state or foreign securities or “blue sky” laws and the rules and regulations thereunder shall have been taken and, where applicable, become effective or been accepted;

(viii) the TopBuild Common Stock to be delivered in the Distribution shall have been approved for listing on the NYSE, subject to official notice of issuance;

(ix) the Board of Directors of TopBuild, as named in the Information Statement, shall have been duly elected, and the Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws, each in substantially the form filed as an exhibit to the Form 10, shall be in effect;

(x) each of the Ancillary Agreements shall have been duly executed and delivered by the parties thereto;

(xi) Masco shall have received an opinion of Davis Polk & Wardwell LLP (which shall not have been revoked or modified in any material respect) that is reasonably satisfactory to Masco, confirming that (i) the Restructuring and the Distribution, taken together, will qualify as a “reorganization” within the meaning of Section 368(a)(1)(D) of the Code and (ii) the Distribution will qualify as a tax-free transaction under Sections 355(a) and 355(c) of the Code;

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(xii) no Applicable Law shall have been adopted, promulgated or issued that prohibits the consummation of the Distribution or any of the other transactions contemplated hereby;

(xiii) any material governmental approvals and consents and any material permits, registrations and consents from Third Parties, in each case, necessary to effect the Distribution and to permit the operation of the TopBuild Business after the Distribution Date substantially as it is conducted at the date hereof shall have been obtained; and

(xiv) no event or development shall have occurred or exist that, in the judgment of the Board of Directors of Masco, in its sole discretion, makes it inadvisable to effect the Distribution or the other transactions contemplated hereby.

(b) Each of the conditions set forth in this Section 3.01(a) is for the sole benefit of Masco and shall not give rise to or create any duty on the part of Masco or its Board of Directors to waive or not to waive any such condition or to effect the Distribution, or in any way limit Masco’s rights of termination as set forth in Section 7.12 or alter the consequences of any termination from those specified in Section 7.12. Any determination made by Masco on or prior to the Distribution concerning the satisfaction or waiver of any or all of the conditions set forth in this Section 3.01 shall be conclusive and binding on the parties and all other affected Persons.

Section 3.02. *The Distribution.* (a) Masco shall, in its sole discretion, determine the Distribution Date and all terms of the Distribution, including the timing of the consummation of all or part of the Distribution. Masco may, at any time and from time to time until the consummation of the Distribution, modify or change the terms of the Distribution including, without limitation, by accelerating or delaying the timing of the consummation of all or part of the Distribution. For the avoidance of doubt, nothing in this Agreement shall in any way limit Masco’s right to terminate this Agreement or the Distribution as set forth in Section 7.12 or alter the consequences of any such termination from those specified in Section 7.12.

(b) Subject to the terms and conditions set forth in this Agreement, (i) on or prior to the Distribution Date, Masco shall take such steps as are reasonably necessary or appropriate to permit the Distribution by the Distribution Agent of validly issued, fully paid and non-assessable shares of TopBuild Common Stock, registered in book-entry form through the registration system, (ii) the Distribution shall be effective at the Distribution Time, and (iii) Masco shall instruct the Distribution Agent to distribute, on or as soon as practicable after the Distribution Date, to each holder of record of Masco Common Stock as of the Record Date, by means of a *pro rata* dividend, 1 share of TopBuild Common Stock for every 9 shares of Masco Common Stock so held, subject to Section 3.03. Following the Distribution Date, TopBuild agrees to provide all book-entry transfer

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authorizations for shares of TopBuild Common Stock that Masco or the Distribution Agent shall require (after giving effect to Sections 3.03 and 3.04) in order to effect the Distribution.

Section 3.03. *Fractional Shares.* No fractional shares of TopBuild Common Stock will be distributed in the Distribution. The Distribution Agent will be directed to determine (based on the aggregate number of shares held by each holder) the number of whole shares and the fractional share of TopBuild Common Stock allocable to each holder of Masco Common Stock as of the Record Date. Upon the determination by the Distribution Agent of such numbers of whole shares and fractional shares, as soon as practicable on or after the Distribution Date, the Distribution Agent, acting on behalf of the holders thereof, shall aggregate the fractional shares into whole shares and shall sell the whole shares obtained thereby for cash on the open market (with the Distribution Agent, in its sole discretion, determining when, how and through which broker-dealer(s) and at which price(s) to make such sales) and shall thereafter promptly distribute to each such holder entitled thereto (*pro rata* based on the fractional share such holder would have been entitled to receive in the Distribution) the resulting aggregate 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 commissions, transfer taxes and other costs attributed to the sale of shares pursuant to this Section 3.03. Neither Masco nor TopBuild will be required to guarantee any minimum sale price for the fractional shares. Recipients of cash in lieu of fractional shares will not be entitled to any interest on the amounts of payments made in lieu of fractional shares.

Section 3.04. *NO REPRESENTATIONS OR WARRANTIES.* EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY OTHER DISTRIBUTION DOCUMENT, NO MEMBER OF EITHER GROUP MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, TO ANY MEMBER OF THE OTHER GROUP OR ANY OTHER PERSON WITH RESPECT TO ANY OF THE TRANSACTIONS OR MATTERS CONTEMPLATED HEREBY (INCLUDING WITH RESPECT TO THE BUSINESS, ASSETS, LIABILITIES, CONDITION OR PROSPECTS (FINANCIAL OR OTHERWISE) OF, OR ANY OTHER MATTER INVOLVING, EITHER BUSINESS, OR THE SUFFICIENCY OF ANY ASSETS TRANSFERRED TO THE APPLICABLE GROUP, OR THE TITLE TO ANY SUCH ASSETS, OR THAT ANY REQUIREMENTS OF APPLICABLE LAW ARE COMPLIED WITH WITH RESPECT TO THE RESTRUCTURING OR THE DISTRIBUTION). EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY OTHER DISTRIBUTION DOCUMENT, EACH MEMBER OF EACH GROUP SHALL TAKE ALL OF THE BUSINESS, ASSETS AND LIABILITIES TRANSFERRED TO OR ASSUMED BY IT PURSUANT TO THIS AGREEMENT OR ANY DISTRIBUTION DOCUMENT ON AN “AS IS, WHERE IS” BASIS, AND ALL IMPLIED WARRANTIES OF

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ARTICLE 4  
INSURANCE MATTERS

Section 4.01. *Insurance prior to the Distribution Time.* Except as may otherwise be expressly provided in this Article 4, TopBuild does hereby agree, for itself and on behalf of each member of the TopBuild Group, that the Masco Group shall not have any Liability whatsoever to the TopBuild Group to the extent such Liability is related to, arising out of or resulting from the insurance policies, insurance contracts and claim administration contracts and practices related to the foregoing of the Masco Group in effect at any time prior to the Distribution Time, including as a result of the level, scope or any of the terms and conditions of any such insurance policies, insurance contracts, claim administration contracts, claim administration contracts and practices and any other administration and/or adjustment activity with respect thereto, undertaken by Masco or any member of the Masco Group prior to the Distribution Time, the creditworthiness of any insurance carrier, the adequacy or timeliness of any notice, or lack thereof, to any insurance carrier, bank trustee for any insurer, scheme administrator for any insurer, or claims administrator with respect to any actual claim or potential claim or otherwise.

Section 4.02. *Ownership of Existing Policies and Programs.* Masco or any member of the Masco Group will continue to own all insurance policies, insurance contracts and claim administration contracts of any kind of any member of the Masco Group and the TopBuild Group which were or are in effect at any time at or prior to the Distribution Time (other than, for the sake of clarity, the Post-Distribution Insurance Arrangements and the TPA Agreement), together with all rights, benefits and privileges under any of the foregoing, (collectively, but subject to such exclusions, the “**Masco Policies**”). Subject to the provisions of this Agreement, including the TopBuild Group’s rights under Section 4.04, (a) the members of the Masco Group shall retain all of their respective rights, benefits and privileges, if any, under the Masco Policies and (b) coverage of the TopBuild Group under the Masco Policies shall cease as of the Distribution Time with respect to all Liabilities to the extent incurred or suffered by the TopBuild Group in connection with, relating to, arising out of or due to, directly or indirectly, any act, error, omission, event or occurrence at or after the Distribution Time. Nothing contained herein shall be construed to be an attempted assignment of or a change to any part of the ownership of the Masco Policies or shall be construed to waive any right or remedy of any member of the Masco Group in respect thereof. No provision of this Agreement is intended to relieve any insurer of any Liability under any policy.

Section 4.03. *Acquisition and Maintenance of Post-Distribution Insurance by TopBuild.* Commencing on and as of the Distribution Time,

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TopBuild shall be responsible for maintaining a separate insurance program consisting of the types of insurance policies and coverages that TopBuild considers appropriate to carry on behalf of the TopBuild Group applicable to the TopBuild Group or any member thereof, including the Post-Distribution Non-Matching Deductible Policies and any Matching Deductible Policies addressed under the Assignment and Assumption Agreement and in accordance with the TPA Agreement, subject to the TPA Instructions (the “**Post-Distribution Insurance Arrangements**”). Each member of the TopBuild Group, as appropriate, shall be responsible for all administrative and financial matters relating to insurance policies established and maintained by any member of the TopBuild Group and claims relating to any period at or after the Distribution Time involving any member of the TopBuild Group.

Section 4.04. *Rights under Shared Policies.* (a) At and after the Distribution Time: (i) TopBuild and the other members of the TopBuild Group will have the right to assert and prosecute and/or continue to prosecute claims for any Liabilities with respect to the TopBuild Business under Masco Policies that cover any member of the TopBuild Group and/or any or all of the TopBuild Business within the definition of the named insured, additional named insured, additional insured or insured (excluding, for the avoidance of doubt, any (x) group health and welfare insurance policies and (y) Matching Deductible Policies (collectively, but subject to such exclusions described in the immediately preceding clauses (x) and (y), the “**Shared Policies**”) with Third Party insurers that are “occurrence based” insurance policies (such Shared Policies, “**Occurrence Based Policies**”) arising out of insured occurrences occurring from the date coverage thereunder first commenced until the Distribution Time, to the extent that the terms and conditions of any such Occurrence Based Policies and agreements relating thereto so allow, and (ii) TopBuild and the other members of the TopBuild Group will have the right to continue to prosecute claims with respect to the TopBuild Business under Shared Policies with Third Party insurers that are made under liability insurance policies written on a “claims made” basis (such Shared Policies, “**Claims Made Policies**”) arising out of insured incidents occurring from the date coverage thereunder first commenced until the Distribution Time, if reported within the applicable reporting period under any such policy and to the extent that the terms and conditions of any such Claims Made Policies and agreements relating thereto so allow; *provided* that, (A) subject to Section 4.04(c), the Masco Group may, at any time, without liability or obligation to the TopBuild Group, amend, commute, terminate, buy-out, release, sell back, extinguish liability under or otherwise modify any Shared Policies (and such claims shall be subject to any such amendments, commutations, terminations, buy-outs, releases, sale back arrangements, extinguishments and modifications); *provided, however,* that Masco shall provide TopBuild with 30 days’ written notice prior to amending, commuting, terminating, buying-out, releasing, selling back, extinguishing liability under or otherwise modifying such Shared Policies; (B) at least ten (10) days prior to asserting or tendering a new claim for any Liabilities with respect to the TopBuild Business under any Shared Policies, TopBuild will consult with Masco (and Masco will promptly respond to

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TopBuild’s request to consult, failing which, TopBuild will have met its obligation under this Section 4.04(a)(i)(B)) with respect to the assertion and/or tender of any such claim; (C) any claims made by TopBuild will be subject to (and recovery thereon will be reduced by the amount of) any applicable deductibles, retentions or matching deductible provisions, and, with respect to any such deductibles, retentions or matching deductible provisions which require a payment by a member of the Masco Group in respect thereof, TopBuild shall make such payment on behalf of Masco and/or the applicable member of the Masco Group in proportion to TopBuild’s interest in such claim; (D) TopBuild shall be responsible for and shall pay any claims handling expenses, unreimbursed allocated loss adjustment or defense expenses and any amounts related to, arising out of or resulting from residual Liability arising from such claims; and (E) any claims made by TopBuild will be subject to exhaustion of the Shared Policies, including existing sublimits and aggregate limits as provided in Section 4.04(d). Any amounts unpaid by TopBuild under this Section 4.04(a) shall be subject to TopBuild’s indemnification obligations under Article 6.

(b) At any time following the Distribution Date, Masco and/or any member of the Masco Group may, in its sole discretion and without payment to TopBuild, agree to release or sell back the remaining coverage under any Shared Policy in connection with the settlement of any Claim.

(c) In the event that after the Distribution Time Masco proposes to amend, commute, terminate, buy-out, release, sell back, extinguish liability or coverage under or otherwise modify any Shared Policies, in respect of periods of coverage prior to the Distribution Time, under which TopBuild, the TopBuild Business or the other members of the TopBuild Group has or may in the future have rights to assert claims pursuant to this Article 4 in a manner that would adversely affect any such rights of TopBuild, the TopBuild Business or any of the other members of the TopBuild Group, Masco will (i) if such proposed action would be material to the TopBuild Group, give TopBuild prior notice thereof and consult with TopBuild with respect to such action and (ii) pay to TopBuild its equitable share (as reasonably determined by Masco after good faith consultation with TopBuild), if any, of any net proceeds actually received by Masco from the insurer under the applicable Shared Policy as a result of such action by Masco (after deducting Masco’s out-of-pocket expenses incurred in connection with such action).

(d) To the extent that the limits of any Shared Policy preclude payment in full of any Related Claims or Unrelated Claims filed by any member of the Masco Group, on the one hand, and any member of the TopBuild Group, on the other hand, the insurance proceeds available under such Shared Policy shall be paid to Masco and/or TopBuild, as applicable, on a FIFO Basis.

(c) In the event that any member of the Masco Group, on the one hand, and any member of the TopBuild Group, on the other hand, files Related Claims or Unrelated Claims under any Shared Policy, each of Masco and TopBuild shall

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receive a *pro rata* amount of the available insurance proceeds, as may be reasonably determined by Masco, based on the relationship the Liability incurred by each such party bears to the total Liability to both such parties from the occurrence or event underlying the Related Claims or Unrelated Claims, as the case may be.

(f) In no event (except as provided in Section 4.04(c)) will any member of the Masco Group have any Liability whatsoever to any member of the TopBuild Group if any Shared Policy is terminated or otherwise ceases to be in effect for any reason, is unavailable or inadequate to cover any Liability of any member of the TopBuild Group for any reason whatsoever or is not renewed or extended beyond the current expiration date.

Section 4.05. *Administration and Reserves.* (a) From and after the Distribution Time, the Masco Group will be responsible for the Claims Administration with respect to claims of the Masco Group under Shared Policies (other than such functions of Claims Administration that are performed by the Shared Policies' insurers at the time such claims are made).

(b) From and after the Distribution Time, the TopBuild Group will be responsible for the Claims Administration with respect to claims of the TopBuild Group under Shared Policies (other than such functions of Claims Administration that are performed by the Shared Policies' insurers at the time such claims are made) to the extent permissible under Section 4.04(a), and Masco shall provide appropriate instructions to the applicable insurance brokers under the Shared Policies to facilitate Claims Administration by TopBuild.

(c) Each party agrees to consider in good faith (but shall have no obligation to accept) any requests by the other party to provide assistance to, and cooperate with, such party or any member of its Group with respect to the Claims Administration referred to in Sections Section 4.05(a) and 4.05(b). None of the members of either Group and their respective directors, officers, agents and employees shall have any liability, whether direct or indirect, in contract or tort or otherwise, to any Person for or in connection with the provision of such assistance or cooperation. All out-of-pocket expenses incurred by either party or any member of its Group in providing any such assistance or cooperation shall be reimbursed promptly by the other party or any member of its Group.

Section 4.06. *Insurance Premiums.* From and after the Distribution Time, without limiting the remainder of this Article IV in any respect, Masco 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 Distribution Time, whereupon TopBuild will, upon the request of Masco, promptly reimburse Masco for that portion of such additional premiums and other payments (including any payment in satisfaction of a retention or deductible) paid by Masco as are reasonably determined by Masco to be attributable to the TopBuild Business;

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*provided* that, prior to agreeing to pay any such premiums or other payments that would reasonably be expected to result in a requirement for TopBuild to provide reimbursement under this Section 4.06, Masco shall, to the extent reasonably practicable, provide TopBuild with prior notice and a reasonable opportunity to consult with Masco with respect thereto. Notwithstanding the foregoing, to the extent that TopBuild has previously paid a premium (or has been allocated a portion of a premium by Masco) or satisfied a deductible amount under a Shared Policy, TopBuild shall not be required to pay such premium pursuant to the foregoing sentence or satisfy such deductible again if TopBuild makes a claim under such Shared Policy in accordance with this Article 4.

Section 4.07. *Agreement for Waiver of Conflict and Shared Policy Cooperation.* If a Shared Policy provides coverage for both a member of the Masco Group, on the one hand, and a member of the TopBuild Group, on the other hand, relating to the same occurrence, Masco and TopBuild agree to cooperate in the pursuit of coverage and prosecute and defend any coverage dispute jointly, opposite the applicable insurer under such Shared Policy; *provided* that, if there is an actual or potential conflict of interest in such pursuit, prosecution and/or defense, which, in the reasonable opinion of either party, would otherwise prevent the conduct of such joint pursuit, prosecution and/or defense, the parties shall continue to cooperate to prosecute and/or defend such coverage dispute with respect to, and to pursue coverage under, such Shared Policy pursuant to appropriate arrangements (which arrangements may require each party to retain separate counsel). Nothing in this Section 4.07 will be construed to limit or otherwise alter in any way the indemnity obligations of the parties, including those created by this Agreement or any Ancillary Agreement, by operation of law or otherwise.

Section 4.08. *Duty to Mitigate.* To the extent that either Masco or TopBuild is responsible for any aspect of the Claims Administration for any claim under any Shared Policy after the Distribution Time, such party shall use its reasonable efforts to mitigate the amount of any Liability that is the subject of such claim under the applicable Shared Policy.

Section 4.09. *Timely Payment.* TopBuild agrees to pay all claims of any Third Party arising in connection with any matter that is or may be covered by any Post-Distribution Insurance Arrangement promptly in accordance with the applicable terms of the program agreement among Old Republic Insurance Company, Masco and TopBuild (the "**Assignment and Assumption Agreement**") and any other applicable Post-Distribution Insurance Arrangement.

Section 4.10. *Matching Deductible Policies.* On or prior to the Distribution Time, TopBuild and Gallagher Bassett, Inc. ("**Gallagher**") shall enter into a third party administrator agreement (the "**TPA Agreement**"), pursuant to which Gallagher shall assume responsibility for the Claims Administration of any Claim arising out of or relating to the TopBuild Business in connection with any acts, omissions or matters occurring or existing on or before

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the Distribution Date under any Matching Deductible Policies (each such claim, a "**TopBuild Matching Deductible Claim**"), including, without limitation, such Matching Deductible Policies set forth on Schedule 4.10. For the avoidance of doubt, from and after the Distribution Time, each TopBuild Matching Deductible Claim shall be addressed under the Assignment and Assumption Agreement and in accordance with the TPA Agreement, subject to the TPA Instructions.

Section 4.11. *Other Post-Distribution Insurance Policies.* On or prior to the Distribution Time, TopBuild shall enter into the insurance agreements set forth on Schedule 4.11 (the "**Post-Distribution Non-Matching Deductible Policies**"), which shall cover a Claim, to the extent such Claim is not a TopBuild Matching Deductible Claim, arising out of or relating to the TopBuild Business in connection with any acts, omissions or matters occurring or existing on or after the Distribution Date under any Post-Distribution Non-Matching Deductible Policies (each such claim, a "**TopBuild Post-Distribution Non-Matching Deductible Insurance Claim**"). For the avoidance of doubt, from and after the Distribution Time, any TopBuild Post-Distribution Non-Matching Deductible Insurance Claim shall be resolved in accordance with the applicable Post-Distribution Non-Matching Deductible Policy to the extent applicable thereto.

Section 4.12. *Claims Administrator.* TopBuild hereby agrees to take, or not take, as the case may be, all actions reasonably necessary (including, but not limited to refraining from (i) withdrawing, rejecting or otherwise modifying any adjustment decision by Gallagher with respect to any TopBuild Matching Deductible Claim,

(ii) modifying the TPA Instructions without Masco's express consent, (iii) modifying the TPA Agreement without Masco's express consent, (iv) allowing the TPA Agreement to lapse, (v) exercising any of its termination rights pursuant to Section 4.1 of the TPA Agreement or any other applicable section thereunder; *provided, however*, TopBuild may exercise such termination rights in the event that Gallagher's actions are grossly negligent or evidence willful misconduct so long as (x) Masco grants its consent prior to such exercise (which consent shall not be unreasonably withheld) and (y) TopBuild replaces Gallagher with another claims administrator that is reasonably acceptable to Masco on terms and conditions that are reasonably acceptable to Masco; and (vi) engaging in any conduct that would give rise to Gallagher's right to terminate the TPA Agreement pursuant to Section 4.1 or any other applicable section thereunder) to ensure that Gallagher retains sole responsibility for the Claims Administration of any TopBuild Matching Deductible Claim until the later of (x) the third anniversary of the Distribution Date and (y) the date of exhaustion of the Pre-Distribution Matching Deductible Policies. If Gallagher nevertheless terminates the TPA Agreement or the TPA Agreement otherwise lapses prior to the third anniversary of the Distribution Date, TopBuild shall retain a replacement administrator to carry out the Claims Administration of any TopBuild Matching Deductible Claim that is reasonably acceptable to Masco, and such replacement administrator shall be retained on terms substantially similar to those of the TPA Agreement or otherwise on terms and conditions reasonably acceptable to Masco and TopBuild.

Section 4.13. *Actuary*. TopBuild, on behalf of itself and each member of the TopBuild Group, hereby agrees to retain the actuary serving in such capacity as of the date hereof as the sole provider of all actuarial services to TopBuild and every member of the TopBuild Group. TopBuild further agrees that it shall take all reasonably necessary actions to ensure that such actuary remains the sole provider of all actuarial services to TopBuild and every member of the TopBuild Group through and including December 31, 2015.

Section 4.14. *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 4, 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 4) by virtue of the provisions hereof.

#### ARTICLE 5 ACCESS TO INFORMATION

Section 5.01. *Access to Information*. (a) For a period of six years after the Distribution Date, each Group shall afford promptly the other Group and its agents and, to the extent required by Applicable Law, authorized representatives of any Governmental Authority of competent jurisdiction, reasonable access (which shall include, to the extent reasonably requested, the right to make copies) during normal business hours to its books of account, financial and other records (including accountant's work papers, to the extent any required consents have been obtained), information, employees and auditors to the extent necessary or useful for such other Group in connection with any audit, investigation, dispute or litigation, complying with their obligations under this Agreement or any Ancillary Agreement, any regulatory proceeding, any regulatory filings, complying with reporting disclosure requirements or any other requirements imposed by any Governmental Authority or any other reasonable business purpose of the Group requesting such access; *provided* that (i) any such access shall not unreasonably interfere with the conduct of the business of the Group providing such access and (ii) if any party reasonably determines that affording any such access to the other party would be commercially detrimental in any material respect or violate any Applicable Law or agreement to which such party or member of its Group is a party, or waive any legal privilege applicable to such party or any member of its Group, the parties shall use reasonable efforts to permit the compliance with such request in a manner that avoids any such harm or consequence.

(b) Without limiting the generality of the foregoing, until the end of the first full TopBuild 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 shall use 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 enable such other party's auditors timely to complete their audit of the annual financial statements and review of the quarterly financial statements.

Section 5.02. *Litigation Cooperation*. (a) Effective as of the Distribution Time, the applicable member of the TopBuild Group shall assume and thereafter be responsible for all Liabilities of either Group that may result from the TopBuild Assumed Actions and, subject to Section 6.04(c), all Liabilities and fees and costs relating to the defense of the TopBuild Assumed Actions, including attorneys', accountants', consultants' and other professionals' fees and expenses that have been incurred prior to the Distribution Time and are unpaid as of the Distribution Time, or, that are incurred on or after the Distribution Time. "**TopBuild Assumed Actions**" means (x) those Actions primarily relating to the TopBuild Business, including those in which any member of the Masco Group or any Affiliate of a member of the Masco Group is a defendant or a party against whom the claim or investigation is directed that are primarily related to the TopBuild Business and, including, for the sake of clarity, those Actions listed on Schedule 5.02(a), but excluding the Actions listed on Schedule 5.02(a)(i) and any Fundamental Claim and (y) all Actions that TopBuild has elected to control the defense of as the Indemnifying Party pursuant to Section 6.04(b). If any member of the Masco Group has any rights or claims against a Third Party insurer or other Third Party in connection with or relating to any TopBuild Assumed Action, such member shall, subject to Section 2.04, transfer and assign to the applicable member of the TopBuild Group all such rights or claims and cooperate with the TopBuild Group in connection with the enforcement and collection thereof. For the avoidance of doubt, effective as of the Distribution Time, TopBuild shall be entitled to all recovery, rights, claims, credits, causes of action, payments, awards and rights of set-off, in each case, with respect to the TopBuild Assumed Actions. Masco hereby agrees to transfer or pay, and to cause any applicable member of the Masco Group to transfer or pay, to TopBuild any such recovery, rights, claims, credits, causes of action, payments, awards and rights of set-off as promptly as possible.

(b) Effective as of the Distribution Time, the applicable member of the Masco Group shall assume and thereafter be responsible for all Liabilities of either Group that may result from the Masco Assumed Actions and, subject to Section 6.04(c), all fees and costs relating to the defense of the Masco Assumed Actions, including attorneys', accountants', consultants' and other professionals' fees and expenses that have been incurred prior to the Distribution Time and are unpaid as of or after the Distribution Time, or, that are incurred on or after the Distribution Time. "**Masco Assumed Actions**" means (x) those Actions primarily related to the Masco Business, including those in which any member of the TopBuild Group or any Affiliate of a member of the TopBuild Group is a defendant or the party against whom the claim or investigation is directed that are

primarily related to the Masco Business and, including, for the sake of clarity, those Actions listed on Schedule 5.02(a)(i) and Schedule 5.02(b) and (y) all Actions that Masco has elected to control the defense of as the Indemnifying Party pursuant to Section 6.04(b). If any member of the TopBuild Group has any rights or claims against a Third Party insurer or other Third Party in connection with or relating to any Masco Assumed Action, such member shall, subject to Section 2.04, transfer and assign to the applicable member of the Masco Group all such rights or claims and cooperate with the Masco Group in connection with the enforcement and collection thereof. For the avoidance of doubt, effective as of the Distribution Time, Masco shall be entitled to all recovery, rights, claims, credits, causes of action, payments, awards and rights of set-off, in each case, with respect to the Masco Assumed Actions. TopBuild hereby agrees to transfer or pay, and to cause any applicable member of the TopBuild Group to transfer or pay, to Masco any such recovery, rights, claims, credits, causes of action, payments, awards and rights of set-off as promptly as possible.

(c) Each party agrees that, at all times from and after the Distribution Time, subject to Section 6.04(e), if an Action relating primarily to its Business is commenced by a Third Party naming a member of each Group as defendants thereto, then such action shall be deemed to be a TopBuild Assumed Action (in the case of an Action primarily related to the TopBuild Business) or a Masco Assumed Action (in the case of an Action primarily related to the Masco Business) and the party as to which the Action primarily relates shall use its reasonable efforts to cause the other party or member of its Group to be removed from such Action.

(d) The parties agree, that at all times from and after the Distribution Time, subject to Section 6.04(e), if an Action which does not relate primarily to either party's Business is commenced by a Third Party naming a member of each Group as a defendant thereto, then the parties shall cooperate and consult to the extent necessary or advisable with respect to such Action.

(e) Each Group shall use reasonable efforts to make available to the other Group and its attorneys, accountants, consultants and other designated representatives, upon written request, its directors, officers, employees and representatives as witnesses, and shall otherwise cooperate with the other Group, to the extent reasonably requested in connection with any Action arising out of either Group's Business prior to the Distribution Time in which the requesting Group may from time to time be involved. Notwithstanding anything contained in this Agreement to the contrary, TopBuild hereby agrees, upon Masco's written request, to execute and deliver any and all certificates, waivers, agreements, documents, and/or instruments of any kind, which are or may be required pursuant to any settlement agreement with respect to any Claim or Action relating to item 1 on Schedule 5.02(b).

Section 5.03. *Reimbursement.* Each Group providing information or witnesses to the other Group or otherwise incurring any out-of-pocket expense in

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connection with cooperating under Section 5.01 shall be entitled to receive from the recipient thereof, upon the presentation of invoices therefor, payment for all reasonable and documented out-of-pocket costs and expenses (including attorney's fees but excluding reimbursement for general overhead, salary and employee benefits) actually incurred in providing such access, information, witnesses or cooperation.

Section 5.04. *Ownership of Information.* All information owned by one party (or a member of its Group) that is provided to the other party (or a member of its Group) under Section 5.01 or Section 5.02 shall be deemed to remain the property of the providing party. Unless specifically set forth herein or in any Ancillary Agreement, nothing contained in this Agreement shall be construed to grant or confer rights of license or otherwise in any such information.

Section 5.05. *Retention of Records.* Except as otherwise required by Applicable Law or agreed to in writing, for a period of one year following the Distribution Date, each party shall, and shall cause the members of its Group to, retain any and all information in its possession or control relating to the other Group's Business in accordance with the document retention practices of Masco as in effect as of the date hereof. Neither party shall destroy, or permit the destruction, or otherwise dispose, or permit the disposal, of any such information, subject to such retention practice, unless, prior to such destruction or disposal, the party proposing (or whose Group member is proposing) such destruction or disposal (the "**Disposing Party**") provides not less than 30 days' prior written notice to the other party (the "**Receiving Party**"), specifying the information proposed to be destroyed or disposed of and the scheduled date for such destruction or disposal. If the Receiving Party shall request in writing prior to the scheduled date for such destruction or disposal that any of the information proposed to be destroyed or disposed of be delivered to the Receiving Party, the Disposing Party shall promptly arrange for the delivery of such of the information as was requested at the expense of the Receiving Party; *provided* that, if the Disposing Party reasonably determines that any such provision of information would violate any Applicable Law or agreement to which such party or member of its Group is a party, or waive any legal privilege applicable to such party or any member of its Group, the parties shall use reasonable efforts to permit the prompt compliance with such request in a manner that avoids any such harm or consequence. Any records or documents that were subject to a litigation hold prior to the Distribution Date must be retained by the applicable party until such party or member of its Group is notified by the other party that the litigation hold is no longer in effect.

Section 5.06. *Confidentiality.* Each party acknowledges that it or a member of its Group may have in its possession, and, in connection with this Agreement and the Ancillary Agreements, may receive, Confidential Information of the other party or any member of its Group (including information in the possession of such other party relating to its clients or customers). Each party shall hold and shall cause its directors, officers, employees, agents, consultants

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and advisors ("**Representatives**") and the members of its Group and their Representatives to hold in strict confidence and not to use, except as permitted by this Agreement, or any Ancillary Agreement all such Confidential Information concerning the other Group unless (a) such party or any of the members of its Group or its or their Representatives is compelled to disclose such Confidential Information by judicial or administrative process or by other requirements of Applicable Law or (b) such Confidential Information can be shown to have been (i) in the public domain through no fault of such party or any of the members of its Group or its or their Representatives, (ii) lawfully acquired after the Distribution Date on a non-confidential basis from other sources not known by such party to be under any legal obligation to keep such information confidential or (iii) developed by such party or any of the members of its Group or its or their Representatives without the use of any Confidential Information of the other Group. Notwithstanding the foregoing, such party or member of its Group or its or their Representatives may disclose such Confidential Information to the members of its Group and its or their Representatives so long as such Persons are informed by such party of the confidential nature of such Confidential Information and are directed by such party to treat such information confidentially. The obligation of each party and the members of its Group and its and their Representatives to hold any such Confidential Information in confidence shall be satisfied if they exercise the same level of care with respect to such Confidential Information as they would with respect to their own proprietary information. If such party or any of a member of its Group or any of its or their Representatives becomes legally compelled to disclose any documents or information subject to this Section 5.06, such party will promptly notify the other party and, upon request, use reasonable efforts to cooperate with the other party's efforts to seek a protective order or other remedy. If no such protective order or other remedy is obtained or if the other party waives in writing such party's compliance with this Section 5.06, such party or the member of its Group or its or their Representatives may furnish only that portion of the information which it concludes, after consultation with counsel, is legally required to be disclosed and will exercise its reasonable efforts to obtain reliable assurance that confidential treatment will be accorded such information. Each party agrees to be responsible for any breach of this Section 5.06 by it, the members of its Group and its and their Representatives.

Section 5.07. *Privileged Information.* (a) The parties acknowledge that members of the Masco Group, on the one hand, and members of the TopBuild Group, on the other hand, may possess documents or other information regarding the other Group that is or may be subject to the attorney-client privilege, the work product doctrine or common interest privilege (collectively, "**Privileges**"; and such documents and other information collectively, the "**Privileged Information**"). Each party agrees to use reasonable efforts to protect and maintain, and to cause their respective Affiliates to protect and maintain, any applicable claim to Privilege in order to prevent any of the other Group's Privileged Information from being disclosed or used in a manner inconsistent with such Privilege without the other party's consent. Without limiting the generality

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of the foregoing, a party and its Affiliates shall not, without the other party's prior written consent, (i) waive any Privilege with respect to any of the other party's or any member of its Group's Privileged Information, (ii) fail to defend any Privilege with respect to any such Privileged Information, or (iii) fail to take any other actions reasonably necessary to preserve any Privilege with respect to any such Privileged Information.

(b) Upon receipt by a party or any member of such party's Group of any subpoena, discovery or other request that calls for the production or disclosure of Privileged Information of the other party or a member of its Group, such party shall promptly notify 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 or a member of its Group may have under this Section 5.07 or otherwise to prevent the production or disclosure of such Privileged Information. Each party agrees that neither it nor any member of its Group will produce or disclose any information that may be covered by a Privilege of the party or a member of its Group under this Section 5.07 unless (i) the other party has provided its written consent to such production or disclosure (which consent shall not be unreasonably withheld) or (ii) a court of competent jurisdiction has entered an order finding that the information is not entitled to protection under any applicable Privilege or otherwise requires disclosure of such information.

(c) In the event that any member of the Masco Group and any member of the TopBuild Group cooperate in the mutual defense of any Third Party Claim, such cooperation shall not constitute a waiver or qualification of such Party's right to assert and defend any applicable claim to Privilege.

(d) Each of the Masco Group and the TopBuild Group covenants and agrees that, following the Distribution Time, Davis Polk & Wardwell LLP or any other internal or external legal counsel currently representing TopBuild Group (each a "**Prior Company Counsel**") may serve as counsel to Masco Group and its Affiliates in connection with any matters arising under or related to this Agreement or the transactions contemplated by this Agreement or any Ancillary Agreement, including with respect to any litigation, Claim or obligation arising out of or related to this Agreement or any Ancillary Agreement or the transactions contemplated by this Agreement or any Ancillary Agreement, notwithstanding any representation by the Prior Company Counsel prior to the Distribution Time. Masco Group and TopBuild Group hereby irrevocably (i) waive any Claim they have or may have that a Prior Company Counsel has a conflict of interest or is otherwise prohibited from engaging in such representation and (ii) covenant and agree that, in the event that a dispute arises after the Distribution Time between TopBuild Group and Masco Group (together with its Affiliates), Prior Company Counsel may represent any member of the Masco Group and any Affiliates thereof in such dispute even though the interests of such Person(s) may be directly adverse to Masco Group or TopBuild Group and even though Prior Company Counsel may have represented the TopBuild Group in a matter substantially related to such dispute.

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(e) All communications between members of Masco Group, on the one hand, and Prior Company Counsel, on the other hand, related to the transactions contemplated by this Agreement or any Ancillary Agreement shall be deemed to be attorney-client confidences that belong solely to such members of Masco Group or the Prior Company Counsel (the "**Pre-Distribution Time Communications**"). Accordingly, TopBuild Group shall not have access to any such Pre-Distribution Time Communications or to the files of Prior Company Counsel relating to such engagement related to the transactions contemplated hereby from and after the Distribution Time, and all books, records and other materials of TopBuild Group in any medium (including electronic copies) containing or reflecting any of the Pre-Distribution Time Communications or the work product of legal counsel with respect thereto, including any related summaries, drafts or analyses, and all rights with respect to any of the foregoing, are hereby assigned and transferred to Masco Group effective as of the Distribution Time (collectively, the "**Masco Group Privileged Materials**"). Masco Group may cause all of the Masco Group Privileged Materials to be distributed to Masco Group immediately prior to the Distribution Time with no copies thereof retained by the TopBuild Group or its respective representatives, and all such distributed Masco Group Privileged Materials shall be excluded from the transactions contemplated by this Agreement and each Ancillary Agreement. From and after the Distribution Time, TopBuild Group and its representatives shall maintain the confidentiality of the Masco Group Privileged Materials. From and after the Distribution Time, none of TopBuild Group and its representatives shall access or in any way, directly or indirectly, use or rely upon any Masco Group Privileged Materials (whether or not distributed to Masco Group prior to the Distribution Time in accordance with this Section 5.07(e)). To the extent that any Masco Group Privileged Materials are not delivered to Masco Group, TopBuild Group agrees not to assert a waiver of any applicable privilege or protection with respect to such materials. Without limiting the generality of the foregoing, from and after the Distribution Time, (a) Masco Group shall be the sole holders of the Privileges with respect to the Masco Group Privileged Materials, and no member of TopBuild Group shall be a holder thereof, (b) to the extent that files of Prior Company Counsel in respect of Masco Group Privileged Materials constitute property of the client, only Masco Group shall hold such property rights, (c) Prior Company Counsel shall have no duty whatsoever to reveal or disclose any Masco Group Privileged Materials to TopBuild Group by reason of any attorney-client relationship between Prior Company Counsel and TopBuild Group and (d) after the Distribution Date, all communications between members of the TopBuild Group, on the one hand, and any attorneys retained by any member of the TopBuild Group, on the other hand, shall be deemed to be attorney-client confidences that belong solely to such members of the TopBuild Group or such attorneys. Each of TopBuild Group and Masco Group hereby acknowledges and confirms that it has had the opportunity to review and obtain adequate information regarding the significance and risks of the waivers and other terms and conditions of this Section 5.07(e), including the opportunity to discuss with counsel such matters and reasonable alternatives to such terms. This Section

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Section 5.07(e) is for the benefit of Masco Group and Prior Company Counsel, and Masco Group and Prior Company Counsel are intended third party beneficiaries of this Section 5.07(e). This Section 5.07(e) shall be irrevocable, and no term of this Section 5.07(e) may be amended, waived or modified, without the prior written consent of Masco Group and Prior Company Counsel. The covenants and obligations set forth in this Section 5.07(e) shall survive for ten (10) years following the Distribution Time.

## ARTICLE 6 RELEASE; INDEMNIFICATION

### Section 6.01. *Release of Pre-Distribution Claims.*

(a) Except (i) as provided in Section 6.01(b) and (ii) as otherwise expressly provided in this Agreement or any Ancillary Agreement, each party hereto does hereby, on behalf of itself and each member of its Group, and each of their successors and assigns, release and forever discharge the other party and the other members of such party's Group, and their respective successors and assigns, and all Persons who at any time prior to the Distribution Time have been directors, officers, employees or attorneys serving as independent contractors of such other party or any member of its Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns (collectively, the "**Released Parties**"), from any and all demands, Claims, Actions and Liabilities whatsoever, whether at law or in equity (including any right of contribution or any right pursuant to any Environmental Law whether now or hereinafter in effect), whether arising under any contract or agreement, by operation of law or otherwise (and including for the avoidance of doubt, those arising as a result of the negligence, strict liability or any other liability under any theory of law or equity of, or any violation of law by any Released Party), 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 Distribution Date. Masco shall cause each of the other members of the Masco Group to, effective as of the Distribution Time, release and forever discharge each of the TopBuild Indemnitees as and to the same extent as the release and discharge provided by Masco pursuant to the foregoing provisions of this Section 6.01(a). TopBuild shall cause each of the other members of the TopBuild Group to, effective as of the Distribution Time, release and discharge each of the Masco Indemnitees as and to the same extent as the release and discharge provided by TopBuild pursuant to the foregoing provisions of this Section 6.01(a).

(b) Nothing contained in Section 6.01(a) shall impair any right of any Person identified in Section 6.01(a) to enforce this Agreement or any Ancillary Agreement. Nothing contained in Section 6.01(a) shall release or discharge any Person from:

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(i) any Liability assumed, transferred, assigned, retained or allocated to that Person in accordance with, or any other Liability of that Person under, this Agreement or any of the Ancillary Agreements;

(ii) any Liability that is expressly specified in this Agreement (including Section 2.05 and Section 2.06) or any Ancillary Agreement to continue after the Distribution Time, but subject to any limitation set forth in this Agreement (including Section 2.05 and Section 2.06) or any Ancillary Agreement relating specifically to such Liability; or

(iii) any Liability the release of which would result in the release of any Person, other than a member of the Masco Group or any related Released Party; *provided, however*, that the parties hereto agree not to bring or allow their respective Subsidiaries to bring suit against the other party or any related Released Party with respect to any such Liability.

In addition, nothing contained in Section 6.01(a) shall release any party or any member of its Group from honoring its existing obligations to indemnify, or advance expenses to, any Person who was a director, officer or employee of such party or any member of its Group, at or prior to the Distribution Time, to the extent such Person was entitled to such indemnification or advancement of expenses pursuant to then-existing obligations; *provided, however*, that to the extent applicable, Section 6.02 hereof shall determine whether any party shall be required to indemnify the other or a member of its Group in respect of such Liability.

(c) No party hereto shall make, nor permit any member of its Group to make, any Claim or demand, or commence any Action asserting any Claim or demand, including any Claim of contribution or indemnification, against the other party, or any related Released Party, with respect to any Liability released pursuant to Section 6.01(a).

(d) It is the intent of each of the parties hereto by virtue of the provisions of this Section 6.01 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 Distribution Date between members of the Masco Group, on the one hand, and members of the TopBuild Group, on the other hand, (including any contractual agreements or arrangements existing or alleged to exist between the parties on or before the Distribution Date), except as expressly set forth in Section 6.01(b) or as expressly provided in this Agreement or any Ancillary Agreement. At any time, at the reasonable request of either Masco or TopBuild, the other party hereto shall execute and deliver (and cause its respective Subsidiaries to execute and deliver) releases reflecting the provisions hereof.

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Section 6.02. *TopBuild Indemnification of the Masco Group.* (a) Effective as of and after the Distribution Time, TopBuild shall indemnify, defend and hold harmless each member of the Masco Group, each Affiliate thereof and each of their respective directors, officers and employees (the “**Masco Indemnitees**”) from and against any and all Liabilities incurred or suffered by any of the Masco Indemnitees arising out of or in connection with (i) any of the TopBuild Liabilities, or the failure of any member of the TopBuild Group to pay, perform or otherwise discharge any of the TopBuild Liabilities, (ii) any breach by TopBuild or any member of the TopBuild Group of this Agreement or any Ancillary Agreement and (iii) any payments made by Masco or any member of the Masco Group in respect of any TopBuild Surety Bond or any Liability of any member of the Masco Group in respect thereof.

(b) Except to the extent set forth in Section 6.03(b), effective as of and after the Distribution Time, TopBuild shall indemnify, defend and hold harmless each of the Masco Indemnitees and each Person, if any, who controls any Masco Indemnitee within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all Liabilities caused by any untrue statement or alleged untrue statement of a material fact contained in the Form 10 or any amendment thereof, the Information Statement (as amended or supplemented if TopBuild shall have furnished any amendments or supplements thereto), the Equity Compensation Registration Statement or any marketing materials prepared in connection with the Credit Agreement or caused by any omission or alleged omission to state therein a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

Section 6.03. *Masco Indemnification of TopBuild Group.* (a) Effective as of and after the Distribution Time, Masco shall indemnify, defend and hold harmless each member of the TopBuild Group, each Affiliate thereof and each of their respective directors, officers and employees (the “**TopBuild Indemnitees**”) from and against any and all Liabilities incurred or suffered by any of the TopBuild Indemnitees and arising out of or in connection with (i) any of the Masco Liabilities, or the failure of any member of the Masco Group to pay, perform or otherwise discharge any of the Masco Liabilities and (ii) any breach by Masco or any member of the Masco Group of this Agreement or any Ancillary Agreement.

(b) Effective as of and after the Distribution Time, Masco shall indemnify, defend and hold harmless each of the TopBuild Indemnitees and each Person, if any, who controls any TopBuild Indemnitee within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all Liabilities caused by any untrue statement or alleged untrue statement of a material fact contained in the Form 10 or any amendment thereof, the Information Statement (as amended or supplemented if TopBuild shall have furnished any amendments or supplements thereto), the Equity Compensation Registration Statement or any marketing materials prepared in

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connection with the Credit Agreement or any marketing materials prepared in connection with the Credit Agreement or caused by any omission or alleged omission to state therein a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, in each case to the extent, but only to the extent, that such Liabilities are caused by any such untrue statement or omission or alleged untrue statement or omission based on information furnished by Masco solely in respect of the Masco Group, including, for the avoidance of doubt, information contained in the Information Statement under the caption “The Separation — Reasons for the Separation”.

Section 6.04. *Procedures.* (a) The party seeking indemnification under Section 6.02 or Section 6.03 (the “**Indemnified Party**”) agrees to give prompt notice to the party against whom indemnity is sought (the “**Indemnifying Party**”) of the assertion of any claim, or the commencement of any suit, action or proceeding (each, a “**Claim**”) in respect of which indemnity may be sought hereunder and will provide the Indemnifying Party such information with respect thereto that the Indemnifying Party may reasonably request. The failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent such failure shall have prejudiced the Indemnifying Party.

(b) Subject to Section 6.04(e), the Indemnifying Party shall be entitled to participate in the defense of any Claim asserted by any Third Party (“**Third Party Claim**”) and, subject to the limitations set forth in this Section 6.04, if it so notifies the Indemnified Party no later than 30 days after receipt of the notice described in Section 6.04(a), shall be entitled to control and appoint lead counsel for such defense, in each case at its expense. If the Indemnifying Party does not so notify the Indemnified Party, the Indemnified Party shall have the right to defend or contest such Third Party Claim through counsel chosen by the Indemnified Party that is reasonably acceptable to the Indemnifying Party, subject to the provisions of this Section 6.04. 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).

(c) Subject to Section 6.04(e), if the Indemnifying Party shall assume the control of the defense of any Third Party Claim in accordance with the provisions of Section 6.04(b), (i) the Indemnifying Party shall obtain the prior written consent of the Indemnified Party (which shall not be unreasonably withheld) before entering into any settlement of such Third Party Claim, if the settlement does not release the Indemnified Party from all Liabilities and obligations with respect to such Third Party Claim or the settlement imposes injunctive or other equitable relief against the Indemnified Party or any of its related Indemnitees or is otherwise materially prejudicial to any such Person

and (ii) the Indemnified Party shall be entitled to participate in (but not control) the defense of such Third Party Claim and, at its own expense, to employ separate counsel of its choice for such purpose; *provided* that in the event of a conflict of

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interest between the Indemnifying Party and the applicable Indemnified Party, the reasonable and documented fees and expenses of such separate counsel shall be at the Indemnifying Party's expense.

(d) TopBuild hereby agrees to notify Masco of any actual or threatened Third Party Claim or Action that TopBuild reasonably believes could be or become a Fundamental Claim within 10 Business Days of TopBuild becoming aware of such Third Party Claim or Action or, if later, any facts or circumstances that would lead a reasonable person to so conclude.

(e) Notwithstanding anything to the contrary contained herein, Masco shall have the right, but not the obligation, to defend or assume the defense of, and settle or compromise (or seek to settle or compromise or to reject any proposed settlement or compromise), any Fundamental Claim; *provided* that TopBuild (and the relevant officer(s) and/or director(s) so long as such officer(s) and/or director(s) became or remained an officer(s) or director(s) of TopBuild or any of its Subsidiaries on or after the Distribution Date) may retain its right to defend such officer(s) and/or director(s) against a Fundamental Claim that alleges criminal misconduct on the part of such officer(s) and/or director(s) of TopBuild in such officer's or director's capacity as such following the Distribution Date, and each such officer or director may retain his or her right to defend himself or herself against such Fundamental Claim; *provided, further*, that Masco shall notify TopBuild of its decision to exercise control of any Fundamental Claim within 60 days of the later of (i) Masco receiving the notice described in Section 6.04(d) or (ii) any Governmental Authority becoming involved in any Third Party Claim or Action. For the avoidance of doubt, if Masco exercises its right to control the defense of any Fundamental Claim in accordance with this Section 6.04(e), Masco shall have sole and exclusive authority to commence, prosecute, manage, control, conduct, defend, settle or otherwise determine all matters of whatever nature (including, as applicable, litigation strategy and choice of legal counsel or other professionals) with respect to such Fundamental Claim.

(f) The Parties hereby agree that 75% of any out-of-pocket fees, costs and expenses (including, but not limited to, any attorneys' fees and expenses and associated investigation costs) related to the investigation and defense of a Fundamental Claim that Masco has assumed in accordance with Section 6.04(e) shall be borne by TopBuild, and 25% of such out-of-pocket fees, costs, and expenses shall be borne by Masco. Masco shall reimburse TopBuild for 25% of such fees, costs and expenses promptly after, but in any event within 60 days of, receipt of any invoice and documentation in respect thereof.

(g) Each party shall cooperate, and cause their respective Affiliates to cooperate, in the defense or prosecution of any Third Party Claim (including any Fundamental Claim) and shall furnish or cause to be furnished such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials or appeals, as may be reasonably requested in connection therewith.

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(h) Each Indemnified Party shall use reasonable efforts to collect any amounts available under insurance coverage, or from any other Person alleged to be responsible, for any Liabilities payable under Section 6.02 or Section 6.03 and the reasonable expenses incurred in connection therewith will be treated as Liabilities subject to indemnification hereunder.

(i) If any Third Party Claim shall be brought against a member of each Group, then such Action shall be deemed to be a TopBuild Assumed Action or a Masco Assumed Action in accordance with Sections 5.02(a) or 5.02(b), to the extent applicable, and the related party shall be deemed to be the Indemnifying Party for the purposes of this Article 6. In the event of any Action in which the Indemnifying Party is not also named defendant, at the request of either the Indemnified Party or the Indemnifying Party, the parties will use reasonable efforts to substitute the Indemnifying Party or its applicable Affiliate for the named defendant in the Action.

Section 6.05. *Calculation of Indemnification Amount.* Any indemnification amount pursuant to Section 6.02 or Section 6.03 shall be paid (i) net of any amounts actually recovered by the Indemnified Party under applicable Third Party insurance policies or from any other Third Party alleged to be responsible therefor, and (ii) taking into account any Tax Benefit allowable to the Indemnified Party (using the methodology set forth in Section 11(d) of the Tax Matters Agreement to determine the amount of any such Tax Benefit) and any Tax cost incurred by the Indemnified Party arising from the incurrence or payment of the relevant Liabilities. Masco and TopBuild agree that, for United States federal income Tax purposes, any payment made pursuant to this Article 6 will be treated as provided under Section 12(c) of the Tax Matters Agreement. If the Indemnified Party receives any amounts under applicable Third Party insurance policies, or from any other Third Party alleged to be responsible for any Liabilities, subsequent to an indemnification payment by the Indemnifying Party in respect thereof, then such Indemnified Party shall promptly reimburse the Indemnifying Party for any payment made by such Indemnifying Party in respect thereof up to the amount received by the Indemnified Party from such Third Party insurance policy or Third Party, as applicable. The Indemnifying Party shall not be liable for any Liabilities under Section 6.02 or Section 6.03 to the extent such Liabilities are special, indirect, incidental, consequential or punitive damages or lost profits (other than any such Liabilities actually paid to Third Parties).

Section 6.06. *Contribution.* If for any reason the indemnification provided for in Section 6.02 or Section 6.03 is unavailable to any Indemnified Party, or insufficient to hold it harmless, then the Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party as a result of such Liabilities in such proportion as is appropriate to reflect the relative fault of the Masco Group, on the one hand, and the TopBuild Group, on the other hand, in connection with the conduct, statement or omission that resulted in such Liabilities. In case of any Liabilities arising out of or related to information contained in the Form 10 or any amendment thereof, the Information Statement

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(as amended or supplemented if TopBuild shall have furnished any amendments or supplements thereto), the Equity Compensation Registration Statement or any marketing materials prepared in connection with the Credit Agreement, the relative fault of the Masco Group, on the one hand, and the TopBuild Group, on the other hand, shall be determined by reference to, among other things, whether the untrue statement or alleged untrue statement of a material fact or the omission or alleged omission of a material fact relates to information supplied by Masco or TopBuild.

Section 6.07. *Survival of Indemnities.* The rights and obligations of any Indemnified Party or Indemnifying Party under this Article 6 shall survive the sale or other transfer of any party of any of its assets, business or liabilities.

ARTICLE 7  
MISCELLANEOUS

Section 7.01. *Notices.* Any notice, instruction, direction or demand under the terms of this Agreement required to be in writing shall be duly given upon delivery, if delivered by hand, facsimile transmission, or mail, to the following addresses:

If to Masco to:

Masco Corporation  
21001 Van Born Road  
Taylor, Michigan 48180  
Attn: General Counsel  
Facsimile: (313) 792-6430

with a copy to:

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, New York 10017  
Attn: John D. Amorosi  
Bruce Dallas  
Facsimile: (212) 701-5010

If to TopBuild to:

TopBuild Corp.  
260 Jimmy Ann Dr  
Daytona Beach, FL 32114  
Attn: General Counsel  
Facsimile: (386) 304-2144

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with a copy to:

McDermott Will & Emery  
333 SE 2<sup>nd</sup> Ave #4500  
Miami, Florida 33131  
Attn: Harris C. Siskind  
Facsimile: (305) 347-6500

and

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, New York 10017  
Attn: John D. Amorosi  
Bruce Dallas  
Facsimile: (212) 701-5010

or such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other party hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day in the place of receipt.

Section 7.02. *Masco Marks Phase Out.* As soon as reasonably practicable after the Distribution Date, but in any event within two hundred seventy (270) days following the Distribution Date, TopBuild shall, and shall cause each of the other members of the TopBuild Group to, (a) cease all use of the Masco Marks (b) remove, destroy or strike over all Masco Marks from the assets and other materials of any member of the TopBuild Group, including as part of its stationary, displays, signs, promotional materials, manuals, forms, websites, email and other materials and (c) file amendments to their certificates of incorporation, articles of association or other organizational documents with any applicable Governmental Authority changing the names of such members of the TopBuild Group to names that do not include any of the Masco Marks. Any use by the members of the TopBuild Group of the Masco Marks during the limited phase-out period provided in this Section 7.02 shall be (i) solely in connection with goods and services that are (x) the type of goods and services in connection with which such members of the TopBuild Group were using the Masco Marks immediately prior to the Distribution Date and (y) of a quality at least as high as the quality of goods and services provided by such members of the TopBuild Group immediately prior to the Distribution Date, and (ii) subject to all style and other usage guidelines in effect for the Masco Marks (as may be modified by Masco from time to time). All goodwill associated with the use by the members of the TopBuild Group of the Masco Marks shall inure to the benefit of Masco or its Affiliates, as applicable. Following the Distribution Date, none of the members

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of the TopBuild Group shall (A) contest the validity or ownership of any of the Masco Marks or (B) use, adopt or employ any variation or derivative of any Masco Mark, including any trademark that is confusingly similar to any Masco Mark. For the purposes of this Section 7.02, "**Masco Marks**" shall mean any and all trademarks owned by Masco or any of its Affiliates, including the trademark "MASCO".

Section 7.03. *Amendments; No Waivers.* (a) Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by Masco and TopBuild, or in the case of a waiver, by the party against whom the waiver is to be effective.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Applicable Law.

Section 7.04. *Expenses.* Except as specifically provided otherwise in this Agreement or any Ancillary Agreement, all costs and expenses incurred by the Masco Group in connection with the Distribution and related transactions shall be paid by Masco, and all costs and expenses incurred by the TopBuild Group in connection with the Distribution and related transactions shall be paid by TopBuild.

Section 7.05. *Successors and Assigns.* The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns; *provided* that neither party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the



consent of the other party hereto. If any party or any of its successors or permitted assigns (i) shall consolidate with or merge into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) shall transfer all or substantially all of its properties and assets to any Person, then, and in each such case, proper provisions shall be made so that the successors and assigns of such party shall assume all of the obligations of such party under the Distribution Documents.

Section 7.06. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law rules of such state.

Section 7.07. *Counterparts; Effectiveness; Third-Party Beneficiaries.* This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other

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party hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication). Except for Section 5.07 and the indemnification and release provisions of Article 6, neither this Agreement nor any provision hereof is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any Person other than the parties hereto and their respective successors and permitted assigns.

Section 7.08. *Entire Agreement.* This Agreement and the other Distribution Documents constitute the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements, understandings and negotiations, both written and oral, between the parties with respect to the subject matter hereof and thereof. No representation, inducement, promise, understanding, condition or warranty not set forth herein or in the other Distribution Documents has been made or relied upon by any party hereto or any member of their Group with respect to the transactions contemplated by the Distribution Documents. To the extent that any provision of this Agreement is inconsistent with any provision of any other Distribution Document, the provision of such other Distribution Document shall prevail. To the extent that any provision of this Agreement is inconsistent with any provision of the TPA Agreement or any other agreement entered into by Masco or TopBuild relating to insurance matters or any other matters described in Article 4, the provision of this Agreement shall control as between each member of the Masco Group, on the one hand, and each member of the TopBuild Group, on the other.

Section 7.09. *Tax Matters.* Except as otherwise expressly provided herein, this Agreement shall not govern Tax matters (including any administrative, procedural and related matters thereto), which shall be exclusively governed by the Tax Matters Agreement and the Employee Matters Agreement.

Section 7.10. *Jurisdiction.* The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in the Delaware Chancery Court, or if such court shall not have jurisdiction, any federal court located in the State of Delaware or any Delaware state court, so long as one of such courts shall have subject matter jurisdiction over such suit, action or proceeding, and that any cause of action arising out of this Agreement shall be deemed to have arisen from the transaction of business in the State of Delaware, and each of the parties hereby irrevocably consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within

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or outside of the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 7.01 shall be deemed effective service of process on such party.

Section 7.11. *WAIVER OF JURY TRIAL.* EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 7.12. *Termination.* Notwithstanding any provision of this Agreement to the contrary, the Masco Board of Directors may, in its sole discretion and without the approval of TopBuild or any other Person, at any time prior to the Distribution terminate this Agreement and/or abandon the Distribution, whether or not it has theretofore approved this Agreement and/or the Distribution. In the event this Agreement is terminated pursuant to the preceding sentence, this Agreement shall forthwith become void and neither party nor any of its directors or officers shall have any liability or further obligation to the other party or any other Person by reason of this Agreement.

Section 7.13. *Severability.* If any one or more of the provisions contained in this Agreement should be declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired thereby so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a declaration, the parties shall modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner so that the transactions contemplated hereby are consummated as originally contemplated to the fullest extent possible.

Section 7.14. *Survival.* All covenants and agreements of the parties contained in this Agreement shall survive the Distribution Date indefinitely, unless a specific survival or other applicable period is expressly set forth herein.

Section 7.15. *Captions.* The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof.

Section 7.16. *Interpretation.* In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of its authorship of any of the provisions of this Agreement.

Section 7.17. *Specific Performance.* Each party to this Agreement acknowledges and agrees that damages for a breach or threatened breach of any of the provisions of this Agreement would be inadequate and irreparable harm would

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occur. In recognition of this fact, each party agrees that, if there is a breach or threatened breach, in addition to any damages, the other nonbreaching party to this Agreement, without posting any bond, shall be entitled to seek and obtain equitable relief in the form of specific performance, temporary restraining order, temporary or permanent injunction, attachment, or any other equitable remedy which may then be available to obligate the breaching party (i) to perform its obligations under this Agreement or (ii) if the breaching party is unable, for whatever reason, to perform those obligations, to take any other actions as are necessary, advisable or appropriate to give the other party to this Agreement the economic effect which comes as close as possible to the performance of those obligations (including, but not limited to, transferring, or granting liens on,

the assets of the breaching party to secure the performance by the breaching party of those obligations).

Section 7.18. *Performance*. Each party shall cause to be performed all actions, agreements and obligations set forth herein to be performed by any member of such party's Group.

*[Remainder of page intentionally left blank]*

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

**MASCO CORPORATION**

By: /s/ Kenneth G. Cole  
Name: Kenneth G. Cole  
Title: Vice President, General Counsel and Secretary

**TOPBUILD CORP.**

By: /s/ John G. Szniewajs  
Name: John G. Szniewajs  
Title: President and Treasurer

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF**

**TopBuild Corp.**

June 30, 2015

The undersigned, John G. Szniewajs, does hereby verify that:

A. He is the duly elected and acting President and Treasurer of TopBuild Corp., a corporation organized and existing under the laws of the State of Delaware, which corporation was originally incorporated pursuant to the General Corporation Law of the State of Delaware on February 11, 2015 under the name Masco SpinCo Corp. (the "Corporation").

B. Pursuant to Sections 242 and 245 of the General Corporation Law of Delaware, the certificate of incorporation of the Corporation, originally filed February 11, 2015 with the Delaware Secretary of State and amended on March 20, 2015, is hereby amended and restated to read in its entirety as follows:

Article 1  
NAME

The name of the corporation is TopBuild Corp.

Article 2  
REGISTERED OFFICE AND AGENT

The address of its registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

Article 3  
PURPOSE AND POWERS

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended ("**Delaware Law**").

Article 4  
CAPITAL STOCK

Section 4.01. *Authorized Shares*

(a) *Classes of Stock.* The total number of shares of stock that the Corporation shall have authority to issue is 250,000,000 shares, of Common Stock, par value \$0.01 per share (the "Common Stock"), and 10,000,000 shares of Preferred Stock, par value \$0.01 per share (the "**Preferred Stock**").

(b) *Preferred Stock.* The Board of Directors is hereby empowered, without any action or vote by the Corporation's stockholders (except as may otherwise be provided by the terms of any class or series of Preferred Stock then outstanding), to authorize by resolution or resolutions from time to time the issuance of one or more classes or series of Preferred Stock and to fix the designations, powers, preferences and relative, participating, optional or other rights, if any, and the qualifications, limitations or restrictions thereof, if any, with respect to each such class or series of Preferred Stock and the number of shares constituting each such class or series, and to increase or decrease the number of shares of any such class or series to the extent permitted by Delaware Law.

Section 4.02. *Voting Rights.* Each holder of Common Stock, as such, shall be entitled to one vote for each share of Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote; *provided, however*, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any certificate of designations relating to any class or series of Preferred Stock) that relates solely to the terms of one or more outstanding classes or series of Preferred Stock if the holders of such affected class or series are entitled, either separately or together with the holders of one or more other such classes or series, to vote thereon pursuant to this Certificate of Incorporation (including any certificate of designations relating to any class or series of Preferred Stock) or pursuant to Delaware Law.

Section 4.03. *Pre-emptive Rights.* No holder of any class of stock issued by this Corporation shall be entitled to pre-emptive rights.

Article 5  
BYLAWS

The Board of Directors shall have the power to adopt, amend or repeal the bylaws of the Corporation (the "**Bylaws**").

The stockholders may adopt, amend or repeal the Bylaws only with the affirmative vote of the holders of not less than 80% of the voting power of all outstanding securities of the Corporation generally entitled to vote in the election of directors, voting together as a single class.

Article 6  
BOARD OF DIRECTORS

Section 6.01. *Power of the Board of Directors.* The business and affairs of the Corporation shall be managed by or under the direction of a Board of Directors.

Section 6.02. *Number of Directors.* The number of directors which shall constitute the Board of Directors shall, as of the date this Certificate of Incorporation becomes effective, be seven and, thereafter, shall be not less than five nor more than twelve, the exact number to be determined from time to time by resolution adopted by the affirmative vote of a majority of the Board of Directors.

Section 6.03. *Election of Directors.* (a) The directors shall be divided into three classes, designated Class I, Class II and Class III. Each class shall consist, as nearly as may be practicable, of one-third of the total number of directors constituting the entire Board of Directors. Each director shall serve for a term ending on the date of the third annual meeting of stockholders next following the annual meeting at which such director was elected; provided that directors initially designated as Class I directors shall serve for a term ending on the date of the 2016 annual meeting, directors initially designated as Class II directors shall serve for a term ending on the 2017 annual meeting, and directors initially designated as Class III directors shall serve for a term ending on the date of the 2018 annual meeting. Notwithstanding the foregoing, each director shall hold office until such director's successor shall have been duly elected and qualified or until such director's earlier death, resignation or removal. In the event of any change in the number of directors, the Board of Directors shall apportion any newly created directorships among, or reduce the number of directorships in, such class or classes as shall equalize, as nearly as possible, the number of directors in each class. In no event will a decrease in the number of directors shorten the term of any incumbent director.

(b) The names and mailing addresses of the persons who are to serve initially as directors of each Class are:

	Name	Mailing Address
Class I	Dennis W. Archer Alec C. Covington	260 Jimmy Ann Drive Daytona Beach, FL 32114
Class II	Mark A. Petrarca Margaret M. Whelan	260 Jimmy Ann Drive Daytona Beach, FL 32114
Class III	Gerald Volas Carl T. Camden Joseph S. Cantie	260 Jimmy Ann Drive Daytona Beach, FL 32114

(c) There shall be no cumulative voting in the election of directors. Election of directors need not be by written ballot unless the Bylaws so provide.

Section 6.04. *Vacancies.* Vacancies on the Board of Directors resulting from death, resignation, removal or otherwise and newly created directorships resulting from any increase in the number of directors shall, except as otherwise required by law, be filled solely by a majority of the directors then in office (although less than a quorum) or by the sole remaining director, and each director so elected shall hold office for a term that shall coincide with the term of the Class to which such director shall have been elected.

Section 6.05. *Removal.* No director may be removed from office by the stockholders except for cause with the affirmative vote of the holders of not less than a majority of the total voting power of all outstanding securities of the Corporation generally entitled to vote in the election of directors, voting together as a single class.

Section 6.06. *Preferred Stock Directors.* Notwithstanding anything else contained herein, whenever the holders of one or more classes or series of Preferred Stock shall have the right, voting separately as a class or series, to elect directors, the election, term of office, filling of vacancies, removal and other features of such directorships shall be governed by the terms of such class or series of Preferred Stock adopted by resolution or resolutions adopted by the Board of Directors pursuant to Article 4(A) hereto, and such directors so elected shall not be subject to the provisions of this Article 6 unless otherwise provided therein.

Article 7  
MEETINGS OF STOCKHOLDERS

Section 7.01. *Annual Meetings.* An annual meeting of stockholders for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting shall be held at such place, on such date, and at such time as the Board of Directors shall determine.

Section 7.02. *Special Meetings.* Special meetings of the stockholders may be called by the Chairman of the Board of Directors, the Chief Executive Officer or the President and shall be called by the Chairman of the Board of Directors, Chief Executive Officer, President or the Secretary, on the written request of three directors. Notwithstanding the foregoing, whenever holders of one or more classes or series of Preferred Stock shall have the right, voting separately as a class or series, to elect directors, such holders may call, pursuant to the terms of such class or series of Preferred Stock adopted by resolution or resolutions of the Board of Directors pursuant to Article 4(A) hereto, special meetings of holders of such Preferred Stock.

Section 7.03. *No Action by Written Consent.* Subject to the rights of the holders of any class or series of Preferred Stock then outstanding, as may be set forth in the resolution or resolutions adopted by the Board of Directors pursuant to Article 4(A) hereto for such class or series of Preferred Stock, any action required or permitted to be taken at any annual or special meeting of stockholders may be taken only upon the vote of stockholders at an annual or special meeting duly noticed and called in accordance with Delaware Law, as amended from time to time, and this Article 7 and may not be taken by written consent of stockholders without a meeting.

Article 8  
BUSINESS COMBINATIONS

Section 8.01. *Authorization.* The affirmative vote of the holders of 95% of all shares of stock of the Corporation entitled to vote in elections of directors, considered for the purposes of this Article 8 as one class, shall be required for the adoption or

authorization of a business combination (as hereinafter defined) with any other entity (as hereinafter defined) if, as of the record date for the determination of stockholders entitled to notice thereof and to vote thereon, such other entity is the beneficial owner, directly or indirectly, of 30% or more of the outstanding shares of stock of the Corporation entitled to vote in elections of directors considered for the purposes of this Article 8 as one class; provided that such 95% voting requirement shall not be applicable if:

(a) The cash, or fair market value of other consideration, to be received per share by common stockholders of the Corporation in such business combination bears the same or a greater percentage relationship to the market price of the Corporation's common stock immediately prior to the announcement of such business combination as the highest per share price (including brokerage commissions and soliciting dealers' fees) which such other entity has theretofore paid for any of the shares of the Corporation's common stock already owned by it bears to the market price of the common stock of the Corporation immediately prior to the commencement of acquisition of the Corporation's common stock by such other entity;

(b) The cash, or fair market value of other consideration, to be received per share by common stockholders of the Corporation in such business combination (i) is not less than the highest per share price (including brokerage commissions and soliciting dealers' fees) paid by such other entity in acquiring any of its holdings of the Corporation's common stock, and (ii) is not less than the earnings per share of common stock of the Corporation for the four full consecutive fiscal quarters immediately preceding the record date for solicitation of votes on such business combination, multiplied by the then price/earnings multiple (if any) of such other entity as customarily computed and reported in the financial community;

(c) After such other entity has acquired a 30% interest and prior to the consummation of such business combination: (i) such other entity shall have taken steps to ensure that the Corporation's Board of Directors included at all times representation by continuing director(s) (as hereinafter defined) proportionate to the stockholdings of the Corporation's public common stockholders not affiliated with such other entity (with a continuing director to occupy any resulting fractional board position); (ii) there shall have been no reduction in the rate of dividends payable on the Corporation's common stock except as necessary to insure that a quarterly dividend payment does not exceed 5% of the net income of the Corporation for the four full consecutive fiscal quarters immediately preceding the declaration date of such dividend, or except as may have been approved by a unanimous vote of the directors; (iii) such other entity shall not have acquired any newly issued shares of stock, directly or indirectly, from the Corporation (except upon conversion of convertible securities acquired by it prior to obtaining a 30% interest or as a result of a pro rata stock dividend or stock split); and (iv) such other entity shall not have acquired any additional shares of the Corporation's outstanding common stock or securities convertible into common stock except as a part of the transaction which results in such other entity acquiring its 30% interest;

(d) Such other entity shall not have (i) received the benefit, directly or indirectly (except proportionately as a stockholder) of any loans, advances, guarantees,

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pledges or other financial assistance or tax credits of or provided by the Corporation, or (ii) made any major change in the Corporation's business or equity capital structure without the unanimous approval of the directors, in either case prior to the consummation of such business combination; and

(e) A proxy statement responsive to the requirements of the United States securities laws shall be mailed to all common stock- holders of the Corporation for the purpose of soliciting stock- holder approval of such business combination and shall contain on its first page thereof, in a prominent place, any recommendations as to the advisability (or inadvisability) of the business combination which the continuing directors, or any of them, may choose to state and, if deemed advisable by a majority of the continuing directors, an opinion of a reputable investment banking firm as to the fairness (or not) of the terms of such business combination, from the point of view of the remaining public stockholders of the Corporation (such investment banking firm to be selected by a majority of the continuing directors and to be paid a reasonable fee for their services by the Corporation upon receipt of such opinion).

The provisions of this Article 8 shall also apply to a business combination with any other entity which at any time has been the beneficial owner, directly or indirectly, of 30% or more of the outstanding shares of stock of the Corporation entitled to vote in elections of directors considered for the purposes of this Article 8 as one class, notwithstanding the fact that such other entity has reduced its shareholdings below 30% if, as of the record date for the determination of stockholders entitled to notice of and to vote on to the business combination, such other entity is an "affiliate" of the Corporation (as hereinafter defined).

Section 8.02. *Definitions.* As used in this Article 8, (i) the term "other entity" shall include any corporation, person or other entity and any other entity with which it or its "affiliate" or "associate" (as defined below) has any agreement, arrangement or understanding, directly or indirectly, for the purpose of acquiring, holding, voting or disposing of stock of the Corporation, or which is its "affiliate" or "associate" as those terms are defined in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934 as in effect on March 31, 1981, together with the successors and assigns of such persons in any transaction or series of transactions not involving a public offering of the Corporation's stock within the meaning of the Securities Act of 1933; (ii) an other entity shall be deemed to be the beneficial owner of any shares of stock of the Corporation which the other entity (as defined above) has the right to acquire pursuant to any agreement, arrangement or understanding or upon exercise of conversion rights, warrants or options, or otherwise; (iii) the outstanding shares of any class of stock of the Corporation shall include shares deemed owned through application of clause (ii) above but shall not include any other shares which may be issuable pursuant to any agreement, or upon exercise of conversion rights, warrants or options, or otherwise; (iv) the term "business combination" shall include any merger or consolidation of the Corporation with or into any other entity, or the sale or lease of all or any substantial part of the assets of the Corporation to, or any sale or lease to the Corporation or any subsidiary thereof in exchange for securities of the Corporation of any assets (except assets having an aggregate fair market value of less than \$5,000,000) of

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any other entity; (v) the term "continuing director" shall mean a person who was a member of the Board of Directors of the Corporation elected by stockholders prior to the time that such other entity acquired in excess of 10% of the stock of the Corporation entitled to vote in the election of directors, or a person recommended to succeed a continuing director by a majority of continuing directors; and (vi) for the purposes of subparagraphs (1) and (2) of this Article 8 the term "other consideration to be received" shall mean, in addition to other consideration received, if any, capital stock of the Corporation retained by its existing public stockholders in the event of a business combination with such other entity in which the Corporation is the surviving corporation.

Section 8.03. *Continuing Directors.* A majority of the continuing directors shall have the power and duty to determine for the purposes of this Article 8 on the basis of information known to them whether (i) such other entity beneficially owns 30% or more of the outstanding shares of stock of the Corporation entitled to vote in elections of directors; (ii) an other entity is an "affiliate" or "associate" (as defined above) of another; (iii) an other entity has an agreement, arrangement or understanding with another; or (iv) the assets being acquired by the Corporation, or any subsidiary thereof, have an aggregate fair market value of less than \$5,000,000.

Section 8.04. *Amendment.* No amendment to the Certificate of Incorporation of the Corporation shall amend or repeal any of the provisions of this Article 8, unless the amendment effecting such amendment or repeal shall receive the affirmative vote of the holders of 95% of all shares of stock of the corporation entitled to vote in elections of directors, considered for the purposes of this Article 8 as one class; provided that this paragraph D shall not apply to, and such 95% vote shall not be required for, any amendment or repeal unanimously recommended to the stockholders by the Board of Directors of the Corporation if all of such directors are persons who would be eligible to serve as "continuing directors" within the meaning of paragraph B of this Article 8.

Section 8.05. *Fiduciary Duty.* Nothing contained in this Article 8 shall be construed to relieve any other entity from any fiduciary obligation imposed by law.

## Article 9 INDEMNIFICATION

Section 9.01. *Limited Liability.* A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law hereafter is amended to authorize the further limitation or elimination of the liability of directors, then the liability of a director of the Corporation, in addition to the limitation on liability provided herein, shall be limited to the fullest extent permitted by the Delaware Law.

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Section 9.02. *Right to Indemnification.* (a) Each person (and the heirs, executors or administrators of such person) who was or is a party or is threatened to be made a party to, or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director, officer or employee of the Corporation or is or was serving at the request of the Corporation as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Delaware Law, against all expense, liability and loss (including, without limitation, attorneys' fees, judgments, fines and amounts paid in settlement) reasonably incurred or suffered by such person in connection therewith. The Corporation shall indemnify a director, officer or employee in connection with an action, suit or proceeding (other than an action, suit or proceeding to enforce indemnification rights provided for herein or elsewhere) initiated by such director, officer or employee only if such action, suit or proceeding was authorized by the Board of Directors. The right to indemnification conferred in this Article 9 shall also include the right to be paid by the Corporation the expenses incurred in connection with any such proceeding in advance of its final disposition; provided, however, that, if the Delaware Law requires, the payment of such expenses incurred by a director or officer in such person's capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person) in advance of the final disposition of an action, suit or proceeding shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such director or officer is not entitled to be indemnified for such expenses under this Article 9 or otherwise. The right to indemnification conferred in this Article 9 shall be a contract right.

(b) The Corporation may, by action of its Board of Directors, provide indemnification to such agents of the Corporation to such extent and to such effect as the Board of Directors shall determine to be appropriate and authorized by Delaware Law.

Section 9.03. *Insurance.* The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss incurred by such person in any such capacity or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under Delaware Law.

Section 9.04. *Nonexclusivity of Rights.* The rights and authority conferred in this Article 9 shall not be exclusive of any other right that any person may otherwise have or hereafter acquire.

Section 9.05. *Preservation of Rights.* Neither the amendment nor repeal of this Article 9, nor the adoption of any provision of this Certificate of Incorporation or the Bylaws, nor, to the fullest extent permitted by Delaware Law, any modification of law,

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shall adversely affect any right or protection of any person granted pursuant hereto existing at, or arising out of or related to any event, act or omission that occurred prior to, the time of such amendment, repeal, adoption or modification (regardless of when any proceeding (or part thereof) relating to such event, act or omission arises or is first threatened, commenced or completed).

#### Article 10 MISCELLANEOUS

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized:

To make, alter or repeal the bylaws of the Corporation.

To authorize and cause to be executed mortgages and liens upon the real and personal property of the Corporation.

To set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and to abolish any such reserve in the manner in which it was created.

When and as authorized by the affirmative vote of the holders of a majority of the stock issued and outstanding having voting power given at a stockholders' meeting duly called for that purpose, to sell, lease or exchange all of the property and assets of the Corporation, including its good will and its corporate franchises, upon such terms and conditions and for such consideration, which may be in whole or in part shares of stock in, and/or other securities of, any other corporation or corporations, as its Board of Directors shall deem expedient and for the best interests of the Corporation.

#### Article 11 AMENDMENTS

The Corporation reserves the right to amend this Certificate of Incorporation in any manner permitted by the Delaware Law and all rights and powers conferred upon stockholders, directors and officers herein are granted subject to this reservation. Notwithstanding the foregoing or the bylaws, the provisions set forth in Articles 4(B), 5, 6, 7 and this Article 11 may not be repealed or amended in any respect, and no other provision may be adopted, amended or repealed, in this Certificate of Incorporation or in the bylaws, which would have the effect of modifying or permitting the circumvention of the provisions set forth in any of Articles 4(B), 5, 6, 7 or this Article 11, unless such action is approved by the affirmative vote of the holders of not less than 80% of the total voting power of all outstanding securities of the Corporation generally entitled to vote in the election of directors, voting together as a single class.

C. The foregoing amendment and restatement of this certificate of incorporation has been duly approved by the board of directors of the Corporation.

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D. The foregoing amendment and restatement of this certificate of incorporation has been duly approved by the written consent of the sole stockholder of the Corporation in accordance with Sections 228, 242 and 245 of the Delaware General Corporation Law.

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IN WITNESS WHEREOF, the undersigned has executed this Certificate of Incorporation as of the date first above written.

/s/ John G. Sznewajs  
John G. Sznewajs  
President and Treasurer



**AMENDED AND RESTATED  
BYLAWS**

**OF**

**TopBuild Corp.**

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**ARTICLE 1  
OFFICES**

Section 1.01. *Registered Office.* The registered office of the Corporation shall be in the City of Wilmington, County of New Castle, State of Delaware.

Section 1.02. *Other Offices.* The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

Section 1.03. *Books.* The books of the Corporation may be kept within or without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

**ARTICLE 2  
MEETINGS OF STOCKHOLDERS**

Section 2.01. *Time and Place of Meetings.* All meetings of stockholders shall be held at such place, either within or without the State of Delaware, on such date and at such time as may be determined from time to time by the Board of Directors, or on such other date to which a meeting may be adjourned or re-scheduled, at such time and place as shall be designated by resolution of the Board of Directors and set forth in the notice of such meeting.

Section 2.02. *Annual Meetings.* An annual meeting of stockholders, commencing with the year 2016, shall be held for the election of directors and to transact such other business as may properly be brought before the meeting.

Section 2.03. *Special Meetings.* Special meetings of the stockholders may be called only by the Chairman of the Board, the Chief Executive Officer, the President or a majority of the Board of Directors. Special meetings shall be held as shall be designated by resolution of the Board of Directors and set forth in the notice of such meeting, and the business transacted shall be confined to the purpose or purposes stated in the notice of the meeting.

Section 2.04. *Notice of Meetings and Adjourned Meetings; Waivers of Notice.*

(a) 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, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, such notice shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder of record entitled to vote at such meeting. The Board of Directors or the chairman of the meeting may adjourn the meeting to another time or place (whether or not a quorum is present), and notice need not be given of the adjourned meeting if the time, place, if any, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, are announced at the meeting at which such adjournment is made. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, or after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

(b) A written waiver of any such notice signed by the person entitled thereto, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a stockholder at a meeting, without protesting prior to the meeting the lack of notice of such meeting shall constitute a waiver of notice of such meeting.

Section 2.05. *Quorum.* Unless otherwise required by law, by the Certificate of Incorporation or by these Bylaws, the presence, in person or by proxy, of the holders of a majority of the total voting power of all outstanding securities of the Corporation generally entitled to vote at a meeting of stockholders shall constitute a quorum for the transaction of business. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the chairman of the meeting or a majority in voting interest of the stockholders present in person or represented by proxy may adjourn the meeting, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted that might have been transacted at the meeting as originally notified; but only those stockholders of record as originally notified shall be entitled to vote at any adjournment or adjournments thereof.

Section 2.06. *Voting.*

(a) Unless otherwise provided in the Certificate of Incorporation and subject to law, each stockholder shall be entitled to one vote for each outstanding share of capital stock of the Corporation held by such stockholder. Any share of capital stock of the Corporation held by the Corporation shall have no voting rights. Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, in all matters other than the election of directors, the affirmative vote of the holders of a majority of the votes cast at the meeting on the subject matter shall be the act of the stockholders. Abstentions and broker non-votes shall not be counted as votes cast. Subject to the rights of the holders of any class or series of preferred stock to elect additional directors under specific circumstances, as may be set forth in the certificate of designations for such class or series of preferred stock, directors shall be elected by a plurality of the votes of the shares of capital stock of the Corporation present in person or represented by proxy at the meeting and entitled to vote on the election of directors.

(b) Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to a corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, appointed by an instrument in writing, subscribed by such stockholder or by his attorney thereunto authorized, or by proxy sent by cable, telegram or by any means of electronic communication permitted by law, which results in a writing from such stockholder or by his attorney, and delivered to the secretary of the meeting. No proxy shall be voted after three (3) years from its date, unless said proxy provides for a longer period.

Section 2.07. *Action by Consent.* Subject to the rights of the holders of any class or series of preferred stock then outstanding, as may be set forth in the certificate of designations for such class or series of preferred stock, any action required or permitted to be taken at any annual or special meeting of stockholders may be taken only upon the vote of stockholders at an annual or special meeting duly noticed and called in accordance with Delaware Law and may not be taken by written consent of



stockholders without a meeting.

Section 2.08. *Organization.* At each meeting of stockholders, the Chairman of the Board of Directors, if one shall have been elected, the Chief Executive Officer or the President, shall preside at such meeting as more particularly provided in Article 4 hereof. In the event the Chairman of the Board, the Chief Executive Officer and the President shall be absent or otherwise unable to preside, then the director designated by the vote of the majority of the directors present at such meeting, shall act as chairman of the meeting. The Secretary (or in the Secretary's absence or inability to act, the person whom the

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chairman of the meeting shall appoint secretary of the meeting) shall act as secretary of the meeting and keep the minutes thereof.

Section 2.09. *Order of Business.* The order of business at all meetings of stockholders shall be as determined by the chairman of the meeting.

Section 2.10. *Nomination of Directors and Proposal of Other Business.*

(a) *Annual Meetings of Stockholders.*

(i) Nominations of persons for election to the Board of Directors or the proposal of other business to be transacted by the stockholders at an annual meeting of stockholders may be made only (A) pursuant to the Corporation's notice of meeting (or any supplement thereto), (B) by or at the direction of the Board of Directors, (C) as may be provided in the certificate of designations for any class or series of preferred stock or (D) by any stockholder of the Corporation who is a stockholder of record at the time of giving of notice provided for in paragraph (ii) of this Section 2.10(a) and at the time of the annual meeting, who shall be entitled to vote at the meeting and who complies with the procedures set forth in this Section 2.10(a), and, except as otherwise required by law, any failure to comply with these procedures shall result in the nullification of such nomination or proposal.

(ii) For nominations or other business to be properly brought before an annual meeting of stockholders by a stockholder pursuant to clause (D) of paragraph (i) of this Section 2.10(a), the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and any such proposed business (other than the nominations of persons for election to the Board of Directors) must constitute a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to, or mailed and received by, the Secretary of the Corporation at the principal executive offices of the Corporation not less than 120 days nor more than 150 days prior to the first anniversary of the preceding year's annual meeting of stockholders; *provided, however*, that in the event that the date of the annual meeting is advanced more than 30 days prior to such anniversary date or delayed more than 70 days after such anniversary date then to be timely such notice must be received by the Corporation no earlier than 120 days prior to such annual meeting and no later than the later of 70 days prior to the date of the meeting or the 10<sup>th</sup> day following the day on which public announcement of the date of the meeting was first made by the Corporation. In no event shall the adjournment or postponement of any meeting, or any announcement thereof, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

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(iii) A stockholder's notice to the Secretary shall set forth (A) as to each person whom the stockholder proposes to nominate for election or reelection as a director: (1) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934 (as amended (together with the rules and regulations promulgated thereunder), the "**Exchange Act**") including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected; and (2) a reasonably detailed description of any compensatory, payment or other financial agreement, arrangement or understanding that such person has with any other person or entity other than the Corporation including the amount of any payment or payments received or receivable thereunder, in each case in connection with candidacy or service as a director of the Corporation (a "**Third-Party Compensation Arrangement**"), (B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend these Bylaws, the text of the proposed amendment), the reasons for conducting such business and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made and (C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the proposal is made:

(1) the name and address of such stockholder (as they appear on the Corporation's books) and any such beneficial owner;

(2) for each class or series, the number of shares of capital stock of the Corporation that are held of record or are beneficially owned by such stockholder and by any such beneficial owner;

(3) a description of any agreement, arrangement or understanding between or among such stockholder and any such beneficial owner, any of their respective affiliates or associates, and any other person or persons (including their names) in connection with the proposal of such nomination or other business;

(4) a description of any agreement, arrangement or understanding (including, regardless of the form of settlement, any derivative, long or short positions, profit interests, forwards, futures, swaps, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions and borrowed or loaned shares) that has been entered into by or on behalf of, or any other agreement, arrangement or understanding that has been made, the effect or intent of

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which is to create or mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or any such beneficial owner with respect to the Corporation's securities;

(5) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to bring such nomination or other business before the meeting;

(6) a representation as to whether such stockholder or any such beneficial owner intends or is part of a group that intends to (i) deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of the Corporation's outstanding capital stock required to approve or adopt the proposal or to elect each such nominee and/or (ii) otherwise to solicit proxies from stockholders in support of such proposal or nomination;

(7) any other information relating to such stockholder, beneficial owner, if any, or director nominee or proposed business that would be required to be disclosed in a proxy statement or other filing required to be made in connection with the solicitation of proxies in support of such nominee or proposal pursuant to Section 14 of the Exchange Act; and

(8) such other information relating to any proposed item of business as the Corporation may reasonably require to determine whether such proposed item of business is a proper matter for stockholder action.

The foregoing notice requirements shall be deemed satisfied by a stockholder if the stockholder has notified the Corporation of his or her intention to present the proposal at an annual meeting in compliance with Rule 14a-8 (or any successor thereof) promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting.

If requested by the Corporation, the information required under clause 2.10(a)(iii)(1)(C)(2), (3) and (4) of the preceding sentence of this Section 2.10 shall be supplemented by such stockholder and any such beneficial owner not later than 10 days after the record date for the meeting to disclose such information as of the record date.

(b) *Special Meetings of Stockholders.* If the election of directors is included as business to be brought before a special meeting in the Corporation's notice of meeting, then nominations of persons for election to the Board of Directors at a special meeting of stockholders may

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be made by any stockholder who is a stockholder of record at the time of giving of notice provided for in this Section 2.10(b) and at the time of the special meeting, who shall be entitled to vote at the meeting and who complies with the procedures set forth in this Section 2.10(b). For nominations to be properly brought by a stockholder before a special meeting of stockholders pursuant to this Section 2.10(b), the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the Corporation (i) not earlier than 150 days prior to the date of the special meeting nor (ii) later than the later of 120 days prior to the date of the special meeting or the 10<sup>th</sup> day following the day on which public announcement of the date of the special meeting was first made. A stockholder's notice to the Secretary shall comply with the notice requirements of Section 2.10(a)(iii).

(c) *General.*

(i) To be eligible to be a nominee for election as a director, the proposed nominee must provide to the Secretary of the Corporation in accordance with the applicable time periods prescribed for delivery of notice under Section 2.10(a)(i) or Section 2.10(b): (A) a completed D&O questionnaire (in the form provided by the secretary of the Corporation at the request of the nominating stockholder) containing information regarding the nominee's background and qualifications and such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as a director of the Corporation or to serve as an independent director of the Corporation, (B) a written representation that, unless previously disclosed to the Corporation, the nominee is not and will not become a party to any voting agreement, arrangement or understanding with any person or entity as to how such nominee, if elected as a director, will vote on any issue or that could interfere with such person's ability to comply, if elected as a director, with his/her fiduciary duties under applicable law, (C) a written representation and agreement that, unless previously disclosed to the Corporation pursuant to Section 2.10(a)(iii)(2), the nominee is not and will not become a party to any Third-Party Compensation Arrangement, (D) a written representation that, such nominee, if elected, intends to tender, promptly following such election, an irrevocable resignation effective upon such person's failure to receive the required vote for reelection at the next meeting at which such nominee would face reelection, and upon acceptance of such resignation by the Board of Directors, and (E) a written representation that, if elected as a director, such nominee would be in compliance and will continue to comply with the Corporation's corporate governance guidelines as disclosed on the Corporation's website, as amended from time to time. At the request of the Board of Directors, any person

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nominated by the Board of Directors for election as a director shall furnish to the Secretary of the Corporation the information that is required to be set forth in a stockholder's notice of nomination that pertains to the nominee.

(ii) No person shall be eligible to be nominated by a stockholder to serve as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 2.10. No business proposed by a stockholder shall be conducted at a stockholder meeting except in accordance with this Section 2.10

(iii) The chairman of the meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the procedures prescribed by these Bylaws or that business was not properly brought before the meeting, and if he/she should so determine, he/she shall so declare to the meeting and the defective nomination shall be disregarded or such business shall not be transacted, as the case may be. Notwithstanding the foregoing provisions of this Section 2.10, 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 or other proposed business, such nomination shall be disregarded or such proposed business shall not be transacted, as the case may be, notwithstanding that proxies in respect of such vote may have been received by the Corporation and counted for purposes of determining a quorum. For purposes of this Section 2.10, 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.

(iv) Without limiting the foregoing provisions of this Section 2.10, a stockholder shall also comply with all applicable requirements of the Exchange Act with respect to the matters set forth in this Section 2.10; *provided, however*, that any references in these Bylaws to the Exchange Act are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 2.10, and compliance with paragraphs (a)(i)(C) and (b) of this Section 2.10 shall be the exclusive means for a stockholder to make nominations or submit other business (other than as provided in Section 2.10(c)(v)).

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(v) Notwithstanding anything to the contrary, the notice requirements set forth herein with respect to the proposal of any business pursuant to this Section 2.10 shall be deemed satisfied by a stockholder if such stockholder has submitted a proposal to the Corporation in compliance with Rule 14a-8 under the Exchange Act, and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for the meeting of stockholders.

Section 2.11. *Inspectors at Stockholders' Meetings.*

(a) The Board of Directors, in advance of any stockholders' meeting, shall appoint one or more inspectors to act at the meeting or any adjournment thereof and to make a written report thereof. In case any inspector or alternate appointed is unable to act, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability.

(b) The inspectors shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election in a manner fair to all stockholders. On request of the chairman of the meeting or any stockholder entitled to vote thereat, the inspectors shall make a report in writing of any challenge,

question or matter determined by them and execute a certificate of any fact found by them. Any report or certificate made by them shall be prima facie evidence of the facts stated and of the vote as certified by them.

### ARTICLE 3 DIRECTORS

Section 3.01. *General Powers.* Except as otherwise provided by law or the Certificate of Incorporation, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

Section 3.02. *Number, Election and Term of Office.* The Board of Directors shall consist of not less than 5 nor more than 12 directors, with the exact number of directors to be determined from time to time solely by resolution adopted by the affirmative vote of a majority of the Board. As set forth in Article 6 of the Certificate of Incorporation, the directors shall be divided into three

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classes, designated Class I, Class II and Class III. Each class shall consist, as nearly as may be practicable, of one-third of the total number of directors constituting the entire Board of Directors. Except as otherwise provided in the Certificate of Incorporation, each director shall serve for a term ending on the date of the third annual meeting of stockholders next following the annual meeting at which such director was elected. Notwithstanding the foregoing, each director shall hold office until such director's successor shall have been duly elected and qualified or until such director's earlier death, resignation or removal. Directors need not be stockholders.

Section 3.03. *Quorum and Manner of Acting.* Unless the Certificate of Incorporation or these Bylaws require a greater number, a majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors and, except as otherwise expressly required by law or by the Certificate of Incorporation, the act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. When a meeting is adjourned to another time or place (whether or not a quorum is present), notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Board of Directors may transact any business which might have been transacted at the original meeting. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat (or if only one be present, then that one) shall adjourn the meeting, from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 3.04. *Time and Place of Meetings.* The Board of Directors shall hold its regular and special meetings at such place, either within or without the State of Delaware, and at such time as may be determined from time to time by the Board of Directors (or the Chairman of the Board of Directors in the absence of a determination by the Board of Directors).

Section 3.05. *Annual Meeting.* The Board of Directors shall meet for the purpose of organization, the election of officers and the transaction of other business, as soon as practicable after each annual meeting of stockholders, on the same day and at the same place where such annual meeting shall be held. Notice of such meeting need not be given. In the event such annual meeting is not so held, the annual meeting of the Board of Directors may be held at such place either within or without the State of Delaware, on such date and at such time as shall be specified in a notice thereof given as hereinafter provided in Section 3.07 herein or in a waiver of notice thereof signed by any director who chooses to waive the requirement of notice.

Section 3.06. *Regular Meetings.* After the place and time of regular meetings of the Board of Directors shall have been determined and notice thereof shall have been once given to each member of the Board of Directors, regular meetings may be held without further notice being given.

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Section 3.07. *Special Meetings.* Special meetings of the Board of Directors may be called by the Chairman of the Board of Directors, the Chief Executive Officer or the President and shall be called by the Chairman of the Board of Directors, Chief Executive Officer, President or the Secretary, on the written request of three directors. Notice of special meetings of the Board of Directors shall be given to each director at least 48 hours before the date of the meeting in such manner as is determined by the Board of Directors. Any requirement of notice shall be effectively waived by any director who signs a waiver of notice before or after the meeting or who waives notice by means of electronic submission or who attends the meeting without protesting (prior thereto or at its commencement) the fact that the meeting has not been lawfully called or convened

Section 3.08. *Committees.* The Board of Directors, by resolution adopted by a majority of the Board, may designate one or more committees, each committee to consist of such number of directors as shall be specified in the resolution designating the committee. Unless otherwise provided by the Board of Directors each committee may make, alter and repeal rules for the conduct of its business. Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matters: (a) approving or adopting, or recommending to the stockholders, any action or matter expressly required by Delaware Law to be submitted to the stockholders for approval or (b) adopting, amending or repealing any Bylaw of the Corporation. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members 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 of Directors to act at the meeting in the place of any such absent or disqualified member. Vacancies in any committee, whether caused by resignation or by increase in the number of members constituting said committee, shall be filled by a majority of the entire Board of Directors.

Section 3.09. *Action by Consent.* Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions, are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in

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paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 3.10. *Telephonic Meetings.* Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or such committee, as the case may be, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

Section 3.11. *Resignation.*

- (a) Any director may resign from the Board of Directors at any time by giving notice to the Board of Directors or to the Secretary of the Corporation.

Any such notice must be in writing or by electronic transmission to the Board of Directors or to the Secretary of the Corporation. The resignation of any director shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

(b) No person shall be eligible to be nominated by the Board of Directors to serve as a director of the Corporation unless the proposed nominee has agreed to tender, promptly following the annual meeting at which he or she is elected as director, an irrevocable resignation effective upon such person's failure to receive the required vote for reelection at the next meeting at which such person would face reelection, and upon acceptance of such resignation by the Board of Directors. If a director nominee fails to receive the required number of votes for reelection, the Board of Directors (excluding the director in question) shall, within 90 days after certification of the election results, decide whether to accept the director's resignation. Absent a compelling reason for the director to remain on the Board of Directors, the Board of Directors shall accept the resignation. The Board of Directors shall promptly disclose its decision and, if applicable, the reasons for rejecting the resignation in a filing with the Securities and Exchange Commission.

Section 3.12. *Vacancies.* Unless otherwise provided in the Certificate of Incorporation, vacancies on the Board of Directors resulting from death, resignation, removal or otherwise and newly created directorships resulting from any increase in the number of directors shall, except as otherwise required by law, be filled solely by a majority of the directors then in office (although less than a quorum) or by the sole remaining director, and each director so elected shall hold office for a term that shall coincide with the term of the Class to which such director shall have been elected. If there are no directors in office, then an election of directors may be held in accordance with Delaware Law. Unless

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otherwise provided in the Certificate of Incorporation, when one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in the filling of the other vacancies. The Board of Directors shall not fill a director vacancy or newly created directorship with any candidate who has not agreed to tender, promptly following his or her appointment to the Board of Directors, an irrevocable resignation effective upon such person's failure to receive the required vote for reelection at the next meeting at which such person would face reelection, and upon acceptance of such resignation by the Board of Directors.

Section 3.13. *Removal.* No director may be removed from office by the stockholders except for cause with the affirmative vote of the holders of not less than a majority of the total voting power of all outstanding securities of the corporation generally entitled to vote in the election of directors, voting together as a single class.

Section 3.14. *Compensation.* Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board of Directors shall have authority to fix the compensation of directors, including fees and reimbursement of expenses.

Section 3.15. *Preferred Stock Directors.* Notwithstanding anything else contained herein, whenever the holders of one or more classes or series of preferred stock shall have the right, voting separately as a class or series, to elect directors, the election, term of office, filling of vacancies, removal and other features of such directorships shall be governed by the terms of the resolutions applicable thereto adopted by the Board of Directors pursuant to the Certificate of Incorporation, and such directors so elected shall not be subject to the provisions of Sections 3.02, 3.12 and 3.13 of this Article 3 unless otherwise provided therein.

#### ARTICLE 4 OFFICERS

Section 4.01. *Principal Officers.* The principal officers of the Corporation shall be a Chief Executive Officer, a President, one or more Vice Presidents, a Treasurer and a Secretary who shall have the duty, among other things, to record the proceedings of the meetings of stockholders and directors in a book kept for that purpose. The Corporation may also have such other principal officers, including one or more Controllers, as the Board of Directors may in its discretion appoint. One person may hold the offices and perform the duties of any two or more of said offices, except that no one person shall hold the offices and perform the duties of President and Secretary.

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Section 4.02. *Appointment, Term of Office and Remuneration.* The principal officers of the Corporation shall be appointed by the Board of Directors in the manner determined by the Board of Directors. Each such officer shall hold office until his or her successor is appointed, or until his or her earlier death, resignation or removal. The remuneration of all officers of the Corporation shall be fixed by the Board of Directors. Any vacancy in any office shall be filled in such manner as the Board of Directors shall determine.

Section 4.03. *Subordinate Officers.* In addition to the principal officers enumerated in Section 4.01 herein, the Corporation may have one or more Assistant Treasurers, Assistant Secretaries and Assistant Controllers and such other subordinate officers, agents and employees as the Board of Directors may deem necessary, each of whom shall hold office for such period as the Board of Directors may from time to time determine. The Board of Directors may delegate to any principal officer the power to appoint and to remove any such subordinate officers, agents or employees.

Section 4.04. *Chief Executive Officer.* Subject to the provisions of these Bylaws and to the direction of the Board of Directors, the Chief Executive Officer shall have the responsibility for the general management and control of the business and affairs of the Corporation and shall perform all duties and have all powers which are commonly incident to the office of the chief executive or which are delegated to him by the Board of Directors. The Chief Executive Officer shall have the power on behalf of the Corporation to enter into, execute and deliver all contracts, instruments, conveyances or documents and to affix the corporate seal thereto and shall have general supervision and direction of all other officers, employees and agents of the Corporation, subject in all cases to the orders and resolutions of the Board of Directors.

Section 4.05. *President.* The President shall be the chief operating and administrative officer of the Corporation. The President shall have general responsibility for the management and control of the operations and administration of the Corporation and shall perform all duties and have all powers which are commonly incident to the office of the president or which are delegated to him by the Board of Directors. The President shall have the power on behalf of the Corporation to enter into, execute and deliver all contracts, instruments, conveyances or documents and to affix the corporate seal thereto and shall have general supervision and direction of all other officers, employees and agents of the Corporation, subject in all cases to the orders and resolutions of the Board of Directors and to the direction of the Chief Executive Officer.

Section 4.06. *Vice President.* Each Vice President shall have such powers and duties as may be delegated to him or her by the Board of Directors. One Vice President shall be designated by the Board of Directors to perform the duties and exercise the powers of the President in the event of the President's absence or disability.

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Section 4.07. *Secretary.* The Secretary shall issue all authorized notices for, and shall keep minutes of all meetings of the stockholders and the Board of Directors. The Secretary shall have charge of the corporate books and shall perform such other duties as the Board of Directors may from time to time prescribe.

Section 4.08. *Treasurer.* The Treasurer shall have the responsibility for maintaining the financial records of the Corporation. The Treasurer shall make such disbursements of the funds of the Corporation as are authorized and shall render from time to time and account of all such transactions and of the financial condition of the

Corporation. The Treasurer shall also perform such other duties as the Board of Directors may from time to time prescribe.

Section 4.09. *Removal.* Except as otherwise permitted with respect to subordinate officers, any officer may be removed, with or without cause, at any time, by resolution adopted by the Board of Directors.

Section 4.10. *Resignations.* Any officer may resign at any time by giving notice to the Board of Directors (or to a principal officer if the Board of Directors has delegated to such principal officer the power to appoint and to remove such officer). Any such notice must be in writing. The resignation of any officer shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.11. *Powers and Duties.* The officers of the Corporation shall have such powers and perform such duties incident to each of their respective offices and such other duties as may from time to time be conferred upon or assigned to them by the Board of Directors.

## ARTICLE 5 CAPITAL STOCK

Section 5.01. *Certificates For Stock; Uncertificated Shares.* The shares of the Corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares or a combination of certificated and uncertificated shares. Any such resolution that shares of a class or series will only be uncertificated shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Except as otherwise required by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of shares represented by certificates of the same class and series shall be identical. Every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of the Corporation by the Chairman of the Board of Directors, or the Chief Executive Officer, President or Vice President, and by the

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Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of such Corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. A Corporation shall not have power to issue a certificate in bearer form.

Section 5.02. *Transfer of Shares.* Shares of the stock of the Corporation may be transferred on the record of stockholders of the Corporation by the holder thereof or by such holder's duly authorized attorney upon surrender of a certificate therefor properly endorsed or upon receipt of proper transfer instructions from the registered holder of uncertificated shares or by such holder's duly authorized attorney and upon compliance with appropriate procedures for transferring shares in uncertificated form, unless waived by the Corporation. The person in whose name shares of stock shall stand on the record of stockholders of the Corporation shall be deemed the owner thereof for all purposes regarding the Corporation.

Section 5.03. *Lost, Destroyed or Stolen Certificates.* No certificate representing shares shall be issued in place of any certificate alleged to have been lost, destroyed or stolen, except on production of evidence of such loss, destruction or theft, and if the Board of Directors shall so require, bond in such amount and in such form as they may deem expedient to indemnify the Corporation, and/or the transfer agents, and/or the registrars of its stock against any claims arising in connection therewith, and secured by such surety as the Board of Directors may in its discretion require.

Section 5.04. *Authority for Additional Rules Regarding Transfer.* The Board of Directors shall have the power and authority to make all such rules and regulations as they may deem expedient concerning the issue, transfer and registration of certificated or uncertificated shares of the stock of the Corporation, as well as for the issuance of new certificates in lieu of those which may be lost, destroyed or stolen.

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## ARTICLE 6 GENERAL PROVISIONS

Section 6.01. *Fixing the Record Date.*

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing such record date is adopted by the Board of Directors, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If the Board of Directors 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 of Directors 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 of Directors, 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; *provided* that the Board of Directors may in its discretion or as required by law fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall fix the same date or an earlier date as the record date for stockholders entitled to notice of such adjourned meeting.

(b) 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 of Directors 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 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 6.02. *Dividends.* Subject to limitations contained in Delaware Law and the Certificate of Incorporation, the Board of Directors may declare and pay dividends upon the shares of capital stock of the Corporation, which dividends may be paid either in cash, in property or in shares of the capital stock of the Corporation.

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Section 6.03. *Year.* The fiscal year of the Corporation shall commence on January 1 and end on December 31 of each year.

Section 6.04. *Corporate Seal.* The Board of Directors may adopt a corporate seal, which 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, affixed or otherwise reproduced.

Section 6.05. *Voting of Stock Owned by the Corporation.* The Board of Directors may authorize any person, on behalf of the Corporation, to attend, vote at and

grant proxies to be used at any meeting of stockholders of any corporation (except this Corporation) in which the Corporation may hold stock.

Section 6.06. *Forum Selection.* Unless the Corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (c) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law or the Certificate of Incorporation or these Bylaws (in each case, as they may be amended from time to time), or (d) any action asserting a claim governed by the internal affairs doctrine shall be a state court located within the state of Delaware (or, if no state court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware), in all cases subject to the court's having personal jurisdiction over the indispensable parties named as defendants. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article/Section 6.06.

Section 6.07. *Amendments.* These Bylaws or any of them, may be altered, amended or repealed, or new Bylaws may be made, by the stockholders entitled to vote thereon at any annual or special meeting thereof or by the Board of Directors. Unless a higher percentage is required by the Certificate of Incorporation as to any matter that is the subject of these Bylaws, all such amendments must be approved by the affirmative vote of the holders of not less than 80% of the total voting power of all outstanding securities of the Corporation, generally entitled to vote in the election of directors, voting together as a single class, or by a majority of the Board of Directors, provided that notices of the proposed amendments shall have been sent to all directors not less than three days before the meeting at which they are to be acted upon, or at any regular meeting of the directors by the unanimous vote of all directors present.

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## TAX MATTERS AGREEMENT

between

**MASCO CORPORATION,**  
on behalf of itself  
and the members  
of the Distributing Group,

and

**TOPBUILD CORP.**  
on behalf of itself  
and the members  
of the Controlled Group

Dated as of June 29, 2015

## TAX MATTERS AGREEMENT

This TAX MATTERS AGREEMENT (the “**Agreement**”) is entered into as of June 29, 2015 between Masco Corporation (“**Distributing**”), a Delaware corporation, on behalf of itself and the members of the Distributing Group, as defined below, and TopBuild Corp. (“**Controlled**”), a Delaware corporation, on behalf of itself and the members of the Controlled Group, as defined below.

WITNESSETH:

WHEREAS, pursuant to the tax laws of various jurisdictions, certain members of the Controlled Group presently file certain tax returns on an affiliated, consolidated, combined, unitary, fiscal unity or other group basis (including as permitted by Section 1501 of the Internal Revenue Code of 1986, as amended (the “**Code**”)) with certain members of the Distributing Group;

WHEREAS, Distributing and Controlled have entered into a Separation and Distribution Agreement, dated as of June 29, 2015 (the “**Distribution Agreement**”), providing for the distribution by Distributing to its shareholders of all of the common stock of Controlled that is held by Distributing (the “**Distribution**”) and certain other matters;

WHEREAS, Distributing and Controlled desire to set forth their agreement on the rights and obligations of Distributing, Controlled and the members of the Distributing Group and the Controlled Group, respectively, with respect to (A) the handling and allocation of federal, state, local and foreign taxes incurred in taxable periods beginning prior to the Distribution Date, as defined below, (B) taxes resulting from the Distribution and transactions effected in connection with the Distribution and (C) various other tax matters;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

**SECTION 1. Definitions.**

(a) As used in this Agreement:

“**Active Trade or Business**” shall mean the Services Business, as defined in the Form 10.

“**Adjustment Request**” means any formal or informal claim or request filed with any Taxing Authority, or with any administrative agency or court, for the adjustment, refund, or credit of Taxes, including (a) any amended Return claiming adjustment to the Taxes as reported on a Return, (b) any claim for equitable recoupment or other offset, and (c) any claim for Refund of Taxes previously paid.

“**Affiliate**” shall mean, when used with respect to a specified Person, a Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified Person. For the purpose of this definition, “control,” when used with respect to any specified Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether

through the ownership of voting securities or other interests, by contract or otherwise. It is expressly agreed that, from and after the Distribution Date, no member of the Distributing Group shall be deemed to be an Affiliate of any member of the Controlled Group, and no member of the Controlled Group shall be deemed to be an Affiliate of any member of the Distributing Group.

“**After-Tax Amount**” shall mean an additional amount equal to the hypothetical incremental Tax liability resulting from the receipt or accrual of any payment (including a payment of the After-Tax Amount), using the maximum statutory rate (or rates, in the case of an item that affects more than one Tax) applicable to the recipient of such payment for the relevant Taxable period, reflecting, for example, the effect of the deductions available for interest paid or accrued and for Taxes, such as state and local income Taxes.

“**Agreement**” shall have the meaning ascribed thereto in the preamble.

“**Applicable Law**” (or “**Applicable Tax Law**,” as the case may be) means, with respect to any Person, any federal, state, local or foreign law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling, directive, guidance, instruction, direction, permission, waiver, notice, condition, limitation, restriction or prohibition or other similar requirement enacted, adopted, promulgated, imposed, issued or applied by a Governmental Authority that is binding upon or applicable to such Person, its properties or assets or its business or operations, as amended unless expressly specified otherwise.

“**Business Day**” shall mean a day, other than Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by

Applicable Law to close.

“**CAP**” shall mean the IRS Compliance Assurance Process.

“**Closing of the Books Method**” shall mean the apportionment of items between portions of a Taxable period based on a closing of the books and records on the close of the Distribution Date (in the event that the Distribution Date is not the last day of the Taxable period, as if the Distribution Date were the last day of the Taxable period), subject to adjustment for items accrued on the Distribution Date that are properly allocable to the Taxable period following the Distribution, as determined by Distributing in accordance with Applicable Law; *provided* that any items not susceptible to such apportionment shall be apportioned on the basis of elapsed days during the relevant portion of the Taxable period.

“**Code**” shall have the meaning ascribed thereto in the recital.

“**Combined Group**” shall mean any group that filed or was required to file (or will file or be required to file) a Return on a consolidated, combined or unitary basis that includes at least one member of the Distributing Group and at least one member of the Controlled Group.

“**Combined Return**” shall mean a Return filed in respect of federal, state, local or foreign income Taxes for a Combined Group.

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“**Company**” shall mean Distributing or Controlled (or the appropriate member of each of their respective Groups), as appropriate.

“**Compensatory Equity Interests**” shall mean any options, stock appreciation rights, restricted stock, stock units or other rights with respect to Distributing Stock or Controlled Stock that are granted on or prior to the Distribution Date by any member of the Distributing Group or any member of the Controlled Group in connection with employee, independent contractor or director compensation or other employee benefits (including, for the avoidance of doubt, options, stock appreciation rights, restricted stock, stock units or other rights issued in respect of any of the foregoing by reason of the Distribution or any subsequent transaction).

“**Controlled**” shall have the meaning ascribed thereto in the recital.

“**Controlled Carried Item**” shall mean any Tax Attribute of the Controlled Group that may or must be carried from one Taxable Period to another prior Taxable Period, or carried from one Taxable Period to another subsequent Taxable Period, under the Code or other Applicable Tax Law.

“**Controlled Group**” shall mean Controlled and each of its direct and indirect Subsidiaries immediately after the Distribution, including any predecessors thereto (other than those entities comprising the Distributing Group). For the avoidance of doubt, any reference herein to the “members” of the Controlled Group shall include Controlled.

“**Distributing**” shall have the meaning ascribed thereto in the recital.

“**Distributing Group**” shall mean Distributing and each of its direct and indirect Subsidiaries immediately after the Distribution, including any predecessors thereto (other than those entities comprising the Controlled Group). For the avoidance of doubt, any reference herein to the “members” of the Distributing Group shall include Distributing.

“**Distribution**” shall have the meaning ascribed thereto in the recital.

“**Distribution Agreement**” shall have the meaning ascribed thereto in the recital.

“**Distribution Date**” shall mean the date on which the Distribution occurs.

“**Distribution Taxes**” shall mean any Taxes incurred solely as a result of the failure of the Tax-Free Status of the Distribution.

“**Equity Interests**” shall mean any stock or other securities treated as equity for tax purposes, options, warrants, rights, convertible debt, or any other instrument or security that affords any Person the right, whether conditional or otherwise, to acquire stock or to be paid an amount determined by reference to the value of stock.

“**Escheat Payment**” shall mean any payment required to be made to a state abandoned property administrator or other public official pursuant to an abandoned property, escheat or similar law.

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“**Final Determination**” shall mean (i) with respect to federal income Taxes, (A) a “determination” as defined in Section 1313(a) of the Code (including, for the avoidance of doubt, an executed IRS Form 906), (B) the execution of an IRS Form 870-AD (or any successor form thereto), as a final resolution of Tax liability for any Taxable period, except that a Form 870-AD (or successor form thereto) that reserves the right of the taxpayer to file a claim for Refund or the right of the IRS to assert a further deficiency shall not constitute a Final Determination with respect to the item or items so reserved, or (C) the execution of a CAP Issue Resolution Agreement (or any similar or successor agreement); (ii) with respect to Taxes other than federal income Taxes, any final determination of liability in respect of a Tax that, under Applicable Law, is not subject to further appeal, review or modification through proceedings or otherwise; (iii) with respect to any Tax, any final disposition by reason of the expiration of the applicable statute of limitations; or (iv) with respect to any Tax, the payment of such Tax by any member of the Distributing Group or any member of the Controlled Group, whichever is responsible for payment of such Tax under Applicable Law, with respect to any item disallowed or adjusted by a Taxing Authority, *provided*, in the case of this clause (iv), that the provisions of Section 15 hereof have been complied with, or, if such section is inapplicable, that the Company responsible under this Agreement for such Tax is notified by the Company paying such Tax that it has determined that no action should be taken to recoup such disallowed item, and the other Company agrees with such determination.

“**Group**” shall mean the Controlled Group or the Distributing Group, as appropriate.

“**IRS**” shall mean the United States Internal Revenue Service.

“**Person**” shall have the meaning ascribed to it in Section 7701(a)(1) of the Code.

“**Post-Distribution Period**” shall mean any Taxable period (or portion thereof) beginning after the Distribution Date.

“**Pre-Distribution Period**” shall mean any Taxable period (or portion thereof) ending on or before the Distribution Date.

“**Proposed Acquisition Transaction**” shall have the meaning ascribed thereto in Section 9(b)(vii) of this Agreement.



“**Return**” shall mean any Tax return, statement, report, form, election, claim or surrender (including estimated Tax returns and reports, extension requests and forms, and information returns and reports) filed or required to be filed with any Taxing Authority.

“**Subsidiary**” of any Person shall mean any corporation, partnership or other entity directly or indirectly owned more than 50 percent (by vote or value) by such Person.

“**Separate Return**” shall mean any Return required to be filed by a member of the Distributing Group or a member of the Controlled Group that is not a Combined Return.

“**Tax**” (and the correlative meaning, “**Taxes**,” “**Taxing**” and “**Taxable**”) shall mean (i) any tax imposed under Subtitle A of the Code, or any net income, gross income, gross receipts, alternative or add-on minimum, sales, use, business and occupation, value-added, trade, goods

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and services, ad valorem, franchise, profits, license, business royalty, withholding, payroll, employment, capital, excise, transfer, recording, severance, stamp, occupation, premium, property, asset, real estate acquisition, environmental, custom duty, or other tax, governmental fee or other like assessment or charge of any kind whatsoever (including, but not limited to, any Escheat Payment), together with any interest and any penalty, addition to tax or additional amount imposed by a Taxing Authority; or (ii) any liability of any member of the Distributing Group or any member of the Controlled Group for the payment of any amounts described in clause (i) as a result of any express or implied obligation to indemnify any other Person.

“**Tax Attribute**” shall mean a net operating loss, net capital loss, unused investment credit, unused foreign tax credit, excess charitable contribution, general business credit, the alternative minimum tax credit, or any other Tax item that could reduce a Tax liability.

“**Tax Benefit**” shall mean any refund, credit, offset or other reduction in otherwise required Tax payments.

“**Tax Counsel**” shall mean Davis Polk & Wardwell LLP.

“**Tax-Free Status**” shall mean (i) the qualification of the Restructuring and Distribution as (A) a reorganization described in Sections 355(a) and 368(a)(1)(D) of the Code, (B) a transaction in which the stock distributed thereby is “qualified property” for purposes of Sections 355(d), 355(e) and 361(c) of the Code and (C) a transaction in which Distributing, Controlled, and the shareholders of Distributing recognize no income or gain for U.S. federal income tax purposes pursuant to Sections 355, 361 and 1032 of the Code (except with respect to fractional shares), and (ii) the qualification of any other transaction contemplated by the Distribution Agreement to be free from Tax, whether U.S. federal, state or local or foreign Tax, but only to the extent such transaction was intended by the parties to be free from such Tax as described in the Tax Opinion. Such term does not include, in the case of Distributing or Controlled, any intercompany items or excess loss accounts taken into account pursuant to the Treasury Regulations promulgated under Section 1502 of the Code.

“**Tax Opinion**” shall mean the legal opinion delivered to Distributing by Tax Counsel with respect to certain U.S. federal income Tax consequences of the Distribution.

“**Tax Proceeding**” shall mean any Tax audit, dispute or proceeding (whether administrative, judicial or contractual).

“**Tax-Related Losses**” means, with respect to any Taxes imposed pursuant to any settlement, determination, judgment or otherwise: (i) all accounting, legal and other professional fees, and court costs incurred in connection with such Taxes, as well as any other out-of-pocket costs incurred in connection with such Taxes and (ii) all damages, costs, and expenses associated with stockholder litigation or controversies and any amount paid by any member of the Distributing Group or any member of the Controlled Group in respect of the liability of shareholders, whether paid to shareholders or to the IRS or any other Taxing Authority, in each case, resulting from the failure of the Tax-Free Status of the Distribution.

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“**Taxing Authority**” shall mean any Governmental Authority (domestic or foreign), including, without limitation, any state, municipality, political subdivision or governmental agency, responsible for the imposition of any Tax.

“**Transfer Taxes**” means all U.S. federal, state, local or foreign sales, use, privilege, transfer, documentary, stamp, duties, recording and similar Taxes and fees (including any penalties, interest or additions thereto) imposed upon any member of the Distributing Group or any member of the Controlled Group in connection with the Restructuring and Distribution.

(b) All capitalized terms used but not defined herein shall have the same meanings as in the Distribution Agreement. Any term used in this Agreement which is not defined in this Agreement or the Distribution Agreement shall, to the extent the context requires, have the meaning assigned to it in the Code or the applicable Treasury Regulations thereunder (as interpreted in administrative pronouncements and judicial decisions) or in comparable provisions of Applicable Law.

**SECTION 2. Sole Tax Sharing Agreement.** Any and all existing Tax sharing agreements or arrangements, written or unwritten, between any member of the Distributing Group, on the one hand, and any member of the Controlled Group, on the other hand, if not previously terminated, shall be terminated as of the Distribution Date without any further action by the parties thereto. Following the Distribution, neither the members of the Controlled Group nor the members of the Distributing Group shall have any further rights or liabilities thereunder, and this Agreement shall be the sole Tax sharing agreement between the members of the Controlled Group, on the one hand, and the members of the Distributing Group, on the other hand.

**SECTION 3. Allocation of Taxes.**

(a) *General Allocation Principles.* Except as provided in Section 3(b), all Taxes shall be allocated as follows:

(i) *Allocation of Taxes for Combined Returns.* Distributing shall be allocated all Taxes reported, or required to be reported, on any Combined Return that any member of the Distributing Group files or is required to file under the Code or Applicable Tax Law.

(ii) *Allocation of Taxes for Separate Returns.* Distributing shall be allocated all Taxes that are attributable to members of the Distributing Group and reported, or required to be reported, on a Separate Return that is required to be filed by a member of the Distributing Group (including, for the avoidance of doubt, any Escheat Payments). Controlled shall be allocated all Taxes that are attributable to members of the Controlled Group and reported, or required to be reported, on a Separate Return that is required to be filed by a member of the Controlled Group (including, for the avoidance of doubt, any Escheat Payments).

(iii) *Taxes Not Reported on Returns.* Controlled shall be allocated any Tax attributable to any member of the Controlled Group that is not required to be reported on

a Return, and Distributing shall be allocated any Tax attributable to any member of the Distributing Group that is not required to be reported on a Return.

(b) *Special Allocation Rules.* Notwithstanding any other provision in this Section 3, the following Taxes shall be allocated as follows:

(i) *Transfer Taxes.* Transfer Taxes shall be allocated 50% to Distributing and 50% to Controlled.

(ii) *Taxes Relating to Compensatory Equity Interests.* Any Tax liability (including, for the avoidance of doubt, the satisfaction of any withholding Tax obligation) relating to the issuance, exercise, vesting or settlement of any Compensatory Equity Interest shall be allocated in a manner consistent with Section 7.

(iii) *Distribution Taxes and Tax-Related Losses.* Any liability for Distribution Taxes and Tax-Related Losses resulting from a breach by any member of the Controlled Group of any representation or covenant made by the members of the Controlled Group under this Agreement shall be allocated in a manner consistent with Section 11(a)(ii).

**SECTION 4. Preparation and Filing of Returns.**

(a) *Combined Returns.*

(i) Distributing shall prepare and file, or cause to be prepared and filed, Combined Returns for which any Combined Group is required or, subject to Section 4(d)(iii), permitted, to file a Combined Return. Each member of any such Combined Group shall execute and file such consents, elections and other documents as may be required, appropriate or otherwise requested by Distributing in connection with the filing of such Combined Returns.

(ii) To the extent that any member of the Controlled Group is included in any Combined Return for a Taxable period that includes the Distribution Date, Distributing shall include in such Combined Return the results of such member of the Controlled Group on the basis of the Closing of the Books Method to the extent permitted by Applicable Tax Law.

(b) *Separate Returns.*

(i) *Returns to be Prepared by Distributing.* Distributing shall prepare and file (or cause to be prepared and filed) all Separate Returns that relate to one or more members of the Distributing Group for any Taxable period.

(ii) *Returns to be Prepared by Controlled.* Controlled shall prepare and file (or cause to be prepared and filed) all Separate Returns that relate to one or more members of the Controlled Group for any Taxable period.

(c) *Provision of Information; Timing.* Controlled shall maintain all necessary information for Distributing (or any of its Affiliates) to file a Combined Return and shall provide

Distributing with all such necessary information in accordance with the Distributing Group's past practice and no later than the dates set forth on Appendix A of this Agreement.

(d) *Special Rules Relating to the Preparation of Tax Returns*

(i) *Consistency with Tax-Free Status.* All Returns that include any member of the Distributing Group or any member of the Controlled Group shall be prepared in a manner that is consistent with the Tax-Free Status.

(ii) *Controlled Returns.* With respect to any Separate Return for which Controlled is responsible pursuant to this Agreement, Controlled and the other members of the Controlled Group shall allocate Tax items to such Separate Return in a manner that is consistent with the allocation performed for the related Combined Return for which Distributing is responsible.

(iii) *Election to File Combined Returns.* For the avoidance of doubt, Distributing shall have the sole discretion of filing any Combined Return if the filing of such Combined Return is elective under Applicable Tax law.

(iv) *Preparation of Transfer Tax Returns.* The Company required under Applicable Tax Law to file any Returns in respect of Transfer Taxes shall prepare and file (or cause to be prepared and filed) such Returns. If required by Applicable Tax Law, Distributing and Controlled shall, and shall cause their respective Affiliates to, cooperate in preparing and filing, and join in the execution of, any such Returns.

(e) *Payment of Taxes.* For the avoidance of doubt, Distributing shall pay (or cause to be paid) to the proper Taxing Authority the Tax shown as due on any Return for which a member of the Distributing Group is responsible under this Section 4, and Controlled shall pay (or cause to be paid) to the proper Taxing Authority the Tax shown as due on any Return for which a member of the Controlled Group is responsible under this Section 4. If any member of the Distributing Group is required to make a payment to a Taxing Authority for Taxes allocated to Controlled under Section 3, Controlled shall pay the amount of such Taxes to Distributing in accordance with Section 11 and Section 12. If any member of the Controlled Group is required to make a payment to a Taxing Authority for Taxes allocated to Distributing under Section 3, Distributing shall pay the amount of such Taxes to Controlled in accordance with Section 11 and Section 12.

**SECTION 5. Apportionment of Earnings and Profits and Tax Attributes.**

(a) Tax Attributes arising in a Taxable period that ends on or includes a Pre-Distribution Period will be allocated to (and the benefits and burdens of such Tax Attribute will inure to) the members of the Distributing Group and the members of the Controlled Group in accordance with Distributing's historical practice (including historical methodologies for making corporate allocations), the Code, Treasury Regulations, and any applicable state, local and foreign law, as determined by Distributing in its sole discretion.

(b) Distributing shall in good faith advise Controlled as soon as reasonably practicable after the close of the relevant Taxable period in which the Distribution occurs in writing of the

portion, if any, of any earnings and profits, Tax Attributes, overall foreign loss or other consolidated, combined or unitary attribute which Distributing determines shall be allocated or apportioned to the members of the Controlled Group under Applicable Tax Law. All members of the Controlled Group shall prepare all Returns in accordance with such written notice. In the event of an adjustment to the earnings and profits, any Tax Attributes, overall foreign loss or other consolidated, combined or unitary attribute determined by Distributing, Distributing shall promptly notify Controlled in writing of such adjustment. For the avoidance of doubt, Distributing shall not be liable to any member of the Controlled Group for any failure of any determination under this Section 5(b) to be accurate under Applicable Tax Law, provided such determination was made in good faith.

(c) Except as otherwise provided herein, to the extent that the amount of any Tax Attribute is later reduced or increased by a Taxing Authority or as a result of a Tax Proceeding, such reduction or increase shall be allocated to the Company to which such Tax Attribute was allocated pursuant to this Section 5, as determined by Distributing in its sole discretion.

#### **SECTION 6. Utilization of Tax Attributes.**

(a) *Distributing Discretion.* Controlled hereby agrees that Distributing shall be entitled to determine in its sole discretion whether to (x) file or to cause to be filed any Adjustment Request with respect to any Combined Return in order to claim in any Pre-Distribution Period any Controlled Carried Item, (y) make or cause to be made any available elections to waive the right to claim in any Pre-Distribution Period, with respect to any Combined Return, any Controlled Carried Item, and (z) make or cause to be made any affirmative election to claim in any Pre-Distribution Period any Controlled Carried Item. Subject to Section 6(b), Controlled shall submit a written request to Distributing in order to seek Distributing's consent with respect to any of the actions described in this Section 6(a).

(b) *Controlled Carrybacks to Combined Returns.*

(i) Each member of the Controlled Group shall elect, to the extent permitted by Applicable Tax Law, to forgo the right to carry back any Controlled Carried Item from a Post-Distribution Period to a Combined Return.

(ii) If a member of the Controlled Group determines that it is required by Applicable Tax Law to carry back any Controlled Carried Item to a Combined Return, it shall notify Distributing in writing of such determination at least 90 days prior to filing the Return on which such carryback will be reflected. If Distributing disagrees with such determination, the parties shall resolve their disagreement pursuant to the procedures set forth in Section 23.

(iii) For the avoidance of doubt, if a Controlled Carried Item is carried back to a Combined Return for any reason, no member of the Distributing Group shall be required to make any payment to, or otherwise compensate, any member of the Controlled Group in respect of such Controlled Carried Item.

(c) *Carrybacks, Carryforwards to Separate Returns.* If a portion or all of any Tax Attribute is allocated to a member of a Combined Group pursuant to Section 5, and is carried

back or forward to a Separate Return, any Tax Benefits arising from such carryback or carryforward shall be retained by such member, subject to future audit adjustments.

#### **SECTION 7. Deductions and Reporting for Certain Equity-Based Awards.**

(a) *Deductions.* To the extent permitted by Applicable Tax Law, income Tax deductions with respect to the issuance, exercise, vesting or settlement after the Distribution Date of any Compensatory Equity Interests shall be claimed (A) in the case of an active officer or employee, solely by the Group that employs such Person at the time of such issuance, exercise, vesting, or settlement, as applicable; (B) in the case of a former officer or employee, solely by the Group that was the last to employ such Person; and (C) in the case of a director or former director (who is not an officer or employee or former officer or employee of a member of either Group), (x) solely by the Distributing Group if such person was, at any time before or after the Distribution, a director of any member of the Distributing Group, and (y) in any other case, solely by the Controlled Group (the party whose Group is described in (A), (B), or (C), the "**Employing Party**"). Notwithstanding anything to the contrary in this Section 7, the deduction with respect to the exercise of options in respect of Distributing stock held by the persons set forth on Appendix B shall be claimed as set forth therein.

(b) *Withholding and Reporting.* For any Taxable period (or portion thereof), the Employing Party shall (A) satisfy, or shall cause to be satisfied, all applicable withholding and reporting responsibilities (including all income, payroll, or other Tax reporting related to income to any current or former employees) with respect to the issuance, exercise, vesting or settlement of such Compensatory Equity Interests; provided that, (x) in the event such Compensatory Equity Interests are settled by the corporation that is the issuer or obligor under the Compensatory Equity Interest (the "**Issuing Corporation**") and the Issuing Corporation is not a member of the same Group as the Employing Party, the Issuing Corporation shall promptly remit to the Employing Party an amount of cash equal to the amount required to be withheld in respect of any withholding Taxes (excluding, for the avoidance of doubt, the employer's share of any employment Tax under Applicable Law), and (y) the Employing Party shall not be liable for failure to remit to the applicable Taxing Authority any amount required to have been withheld from the recipient of the Compensatory Equity Interest in connection with such issuance, exercise, vesting or settlement, except that the Employing Party shall be so liable to the extent that the Issuing Corporation shall have remitted such amount to the Employing Party. Distributing shall promptly notify Controlled, and Controlled shall promptly notify Distributing, regarding the exercise of any option or the issuance, vesting, exercise or settlement of any other Compensatory Equity Interest to the extent that, as a result of such issuance, exercise, vesting or settlement, any other party may be entitled to a deduction or required to pay any Tax, or such information that otherwise may be relevant to the preparation of any Return or payment of any Tax by such other party or parties.

(c) *Distributing Employees.* For purposes of this Section 7, if a Person is an officer or employee of any member of the Distributing Group at any time during a Taxable period, then such officer or employee will exclusively be considered to be employed by such member of the Distributing Group for all of such Taxable period.

#### **SECTION 8. Tax Benefits.**

(a) Distributing shall be entitled to any Tax Benefits (including, in the case of any refund received, any interest thereon actually received from the applicable Taxing Authority) received by any member of the Distributing Group or any member of the Controlled Group, other than any Tax Benefits (or any amounts in respect of Tax Benefits) to which Controlled is entitled pursuant to Section 8(b). Controlled shall not be entitled to any Tax Benefits received by any member of the Distributing Group or the Controlled Group, except as set forth in Section 8(b). A Company obtaining a Tax Benefit to which another Company is entitled hereunder shall pay over the amount of such Tax Benefit (net of any associated Tax costs) to such other Company within 10 Business Days after such Tax Benefit is received or actually applied to reduce a Tax on a Return.

(b) Controlled shall be entitled to:

(i) retain any Tax Benefits (including, in the case of any refund received, any interest thereon actually received from the applicable Taxing Authority) received from an applicable Taxing Authority after the Distribution Date with respect to a Return for which a member of the Controlled Group is responsible under this Agreement; and

(ii) any deductions to which Controlled is entitled under Section 7.

**SECTION 9. Certain Representations and Covenants.**

(a) *Controlled Representations.* Controlled and each other member of the Controlled Group represents that as of the date hereof, and covenants that as of the Distribution Date, there is no plan or intention:

(i) to liquidate Controlled or to merge or consolidate any member of the Controlled Group with any other Person subsequent to the Distribution;

(ii) to sell or otherwise dispose of any material asset of any member of the Controlled Group subsequent to the Distribution, except in the ordinary course of business;

(iii) to take or fail to take any action in a manner that is inconsistent with the written information and representations furnished to Tax Counsel in connection with the Tax Opinion, regardless of whether such information and representations were included in the Tax Opinion;

(iv) to repurchase stock of Controlled other than in a manner that satisfies the requirements of IRS Revenue Procedure 96-30 (as in effect prior to the amendment of such Revenue Procedure by IRS Revenue Procedure 2003-48) and consistent with any representations made to Tax Counsel in connection with the Tax Opinion;

(v) to take or fail to take any action in a manner that management of Controlled knows, or should know, is reasonably likely to contravene any agreement with a Taxing Authority entered into prior to the Distribution Date to which any member of the Controlled Group or the Distributing Group is a party; or

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(vi) to enter into any negotiations, agreements, or arrangements with respect to transactions or events (including stock issuances, pursuant to the exercise of options or otherwise, option grants, the adoption of, or authorization of shares under, a stock option plan, capital contributions, or acquisitions, but not including the Distribution) that could reasonably be expected to cause the Distribution to be treated as part of a plan pursuant to which one or more Persons acquire directly or indirectly Controlled stock representing a 50% or greater interest within the meaning of Section 355(d)(4) of the Code.

(b) *Controlled Covenants.* Controlled and each other member of the Controlled Group covenants to Distributing that, without the prior written consent of Distributing,

(i) during the two-year period following the Distribution Date, Controlled will (A) maintain its status as a company engaged in the Active Trade or Business for purposes of Section 355(b)(2) of the Code, (B) not engage in any transaction that would result in it ceasing to be a company engaged in the Active Trade or Business for purposes of Section 355(b)(2) of the Code, (C) cause each other member of the Controlled Group whose Active Trade or Business is relied upon for purposes of qualifying the Distribution for the Tax-Free Status to maintain its status as a company engaged in such Active Trade or Business for purposes of Section 355(b)(2) of the Code and any such other applicable Tax law, (D) not engage in any transaction or permit any other member of the Controlled Group to engage in any transaction that would result in a member of the Controlled Group described in clause (C) hereof ceasing to be a company engaged in the relevant Active Trade or Business for purposes of Section 355(b)(2) of the Code or such other applicable Tax law, taking into account Section 355(b)(3) of the Code for purposes of clauses (A) through (D) hereof, and (E) not dispose of or permit any other member of the Controlled Group to dispose of, directly or indirectly, any interest in a member of the Controlled Group described in clause (C) hereof or permit any such member of the Controlled Group to make or revoke any election under Treasury Regulations Section 301.7701-3;

(ii) Controlled will not, nor will it permit any other member of the Controlled Group to, take or fail to take any action in a manner that is inconsistent with the information and representations furnished to Tax Counsel in connection with the Tax Opinion, regardless of whether such information and representations were included in the Tax Opinion;

(iii) Controlled will not, nor will it permit any other member of the Controlled Group to, take or fail to take any action in a manner that management of Controlled knows, or should know, is reasonably likely to contravene any agreement with a Taxing Authority entered into prior to the Distribution Date to which any member of the Controlled Group or the Distributing Group is a party;

(iv) during the two-year period following the Distribution Date, Controlled will not repurchase stock of Controlled in a manner contrary to the requirements of IRS Revenue Procedure 96-30 (as in effect prior to the amendment of such Revenue Procedure by IRS Revenue Procedure 2003-48) or inconsistent with any representations made to Tax Counsel in connection with the Tax Opinion;

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(v) on or after the Distribution Date, Controlled will not, nor will it permit any other member of the Controlled Group to, make or change any accounting method, amend any Return or take any Tax position on any Return, take any other action or enter into any transaction that results in any increased Tax liability or reduction of any Tax asset of any member of the Distributing Group in respect of any Pre-Distribution Period;

(vi) during the two-year period following the Distribution Date, no member of the Controlled Group will, or will agree to, sell or otherwise issue to any Person, or redeem or otherwise acquire from any Person, any Equity Interests of Controlled or any other member of the Controlled Group; *provided, however,* that Controlled may (x) repurchase stock of Controlled to the extent not inconsistent with Section 9(b)(iv) hereof and (y) issue such Equity Interests to the extent such issuances satisfy Safe Harbor VIII (relating to acquisitions in connection with a person's performance of services) or Safe Harbor IX (relating to acquisitions by a retirement plan of an employer) of Treasury Regulations Section 1.355-7(d);

(vii) during the two-year period following the Distribution Date, no member of the Controlled Group will (A) solicit any Person to make a tender offer for, or otherwise acquire or sell, the Equity Interests of Controlled, (B) participate in or support any unsolicited tender offer for, or other acquisition, issuance or disposition of, the Equity Interests of Controlled or (C) approve or otherwise permit any proposed business combination or any transaction which, in the case of clauses (A) or (B), individually or in the aggregate, together with any transaction occurring within the four-year period beginning on the date which is two years before the Distribution Date and any other transaction which is part of a plan or series of related transactions (within the meaning of Section 355(e) of the Code) that includes the Distribution, could result in one or more Persons acquiring (except for acquisitions that otherwise satisfy Safe Harbor VIII (relating to acquisitions in connection with a person's performance of services) or Safe Harbor IX (relating to acquisitions by a retirement plan of an employer) of Treasury Regulations Section 1.355-7(d)) directly or indirectly stock representing a 40% or greater interest, by vote or value, in Controlled (or any successor thereto) (any such transaction, a "**Proposed Acquisition**

**Transaction”);**

(viii) during the two-year period following the Distribution Date, if any member of the Controlled Group proposes to enter into any transaction or series of transactions that is not a Proposed Acquisition Transaction but would be a Proposed Acquisition Transaction if the percentage reflected in the definition of Proposed Acquisition Transaction were 25% instead of 40% (a “**Section 9(b)(viii) Acquisition Transaction**”) or, to the extent Controlled has the right to prohibit any Section 9(b)(viii) Acquisition Transaction, proposes to permit any Section 9(b)(viii) Acquisition Transaction to occur, in each case, Controlled shall provide Distributing, no later than 10 Business Days following the signing of any written agreement with respect to the Section 9(b)(viii) Acquisition Transaction, with a written description of such transaction (including the type and amount of Equity Interests of the Controlled to be issued in such transaction) and a certificate of the board of directors of Controlled to the effect that the Section 9(b)(viii) Acquisition Transaction is not a Proposed Acquisition Transaction;

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(ix) during the two-year period following the Distribution Date, no member of the Controlled Group will amend its certificate of incorporation (or other organizational documents), or take any other action, whether through a stockholder vote or otherwise, affecting the voting rights of the Equity Interests of Controlled (including, without limitation, through the conversion of one class of Equity Interests of Controlled into another class of Equity Interests of Controlled); and

(x) Controlled will not take or fail to take, or permit any other member of the Controlled Group to take or fail to take, any action which prevents or could reasonably be expected to result in tax treatment that is inconsistent with the Tax-Free Status.

(c) *Controlled Covenants Exceptions.* Notwithstanding the provisions of Section 9(b), Controlled and the other members of Controlled Group may:

(i) dispose of assets that could otherwise be subject to Section 9(b)(i) or (ii) if the aggregate book value of such assets does not exceed 15 percent of total assets of the Controlled Group (determined as of the Distribution Date); or

(ii) in the case of any other action that would reasonably be expected to be inconsistent with the covenants contained in Section 9(b), if either: (A) Controlled notifies Distributing of its proposal to take such action and Controlled and Distributing obtain a ruling from the IRS to the effect that such actions will not affect the Tax-Free Status, *provided* that Controlled agrees in writing to bear any expenses associated with obtaining such a ruling and *provided further*, that the Controlled Group shall not be relieved of any liability under Section 11(a) of this Agreement by reason of seeking or having obtained such a ruling; or (B) Controlled notifies Distributing of its proposal to take such action and obtains an unqualified opinion of counsel (x) from a Tax advisor recognized as an expert in federal income Tax matters and acceptable to Distributing in its sole discretion, (y) on which Distributing may rely and (z) to the effect that such action will not affect the Tax-Free Status, *provided further*, that the Controlled Group shall not be relieved of any liability under Section 11(a) of this Agreement by reason of having obtained such an opinion.

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**SECTION 10. Protective Section 336(e) Elections.** Pursuant to Treasury Regulations Sections 1.336-2(h)(1)(i) and 1.336-2(j), Distributing and Controlled agree that Distributing shall make a timely protective election under Section 336(e) of the Code and the Treasury Regulations issued thereunder for each member of the Controlled Group that is a domestic corporation for U.S. federal income Tax purposes with respect to the Distribution (a “**Section 336(e) Election**”). It is intended that a Section 336(e) Election will have no effect unless the Distribution is a “qualified stock disposition,” as defined in Treasury Regulations Section 1.336(e)-1(b)(6), by reason of the application of Treasury Regulations Section 1.336-1(b)(5)(i)(B) or Treasury Regulations Section 1.336-1(b)(5)(ii).

**SECTION 11. Indemnities.**

(a) *Controlled Indemnity.* Controlled and each other member of the Controlled Group shall jointly and severally indemnify Distributing and the other members of the Distributing Group against, and hold them harmless, without duplication, from:

(i) any Tax liability allocated to Controlled pursuant to Section 3 of this Agreement;

(ii) any Distribution Taxes and Tax-Related Losses resulting from a breach by Controlled or any other member of the Controlled Group of any representation or covenant made by the members of the Controlled Group herein (including, for the avoidance of doubt, any Distribution Taxes and Tax-Related Losses resulting from any action for which the conditions set forth in Section 9(c)(ii) are satisfied); and

(iii) any Tax liability of Distributing that is attributable to any action of any member of the Controlled Group (including, for the avoidance of doubt, any action for which the conditions set forth in Section 9(c)(ii) are satisfied), other than any action required by the Distribution Agreement, without regard to whether Distributing has consented to such action; and

(iv) all liabilities, costs, expenses (including, without limitation, reasonable expenses of investigation and attorneys’ fees and expenses), losses, damages, assessments, settlements or judgments arising out of or incident to the imposition, assessment or assertion of any Tax liability or damage described in (i), (ii) or (iii), including those incurred in the contest in good faith in appropriate proceedings relating to the imposition, assessment or assertion of any such Tax, liability or damage.

(b) *Distributing Indemnity.* Except in the case of any liabilities described in Section 11(a), Distributing and each other member of the Distributing Group will jointly and severally indemnify Controlled and the other members of the Controlled Group against, and hold them harmless, without duplication, from:

(i) any Tax liability allocated to Distributing pursuant to Section 3;

(ii) any Taxes imposed on any member of the Controlled Group under Treasury Regulations Section 1.1502-6 (or similar provision of state, local or foreign law)

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solely as a result of any such member being or having been a member of a Combined Group; and

(iii) all liabilities, costs, expenses (including, without limitation, reasonable expenses of investigation and attorneys’ fees and expenses), losses, damages, assessments, settlements or judgments arising out of or incident to the imposition, assessment or assertion of any Tax liability or damage described in (i) or (ii), including those incurred in the contest in good faith in appropriate proceedings relating to the imposition, assessment or assertion of any such Tax, liability or damage.

(c) *Discharge of Indemnity.* Controlled, Distributing and the members of their respective Groups shall discharge their obligations under Sections 11(a) and 11(b) hereof, respectively, by paying the relevant amount in accordance with Section 12, within 30 Business Days of demand therefor. Any such demand shall include a statement showing the amount due under Section 11(a) or 11(b), as the case may be. Notwithstanding the foregoing, if any member of the Controlled Group or any member of the Distributing Group disputes in good faith the fact or the amount of its obligation under Section 11(a) or Section 11(b), then no payment of the amount in dispute shall be required until any such good faith dispute is resolved in accordance with Section 23 hereof; *provided, however*, that any amount not paid within 30 Business Days of demand therefor shall bear interest as provided in Section 12.

(d) *Tax Benefits.* If an indemnification obligation of any member of the Distributing Group or any member of the Controlled Group, as the case may be, under this Section 11 arises in respect of an adjustment that makes allowable to a member of the Controlled Group or a member of the Distributing Group, respectively, any Tax Benefit which would not, but for such adjustment, be allowable, then any such indemnification obligation shall be an amount equal to (x) the amount otherwise due but for this Section 11(d), minus (y) the present value (as determined in good faith by Distributing based on reasonable projections, following consultation with Controlled) of the product of the Tax Benefit multiplied by (i) the maximum applicable federal, foreign, state or local, as the case may be, corporate Tax rate in effect at the time such Tax Benefit becomes allowable to the applicable member of the Controlled Group or the applicable member of the Distributing Group (as the case may be) or (ii) in the case of a credit, 100 percent. The present value of such product shall be determined by discounting such product from the time the Tax Benefit becomes allowable at the rate equal to the “prime” rate as published in the *Wall Street Journal, Eastern Edition* on the date of such determination.

#### **SECTION 12. Payments.**

(a) *Timing, After-Tax Amounts.* All payments to be made under this Agreement (excluding, for the avoidance of doubt, any payments to a Taxing Authority described herein) shall be made in immediately available funds. Except as otherwise provided, all such payments will be due 10 Business Days after the receipt of notice of such payment or, where no notice is required, 30 Business Days after the fixing of liability or the resolution of a dispute (the “**Due Date**”). Payments shall be deemed made when received. Any payment that is not made on or before the Due Date shall bear interest at the rate equal to the “prime” rate as published on such Due Date in the *Wall Street Journal, Eastern Edition*, for the period from and including the date immediately following the Due Date through and including the date of payment. If, pursuant to a

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Final Determination, or as agreed by Distributing and Controlled acting in good faith, any amount paid pursuant to this Agreement (including pursuant to this sentence) by any member of the Distributing Group or any member of the Controlled Group, as the case may be (the “**Paying Company**”), results in any increased Tax liability or reduction of any Tax asset of any member of the Controlled Group or any member of the Distributing Group, respectively (the “**Affected Company**”), then the Paying Company shall indemnify the Affected Company and hold it harmless from any interest or penalty attributable to such increased Tax liability or the reduction of such Tax asset and shall pay to the Affected Company, in addition to amounts otherwise owed, the After-Tax Amount. With respect to any payment required to be made under this Agreement, Distributing has the right to designate, by written notice to Controlled, which member of the Distributing Group will make or receive such payment.

(b) *Netting of Payments.* If, on the Due Date for any payment under this Agreement, each of Distributing (or any other member of the Distributing Group) and Controlled (or any other member of the Controlled Group) owes an amount to the other Company pursuant to this Agreement or any other agreement between Distributing and Controlled (including, without limitation, the Distribution Agreement and any other Ancillary Agreement), the Companies shall satisfy their respective obligations to each other by netting the aggregate amounts due to one Company (and its Affiliates) against the aggregate amounts due to the other Company (and its Affiliates), with the Company, if any, owing (together with its Affiliates) the greater aggregate amount paying the other Company the difference between the amounts owed. Such net payment shall be made pursuant to Section 12(a).

(c) *Treatment of Payments.* To the extent permitted by Applicable Tax Law, any payment made to one Company by another Company pursuant to this Agreement, the Distribution Agreement or any other Ancillary Agreement that relates to Taxable periods (or portions thereof) ending on or before the Distribution Date shall be treated by the parties hereto for all Tax purposes as a distribution by, or capital contribution to, Controlled, as the case may be. In the event that a Taxing Authority asserts that a Company’s treatment of a payment described in this Section 12(c) should be other than as required herein, such Company shall use its reasonable best efforts to contest such assertion in a manner consistent with Section 15 of this Agreement.

**SECTION 13. Guarantees.** Distributing or Controlled, as the case may be, shall guarantee or otherwise perform the obligations of each other member of the Distributing Group or the Controlled Group, respectively, under this Agreement.

#### **SECTION 14. Communication and Cooperation.**

(a) *Consult and Cooperate.* Controlled and Distributing shall consult and cooperate (and shall cause each other member of their respective Groups to consult and cooperate) fully at such time and to the extent reasonably requested by the other party in connection with all matters subject to this Agreement. Such cooperation shall include, without limitation,

(i) the retention, and provision on reasonable request, of any and all information including all books, records, documentation or other information pertaining to Tax matters relating to the Distributing Group and the Controlled Group, any

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necessary explanations of information, and access to personnel, until one year after the expiration of the applicable statute of limitation (giving effect to any extension, waiver, or mitigation thereof);

(ii) the execution of any document that may be necessary (including to give effect to Section 15) or helpful in connection with any required Return or in connection with any audit, proceeding, suit or action; and

(iii) the use of the parties’ commercially reasonable efforts to obtain any documentation from a governmental authority or a third party that may be necessary or helpful in connection with the foregoing.

(b) *Provide Information.* Except as set forth in Section 15, Distributing and Controlled shall keep each other reasonably informed with respect to any material development relating to the matters subject to this Agreement.

(c) *Tax Attribute Matters.* Distributing and Controlled shall promptly advise each other with respect to any proposed Tax adjustments that are the subject of an audit or investigation, or are the subject of any proceeding or litigation, and that may affect any Tax liability or any Tax Attribute of any member of the Distributing Group or any member of the Controlled Group (including, but not limited to, basis in an asset or the amount of earnings and profits).

(d) *Confidentiality and Privileged Information.* Any information or documents provided under this Section 14 shall be kept confidential by the party receiving the information or documents, except as may otherwise be necessary in connection with the filing of required Returns or in connection with any audit, proceeding, suit or action. Notwithstanding any other provision of this Agreement or any other agreement, (i) no member of the Distributing Group shall be required to provide any member of the Controlled Group or any other Person access to or copies of any information or procedures other than information or procedures that relate solely to Controlled, the

business or assets of any member of the Controlled Group or matters for which Controlled has an obligation to indemnify under this Agreement, and (ii) in no event shall any member of the Distributing Group be required to provide any member of the Controlled Group or any other Person access to or copies of any information if such action could reasonably be expected to result in the waiver of any privilege. Notwithstanding the foregoing, in the event that Distributing determines that the provision of any information to any member of the Controlled Group could be commercially detrimental, violate any law or agreement to which Distributing is bound or waive any privilege, Distributing shall not be required to comply with the foregoing terms of this Section 14(d) except to the extent that it is able, using commercially reasonable efforts, to do so while avoiding such harm or consequence.

**SECTION 15. Audits and Contest.**

(a) *Notice.* Each of Distributing or Controlled shall promptly notify the other in writing upon the receipt of any notice of Tax Proceeding from the relevant Taxing Authority that may affect the liability of any member of the Controlled Group or the Distributing Group, respectively, for Taxes under Applicable Law or this Agreement; provided, that a party's right to

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indemnification under this Agreement shall not be limited in any way by a failure to so notify, except to the extent that the indemnifying party is prejudiced by such failure.

(b) *Distributing Control.* Notwithstanding anything in this Agreement to the contrary but subject to Section 15(d), Distributing shall have the right to control all matters relating to any Return, or any Tax Proceeding, with respect to any Tax matters of a Combined Group or any member of a Combined Group (as such). Distributing shall have absolute discretion with respect to any decisions to be made, or the nature of any action to be taken, with respect to any Tax matter described in the preceding sentence; *provided, however*, that to the extent that any Tax Proceeding relating to such a Tax matter is reasonably likely to give rise to an indemnity obligation of Controlled under Section 11 hereof, (i) Distributing shall keep Controlled informed of all material developments and events relating to any such Tax Proceeding described in this proviso and (ii) at its own cost and expense, Controlled shall have the right to participate in (but not to control) the defense of any such Tax Proceeding, *provided* that Controlled's rights with respect to any such Tax Proceeding occurring under CAP (a "**CAP Proceeding**") shall be limited to the information rights in clause (i) of the preceding proviso.

(c) *Controlled Assumption of Control; Non-Distribution Taxes.* If Distributing determines that the resolution of any matter pursuant to a Tax Proceeding (other than a Tax Proceeding relating to Distribution Taxes) is reasonably likely to have an adverse effect on the Controlled Group with respect to any Post-Distribution Period, Distributing, in its sole discretion, may permit Controlled to elect to assume control over disposition of such matter at Controlled's sole cost and expense; *provided, however*, that if Controlled so elects, it will (i) be responsible for the payment of any liability arising from the disposition of such matter notwithstanding any other provision of this Agreement to the contrary and (ii) indemnify the Distributing Group for any increase in a liability and any reduction of a Tax asset of the Distributing Group arising from such matter.

(d) *Controlled Participation; Distribution Taxes.* Distributing shall have the right to control any Tax Proceeding relating to Distribution Taxes, *provided* that Distributing shall keep Controlled fully informed of all material developments and (i) if the Tax Proceeding is not a CAP Proceeding, shall permit Controlled a reasonable opportunity to participate in the defense of the matter and (ii) if the Tax Proceeding is a CAP Proceeding, then (x) if such CAP Proceeding is reasonably likely to give rise to an indemnity obligation of Controlled under Section 11 hereof, Distributing shall permit Controlled a reasonable opportunity to participate in the defense of the matter solely with respect to the portion of the CAP Proceeding that relates to Distribution Taxes, and (y) for any CAP Proceeding not described in clause (x), Controlled's right to participate in the defense of the matter shall be limited to the right to comment in advance on any written submissions with respect to Distribution Taxes.

(e) *Escheat Payments.* Distributing shall have the right to control the Tax Proceeding that commenced prior to the date hereof under the Voluntary Disclosure Agreement Program administered by the State of Delaware (the "**VDA Proceeding**"), *provided* that Distributing shall consult with Controlled in good faith with respect to the resolution of the VDA Proceeding. Controlled shall cooperate (and shall cause each other member of the Controlled Group to cooperate) fully at such time and to the extent requested by Distributing in connection with the VDA Proceeding.

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**SECTION 16. Notices.** Any notice, demand, claim, or other communication under this Agreement shall be in writing and shall be deemed to have been given upon the delivery or mailing, thereof, as the case may be, if delivered personally or sent by certified mail, return receipt requested, postage prepaid, to the parties at the following addresses (or at such other address as a party may specify by notice to the other):

If to Distributing or the Distributing Group, to:

Masco Corporation  
21001 Van Born Road  
Taylor, Michigan 48180  
Attn: General Counsel  
Facsimile: (313) 792-6430

with a copy to:

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, New York 10017  
Attn: John D. Amorosi  
Bruce Dallas  
Facsimile: (212) 701-5010

If to Controlled or the Controlled Group, to:

TopBuild Corp.  
260 Jimmy Ann Dr  
Daytona Beach, FL 32114  
Attn: General Counsel  
Facsimile: (386) 304-2144

with a copy to:

McDermott Will & Emery  
333 Avenue of the Americas, Suite 4500  
Miami, Florida 33131

Attn: Harris C. Siskind  
Facsimile: (305) 347-6500

and

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, New York 10017  
Attn: John D. Amorosi  
Bruce Dallas  
Facsimile: (212) 701-5010

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**SECTION 17. *Costs and Expenses.*** Except as expressly set forth in this Agreement, each party shall bear its own costs and expenses incurred pursuant to this Agreement. For purposes of this Agreement, costs and expenses shall include, but not be limited to, reasonable attorneys' fees, accountant fees and other related professional fees and disbursements.

**SECTION 18. *Effectiveness; Termination and Survival.*** This Agreement shall become effective upon the consummation of the Distribution. All rights and obligations arising hereunder shall survive until they are fully effectuated or performed; *provided, further*, that notwithstanding anything in this Agreement to the contrary, this Agreement shall remain in effect and its provisions shall survive for one year after the full period of all applicable statutes of limitation (giving effect to any extension, waiver or mitigation thereof) and, with respect to any claim hereunder initiated prior to the end of such period, until such claim has been satisfied or otherwise resolved.

**SECTION 19. *Specific Performance.*** Each party hereto acknowledges that the remedies at law of the other party for a breach or threatened breach of this Agreement would be inadequate and, in recognition of this fact, any party to this Agreement, without posting any bond, and in addition to all other remedies that may be available, shall be entitled to obtain equitable relief in the form of specific performance, a temporary restraining order, a temporary or permanent injunction or any other equitable remedy that may then be available.

**SECTION 20. *Section Headings.*** The headings contained in this Agreement are inserted for convenience only and shall not constitute a part hereof or in any way affect the meaning or interpretation of this Agreement.

**SECTION 21. *Entire Agreement; Amendments and Waivers.***

(a) *Entire Agreement.* This Agreement contains the entire understanding of the parties hereto with respect to the subject matter contained herein. No alteration, amendment, modification, or waiver of any of the terms of this Agreement shall be valid unless made by an instrument signed by an authorized officer of each of Distributing and Controlled, or in the case of a waiver, by the party against whom the waiver is to be effective.

(b) *Amendments and Waivers.* No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver hereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege. This Agreement shall not be waived, amended or otherwise modified except in writing, duly executed by all of the parties hereto.

**SECTION 22. *Governing Law and Interpretation.*** This Agreement shall be construed and enforced in accordance with the laws of the State of New York without giving, effect to laws and principles relating to conflicts of law.

**SECTION 23. *Dispute Resolution.*** In the event of any dispute relating to this Agreement, including but not limited to whether a Tax liability is a liability of the Distributing Group or the Controlled Group, the parties shall work together in good faith to resolve such dispute within 30 Business Days. If the parties are unable to resolve within 30 Business Days

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any such dispute (other than a dispute related to or arising out of the covenants set forth in Section 9), such dispute shall be resolved by an accounting firm selected by Distributing in good faith consultation with Controlled and whose fees and costs shall be shared equally by Distributing and Controlled.

**SECTION 24. *Counterparts.*** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

**SECTION 25. *Assignments; Third Party Beneficiaries.*** Except as provided below, this Agreement shall be binding upon and shall inure only to the benefit of the parties hereto and their respective successors and assigns, by merger, acquisition of assets or otherwise (including but not limited to any successor of a party hereto succeeding to the Tax Attributes of such party under Applicable Law). This Agreement is not intended to benefit any Person other than the parties hereto and such successors and assigns, and no such other Person shall be a third party beneficiary hereof.

**SECTION 26. *Authorization, Etc.*** Each of the parties hereto hereby represents and warrants that it has the power and authority to execute, deliver and perform this Agreement, that this Agreement has been duly authorized by all necessary corporate action on the part of such party, that this Agreement constitutes a legal, valid and binding obligation of each such party, and that the execution, delivery and performance of this Agreement by such party does not contravene or conflict with any provision or law or of its charter or bylaws or any agreement, instrument or order binding on such party.

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IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the day and year first written above.

Distributing on its own behalf and on behalf of the members of the Distributing Group.

By: /s/ Kenneth G. Cole  
Name: Kenneth G. Cole  
Title: Vice President, General Counsel and Secretary



Controlled on its own behalf and on behalf of the members of the Controlled Group.

By: /s/ John G. Sznewajs

Name: John G. Sznewajs

Title: President and Treasurer

## TRANSITION SERVICES AGREEMENT

dated as of June 29, 2015

by and between

MASCO CORPORATION

and

TOPBUILD CORP.

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Schedule A — Services

**EXHIBITS**

Exhibit A — Tax Services

**TRANSITION SERVICES AGREEMENT**

This TRANSITION SERVICES AGREEMENT (this “**Agreement**”) is entered into as of June 29, 2015 by and between Masco Corporation, a Delaware

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corporation (“**Masco**”) and TopBuild Corp., a Delaware corporation (“**TopBuild**”).

**RECITALS**

WHEREAS, Masco and TopBuild have entered into a Separation and Distribution Agreement dated as of June 29, 2015 (as amended from time to time, the “**Separation and Distribution Agreement**”) providing for the distribution by Masco to its stockholders of all of the common stock of TopBuild; and

WHEREAS, the Separation and Distribution contemplates that the parties hereto will enter into this Agreement pursuant to which Masco will provide, or cause to be provided, certain services to TopBuild (and if requested, one or more of its Subsidiaries), and TopBuild will provide, or cause to be provided, certain services to Masco and, if requested, one or more of its Subsidiaries, in each case on the terms and conditions set forth herein.

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, for themselves, their successors and permitted assigns, hereby agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

Section 1.01. *Definitions.* (a) Any capitalized term that is used, but not defined, herein shall have the meaning assigned to such term in the Separation and Distribution Agreement, or if not defined therein, the Tax Matters Agreement.

(b) As used in this Agreement, the following terms shall have the following meanings, applicable both to the singular and the plural forms of the terms described:

“**Affiliate**” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such other Person. For the purposes of this definition, “**control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and the terms “**controlling**” and “**controlled**” have meanings correlative to the foregoing. Notwithstanding any provision of this Agreement to the contrary (except where the relevant provision states explicitly to the contrary), no member of the Masco Group, on the one hand, and no member of the TopBuild Group, on the other hand, shall be deemed to be an Affiliate of the other.

“**Applicable Law**” means, with respect to any Person, any federal, state, local or foreign law (statutory, common or otherwise), constitution, treaty,

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convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling, directive, guidance, instruction, direction, permission, waiver, notice, condition, limitation, restriction or prohibition or other similar requirement enacted, adopted, promulgated, imposed, issued or applied by a Governmental Authority that is binding upon or applicable to such Person, its properties or assets or its business or operations, as amended unless expressly specified otherwise.

“**Business Day**” means a day, other than Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by Applicable Law to close.

“**Change of Control**” means, with respect to Masco or TopBuild, the occurrence of any of the following: (i) a “Person” (as such term is used in Sections 13(d) and 14(d)(2) of the Exchange Act) becomes a beneficial owner, directly or indirectly, of equity representing fifty percent (50%) or more of the total voting power of Masco’s or TopBuild’s, as applicable, then outstanding equity capital; (ii) such entity merges into, is consolidated with or effects an amalgamation with another Person, or merges another Person into such entity, on a basis whereby less than fifty percent (50%) of the total voting power of the surviving Person immediately after such merger, consolidation or amalgamation is represented by equity held directly or indirectly by former equityholders of (and in respect of their former equity holdings in) such entity immediately prior to such merger, consolidation or amalgamation; and (iii) such entity directly or indirectly sells, transfers or exchanges all, or substantially all, of its assets to another Person unless at least fifty percent (50%) of the total voting power of the transferee is directly or indirectly owned by the equityholders of Masco or TopBuild, as applicable, in

respect of their former equity holdings in Masco or TopBuild immediately prior to transfer; *provided* that in no event shall the consummation, execution or closing of the Spin-Off constitute a Change of Control with respect to Masco or TopBuild.

“**Distribution**” has the meaning set forth in the Separation and Distribution Agreement.

“**Distribution Time**” has the meaning set forth in the Separation and Distribution Agreement.

“**Governmental Authority**” means any multinational, foreign, federal, state, local or other governmental, statutory or administrative authority, regulatory body or commission or any court, tribunal or judicial or arbitral authority which has any jurisdiction or control over either party (or any of their Affiliates).

“**Group**” means, as the context requires, the TopBuild Group or the Masco Group.

“**Insolvency Event**” means with respect to either party, as applicable, (i) the making by such party of any assignment for the benefit of creditors of all or substantially all of its assets or the admission by such party in writing of its

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inability to pay all or substantially all of its debts as they become due; (ii) the adjudication of such party as bankrupt or insolvent or the filing by such party of a petition or application to any tribunal for the appointment of a trustee or receiver for such party or any substantial part of the assets of such party; or (iii) the commencement of any voluntary or involuntary bankruptcy proceedings (and, with respect to involuntary bankruptcy proceedings, the failure of such proceedings to be discharged within 60 days), reorganization proceedings or similar proceeding with respect to such party or the entry of an order appointing a trustee or receiver or approving a petition in any such proceeding.

“**Intercompany Charge-Out Rate**” means with respect to any Service, the rate applicable to such Service as set forth opposite such Service in the fourth column of Schedule A representing the blended rate for all Services that has been agreed by the parties.

“**Interest Rate**” means the lesser of (i) the one-month LIBOR rate as published in the *Wall Street Journal* plus 2.00% or (ii) the maximum rate of interest permitted to be charged by the applicable Governmental Authority.

“**Masco Entity**” means any member of the Masco Group.

“**Masco Systems**” means any computer hardware or software program or routine or part thereof owned, licensed or provided by any Masco Entity or any of their suppliers on any Masco Entity’s behalf, each as modified, maintained or enhanced from time to time by any Masco Entity, any TopBuild Entity or any third party.

“**Person**” means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a Governmental Authority.

“**Provider Group**” means, as the context requires, the Masco Group, in the case of Services to be provided by Masco, or the TopBuild Group, in the case of Services to be provided by TopBuild.

“**Recipient Entity**” means any member of the Recipient Group.

“**Recipient Group**” means, as the context requires, the Masco Group, in the case of Services to be received by the Masco Group, or the TopBuild Group, in the case of Services to be received by the TopBuild Group.

“**Schedule**” means a Schedule attached hereto forming part of this Agreement.

“**Service Costs**” means the reasonable and actual out-of-pocket costs attributable to the provision of the applicable Service, calculated as the product of (i) the Intercompany Charge-Out Rate and (ii) the number of hours attributable to

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the provision of such Service. The parties agree that such costs with respect to any given good or service will be considered reasonable if the relevant out-of-pocket cost for such good or service either (x) does not exceed the comparable cost being paid by Provider or an Affiliate for such good or service prior to the Distribution Time or (y) does not exceed the cost being paid by Provider or an Affiliate for such good or service being rendered to Provider or its Affiliates not in connection with the provision of the Services.

“**Subsidiary**” means, with respect to any Person, any other entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person.

“**Systems**” means the Masco Systems or the TopBuild Systems, individually, or the Masco Systems and the TopBuild Systems, collectively, as the context may indicate or require.

“**Tax Service Provider**” means, pursuant to the terms set forth in Article 2 of this Agreement and in consideration of the payment of the Service Costs pursuant to Exhibit A of this Agreement, after the Distribution Time, Masco (in its capacity as a provider of Services).

“**Tax Service Recipient**” means, pursuant to the terms set forth in Article 2 of this Agreement and in consideration of the payment of the Service Costs pursuant to Exhibit A of this Agreement, after the Distribution Time, TopBuild (in its capacity as a recipient of Services).

“**TopBuild Entity**” means any member of the TopBuild Group.

“**TopBuild Systems**” means any computer hardware or software program or routine or part thereof owned, licensed or provided by any TopBuild Entity or any of their suppliers on any TopBuild Entity’s behalf, each as modified, maintained or enhanced from time to time by any TopBuild Entity, any Masco Entity or any third party.

(c) Each of the following terms is defined in the Section set forth opposite such term:

Term	Section
Actions	5.03
Agreement	Preamble
Baseline Period	4.01(a)

Confidential Information	7.01
End Date	Section 6.01
force majeure	8.03
Invoice Date	3.03(a)
Liaison	Section 4.04

Masco	Preamble
Tax Services	Section 4.05
Tax Systems	Section 4.05(a)
TopBuild	Preamble
Payment Date	3.03(b)
Provider	Section 2.01
Provider Indemnified Person	5.02
Recipient	Section 2.01
Recipient Indemnified Person	5.04
Separation and Distribution Agreement	Recitals
Services	Section 2.01

ARTICLE 2  
PURCHASE AND SALE OF SERVICES

Section 2.01. *Purchase and Sale of Services.* (a) On the terms and subject to the conditions of this Agreement and in consideration of the payment of the Service Costs in accordance with Section 3.01, after the Distribution Time, each of Masco and TopBuild (each in its capacity as a provider of Services, “**Provider**”) agrees to provide to the other party (in its capacity as a recipient of Services, “**Recipient**”), or procure the provision to Recipient of, and Recipient agrees to purchase from Provider, the transition services set forth on Schedule A as Services to be provided by the relevant Provider (the “**Services**”).

(b) It is understood that (i) the Services to be provided to Recipient under this Agreement shall, at Recipient’s request, be provided to Recipient or any other Person that is a Subsidiary of Recipient (and to the extent Services are so provided, references to “Recipient” (and related references) shall be construed accordingly as the context requires), and (ii) Provider may satisfy its obligation to provide or procure Services hereunder by causing one or more of its Affiliates to provide or procure such Services (and, to the extent Services are so provided, references to “Provider” (and related references) shall be construed accordingly as the context requires), which Affiliates it may change at its discretion from time to time; *provided* that Provider shall remain responsible for the performance of such Affiliates. With respect to Services provided to, or procured on behalf of, any Subsidiary of Recipient, Recipient agrees to pay on behalf of such Subsidiary, or cause such Subsidiary to pay, all amounts payable by or in respect of such Services pursuant to this Agreement.

(c) Except for the Services expressly contemplated to be provided in accordance with this Section 2.01, Provider shall have no obligation under this Agreement to provide any services to the Recipient Group.

Section 2.02. *Third Party Licenses and Consents.* Provider and Recipient shall use commercially reasonable efforts to obtain, and to keep and maintain in effect, all governmental or third party licenses and consents required for the

provision of any Service by Provider in accordance with the terms of this Agreement; *provided* that, if Provider is unable to obtain any such license or consent, Provider shall promptly notify Recipient in writing and shall, and shall cause its Affiliates to, use commercially reasonable efforts to implement an appropriate alternative arrangement. The costs relating to obtaining any such licenses or consents shall be borne by Recipient; *provided* that Provider shall not incur any such costs without the prior written consent of Recipient. If any such license, consent or alternative arrangement is not available despite the commercially reasonable efforts of Provider and its Affiliates or as a result of Recipient failing to consent to the incurrance of costs relating to obtaining any such license or consent, Provider shall not be required to provide the affected Services.

Section 2.03. *Third Party Providers.* If Provider receives written notice from any third party service provider that such Person intends to terminate a service pursuant to which Provider provides a Service to Recipient, then Provider shall provide a copy of such written notice to Recipient and shall use commercially reasonable efforts to secure the continued provision of that service from such third party or an alternative service provider. If Provider is unable to secure the continued provision of that service from such third party or an alternative service provider, then Provider shall not be required to provide the affected Service.

Section 2.04. *Cooperation.* Provider and Recipient agree to cooperate in providing for an orderly transition of Services, including Services terminated pursuant to Section 6.02, to Recipient or a successor service provider designated by Recipient. Such cooperation shall be subject to the provisions hereof relating to the provision of Services including that Recipient shall pay to Provider the Service Costs related thereto.

ARTICLE 3  
SERVICE COSTS; OTHER CHARGES

Section 3.01. *Service Costs Generally.* Unless the parties agree in writing to a different arrangement, for each period in which Recipient receives a Service hereunder, Recipient shall pay Provider the Service Costs for the applicable Service. In the case of a termination of any or all Services prior to the End Date (other than (x) a termination of a Service (in whole) under Section 6.02(a), (y) a termination under Section 6.02(c), or (z) a termination under Section 6.02(f) arising from Provider suffering an Insolvency Event), (i) Recipient shall continue to be responsible for the reasonable out-of-pocket costs associated with such Services until the End Date, (ii) Provider shall use reasonable efforts to eliminate such costs referenced in clause (i) as soon as possible and (iii) until such costs referenced in clause (i) are eliminated they will be treated as Service Costs relating to Services provided prior to termination and may be invoiced as incurred. Provider may not rely on the prior sentence with respect to the costs for a given contract if the contract was entered into in connection with providing the Services

and the term of the contract was more than three months unless Recipient approved Provider entering into such contract. If the End Date is extended pursuant to Section 6.01, the parties shall negotiate in good faith to determine the compensation to be paid to Provider by Recipient for Services to be provided during the period of the extension.

Section 3.02. *Taxes.* (a) Recipient shall pay all applicable sales or use taxes incurred with respect to provision of the Services. Such taxes shall be incremental to other payments or charges identified in this Agreement.

(b) All sums payable under this Agreement shall be paid free and clear of all deductions or withholdings unless the deduction or withholding is required by Applicable Law, in which event the amount of the payment due from the party required to make such payment shall be increased to an amount which after any withholding or deduction leaves an amount equal to the payment which would have been due if no such deduction or withholding had been required.

Section 3.03. *Invoicing and Settlement.* (a) Unless any Schedule hereto indicates otherwise or the parties agree in writing to a different arrangement, Provider shall invoice or notify in writing the Recipient on a monthly basis (not later than 30 days after the end of each month) for the charges for Services hereunder for the prior month (the date of delivery of such invoice, the “**Invoice Date**”).

(b) Recipient agrees to pay on or before the date (each, a “**Payment Date**”) that is 30 days after the Invoice Date by wire transfer of immediately available funds payable to the order of Provider to such account(s) designated by Provider all amounts invoiced by Provider pursuant to Section 3.03(a), except for any portion of those amounts reasonably disputed in good faith. Payment for amounts reasonably disputed in good faith for any Services may be withheld beyond their due date by Recipient until such dispute is resolved pursuant to Section 4.04, in which event the relevant payment shall include interest at the Interest Rate from the date that is 15 days after the original relevant Payment Date to the actual payment date. In the event of any overpayments by Recipient, Provider agrees to promptly refund any such overpaid amount to Recipient no later than 15 days from the date it is determined that there has been an overpayment.

#### ARTICLE 4 THE SERVICES

Section 4.01. *Standards of Service.* (a) The level or volume of any specific Service required to be provided to Recipient hereunder shall be at a level or volume consistent in all material respects with the level or volume, as the case may be, of such specific Service as utilized by the Recipient Group during the twelve month period prior to the Distribution Time (the “**Baseline Period**”). Provider agrees to consider in good faith any requests by Recipient to modify the level or

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volume of any specific Service. Any modification to which Provider agrees will be on such terms and conditions (including pricing) as the parties shall mutually and reasonably agree.

(b) The manner, nature, quality and standard of care applicable to the delivery by Provider of the Services hereunder shall be substantially the same as that of similar services which Provider provided to the Recipient Group during the Baseline Period.

(c) Provider shall have no obligation to provide any Services hereunder in respect of any business, assets or properties not forming part of the Recipient Group’s business as of the Distribution Time.

Section 4.02. *Changes to Services.* It is understood and agreed that Provider may from time to time modify or change the manner, nature, quality and/or standard of care of any Service provided to Recipient to the extent Provider is making a similar change in the performance of such services for the Provider and its Affiliates and provided that any such modification, change or enhancement will not reasonably be expected to materially affect such Service. Provider shall furnish to Recipient substantially the same notice (in content and timing), if any, as Provider furnishes to its own organization with respect to such modifications or changes.

Section 4.03. *Management of Services By Provider.* Except as may otherwise be expressly provided in this Agreement, the management of and control over the provision of the Services by Provider shall reside solely with Provider and notwithstanding anything to the contrary Provider shall be permitted to choose the personnel, methodology, systems, applications and third party providers it utilizes in the provision of such Services; *provided* that Provider shall remain responsible for the performance of the Services in accordance with this Agreement. The provision, use of and access to the Services shall be subject to (i) Provider’s business, operational and technical environment, standards, policies and procedures as in effect from time to time, (ii) Applicable Law and (iii) the terms of this Agreement.

Section 4.04. *Liaisons.* Each party shall designate its Chief Financial Officer (or his or her designee) to act as such party’s primary contact person in connection with the Services, and each party may also designate a separate liaison for each Service provided hereunder (who shall act as such party’s primary contact person in connection with the applicable Service) (each, a “**Liaison**”). The Liaisons will oversee the implementation and ongoing operation of this Agreement and shall attempt in good faith to resolve disputes between the parties. The parties have designated their respective initial Liaisons on Schedule A. The parties shall ensure that their respective Liaisons shall meet in person or telephonically at such times as are reasonably requested by Provider or Recipient to review and discuss the status of, and any issues arising in connection with, the Services or this

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Agreement. Each party may re-designate its Liaison from time to time; *provided* that it shall notify the other party in writing of the name and contact information for the newly designated Liaison in accordance with Section 8.05.

Section 4.05. *Special Rules for Tax Services.* This Section 4.05 shall apply to the transition services set forth on Exhibit A (the “**Tax Services**”).

(a) Use of Masco Systems. Tax Service Provider’s obligation to perform each Tax Service is conditional upon Tax Service Recipient’s use of the Masco Systems set forth in Exhibit A, paragraph 2 (the “**Tax Systems**”), through December 31, 2015 in a manner that is consistent with Tax Service Provider’s historical practice and methodologies for the use of such Tax Systems. In the event that Tax Service Recipient fails to fully use the Tax Systems in a manner that is consistent with Tax Service Provider’s historical practice through December 31, 2015, Tax Service Provider shall have no obligation to provide any Tax Service hereunder.

(b) Consistency. All Tax Services to be provided hereunder relating to the preparation of Tax Service Recipient’s Returns shall be performed using Tax Service Provider’s historical methods of accounting and, to the extent that a position has historically been taken on Tax Service Provider’s Returns, in a manner otherwise consistent with such Tax position.

#### ARTICLE 5 DISCLAIMER, LIABILITY AND INDEMNIFICATION

Section 5.01. *EXCLUSION OF WARRANTIES.* EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SERVICES ARE PROVIDED “AS-IS” WITH NO WARRANTIES, AND PROVIDER EXPRESSLY EXCLUDES AND DISCLAIMS ANY WARRANTIES UNDER OR ARISING AS A RESULT OF THIS AGREEMENT, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR ANY OTHER WARRANTY WHATSOEVER.

Section 5.02. *Limitation of Liability.* (a) Recipient agrees that, except for the indemnity obligation set forth in Section 5.04, none of the Provider or its Affiliates or any of its or their respective directors, officers, agents, consultants, representatives and/or employees (each, a “**Provider Indemnified Person**”) shall have any liability, whether direct or indirect, in contract or tort or otherwise, to any Recipient Entity or any other Person for or in connection with the Services rendered or to be rendered by or on behalf of any Provider Indemnified Person pursuant to this Agreement, the transactions contemplated hereby or any actions or inactions by or on behalf of a Provider

damages have resulted from such Provider Indemnified Person's gross negligence or willful misconduct in connection with any such Services, actions or inactions.

(b) Notwithstanding the provisions of Section 5.02(a), no Provider Indemnified Person or Recipient Indemnified Person shall be liable for any special, indirect, incidental, consequential or punitive damages of any kind whatsoever in any way due to, resulting from or arising in connection with any of the Services or the performance of or failure to perform Provider's or Recipient's obligations under this Agreement, as applicable, except to the extent the same are payable by a party or its Affiliates to an unaffiliated third party in respect of a claim by such third party and are covered by the other party's indemnification obligations hereunder. This disclaimer applies without limitation (i) to claims arising from the provision of the Services or any failure or delay in connection therewith, (ii) to claims for lost profits or opportunities, (iii) regardless of the form of action, whether in contract, tort (including negligence), strict liability, or otherwise, and (iv) regardless of whether such damages are foreseeable or whether Provider or Recipient, as applicable, or any of its Affiliates has been advised of the possibility of such damages.

(c) In addition to the foregoing, each party hereto agrees that it shall, in all circumstances, use commercially reasonable efforts to mitigate and otherwise minimize its damages and those of its Affiliates, whether direct or indirect, due to, resulting from or arising in connection with any failure by the other party to comply fully with its obligations under this Agreement.

Section 5.03. *Indemnification of Provider by Recipient* Recipient agrees to indemnify and hold harmless each Provider Indemnified Person from and against any damages, and to reimburse each Provider Indemnified Person for all costs, damages, liabilities and fees and expenses (including reasonable attorneys' fees and expenses and any other expenses reasonably incurred in connection with investigating, prosecuting or defending any Action) (collectively, but subject to Section 5.02, "**Losses**") incurred in investigating, preparing, pursuing, or defending any claim, action, proceeding, or investigation, whether or not in connection with pending or threatened litigation and whether or not any Provider Indemnified Person is a party (collectively, "**Actions**"), arising out of or in connection with Services rendered or to be rendered by or on behalf of any Provider Indemnified Person pursuant to this Agreement, the transactions contemplated hereby or any actions or inactions by or on behalf of any Provider Indemnified Person in connection with any such Services or transactions; *provided* that Recipient shall not be responsible for any Losses of any Provider Indemnified Person to the extent such Losses have resulted from such Provider Indemnified Person's gross negligence or willful misconduct in connection with any of such Services, actions or inactions.

Section 5.04. *Indemnification of Recipient by Provider*. Provider agrees to indemnify and hold harmless the Recipient, each of its Affiliates and its and their

respective directors, officers, agents, consultants, representatives and/or employees (each, a "**Recipient Indemnified Person**") from and against any Losses incurred (including in investigating, preparing, or defending any Action) to the extent such Losses have arisen out of the gross negligence or willful misconduct of any Provider Indemnified Person in connection with the Services rendered or to be rendered pursuant to this Agreement.

Section 5.05. *Indemnification as Exclusive Remedy*. Without limitation to the termination rights provided under Sections 6.02(b) and 6.02(c) or to the rights under Section 8.08, the indemnification provisions of this Article 5 shall be the exclusive remedy for money damages for breach of this Agreement and any matters relating to this Agreement.

Section 5.06. *Conduct of Proceedings*. Any proceedings relating to indemnification under Section 5.03 or 5.04 shall be conducted in accordance with the procedures set forth in Section 6.04 of the Separation and Distribution Agreement.

## ARTICLE 6 TERM AND TERMINATION

Section 6.01. *Term*. Except as otherwise provided in this Article 6 or Section 8.03, the term of this Agreement with respect to each Service shall commence as of the Distribution Time, and shall cease on the earlier of (i) the date set forth in respect of such Service on the applicable Schedule hereto, (ii) the date that is the first anniversary of the Distribution Time (the "**End Date**," as may be extended pursuant to the proviso below) or (iii) such earlier date as determined in accordance with Section 6.02; *provided* that upon giving prior written notice to Provider at least 30 days prior to the then-applicable End Date, Recipient may extend the End Date until a date that is no more than 24 months after the Distribution Time, subject to Recipient and Provider agreeing, pursuant to Section 3.01, to the compensation to be paid to Provider for Services to be provided during the period of extension. This Agreement shall terminate in its entirety upon the expiration of the terms (as determined pursuant to the preceding sentence) of all Services; *provided* that the provisions of Articles 3, 5, 6 and 8 and Sections 7.01, 7.02, Section 7.04, and Section 7.07 shall survive any such termination indefinitely.

Section 6.02. *Termination*. (a) Recipient may from time to time terminate this Agreement with respect to one or more of the Services it receives, in whole or in part, upon giving at least 30 days' prior notice to Provider.

(b) Provider may terminate any Service or any part thereof it provides at any time if Recipient shall have failed to perform any of its material obligations under this Agreement relating to any such Service, Provider has notified Recipient in writing of such failure and such failure (i) shall have continued uncured for a

period of 30 days after receipt by Recipient of written notice of such failure or (ii) is incapable of remedy. For the avoidance of doubt, the failure by Recipient to pay the full amount of any invoiced amount when due shall be considered a breach of Recipient's material obligations under this Agreement, unless such failure to pay results from a good faith dispute in accordance with and subject to Section 3.03(b).

(c) Recipient may terminate any Service it receives as provided in the applicable Schedule or at any time if Provider shall have failed to perform any of its material obligations under this Agreement relating to any such Service, Recipient has notified Provider in writing of such failure, and such failure (i) shall have continued for a period of 30 days after receipt by Provider of written notice of such failure or (ii) is incapable of remedy.

(d) At any time following announcement of a transaction involving a Change of Control of Recipient, Provider may elect, by delivery of notice in writing to Recipient, to terminate any or all Services hereunder, such termination to take effect on the date or dates specified by Provider in such notice; *provided* that without the written consent of Recipient, no such termination of Service shall occur prior to the closing of such Change of Control transaction.

(e) Upon completion of the sale or other disposition of any portion of the Recipient Group's business, assets or properties, Provider's obligation to provide to Recipient, and Recipient's obligation to pay the Service Cost to Provider for, any Service in respect of the business, assets or properties so disposed shall continue in full force and effect in accordance with the terms and conditions of this Agreement, except as the parties may otherwise agree.

(f) Either party may terminate this Agreement at any time with immediate effect upon serving written notice upon the other party if the other party suffers an Insolvency Event.

(g) For the avoidance of doubt, any notice of termination under this Section 6.02 shall be delivered in accordance with Section 8.05.

Section 6.03. *Effect of Termination.* (a) Other than as required by Applicable Law, upon termination of any Service pursuant to Section 6.02, Provider shall have no further obligation to provide the terminated Service and Recipient shall have no obligation to pay any fees relating to such Services; *provided* that, notwithstanding such termination, (i) Recipient shall remain liable to Provider for Service Costs and other fees owed and payable in respect of Services provided prior to the effective date of the termination, and (ii) Recipient shall be responsible for the costs referred to in the second sentence to Section 3.01 to the extent set forth therein.

(b) Termination of this Agreement as provided for herein shall not prejudice or affect any rights or remedies which shall have accrued to either party,

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a Recipient Indemnified Person or a Provider Indemnified Person in respect of Services provided or to have been provided prior to termination.

#### ARTICLE 7 ADDITIONAL AGREEMENTS

Section 7.01. *Confidential Information.* (a) The parties hereby covenant and agree to keep, and to cause its Affiliates to keep, confidential all Confidential Information relating to the other party or any of such other party's Affiliates. Without limiting the generality of the foregoing, each party shall, and shall cause its Affiliates and its and their employees and agents to, exercise the same level of care with respect to Confidential Information relating to the other party or any of its Affiliates as it would with respect to proprietary information, materials and processes relating to itself or any of its Affiliates. "**Confidential Information**" shall mean all confidential and proprietary information, materials and processes relating to a party or any Affiliate of such party obtained by the other party or any Affiliate of such other party at any time (whether prior to or after the date hereof) in any format whatsoever (whether orally, visually, in writing, electronically or in any other form) to the extent arising out of the rendering or receipt of Services hereunder (or preparations for the same or for the termination thereof) and shall include, but not be limited to, economic and business information or data, business plans, computer software and information relating to employees, vendors, customers, products, financial performance and projections, processes, strategies and systems but shall not include (i) information of the other party or its Affiliates which is or becomes generally available to the public other than by release in violation of the provisions of this Section 7.01, (ii) information of the other party or its Affiliates which is or becomes available on a non-confidential basis to a party from a source other than the other party or its Affiliates, provided the party in question reasonably believes that such source is not or was not bound by an obligation to the other party or one of its Affiliates to hold such information confidential and (iii) information developed independently by a party or its Affiliates without use or reference to otherwise Confidential Information of the other party or its Affiliates. Except with the prior written consent of the other party, each party will, and will cause its Affiliates to, use the other party's and its Affiliates' Confidential Information only in connection with the performance of its obligations hereunder and each party shall, and shall cause its Affiliates to, use commercially reasonable efforts to restrict access to the other party's and its Affiliates' Confidential Information to those employees of such party and its Affiliates requiring access for the purpose of providing or receiving Services hereunder. Notwithstanding any provision of this Section 7.01 to the contrary, a party may disclose such portion of the Confidential Information relating to the other party or its Affiliates to the extent, but only to the extent, the disclosing party reasonably believes that such disclosure is required under Applicable Law or the rules of a Governmental Authority; *provided* that if permissible under Applicable Law and practicable, the disclosing party shall first notify the other party hereto of

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such requirement and allow such party a reasonable opportunity to seek a protective order or other appropriate remedy to prevent such disclosure. The parties acknowledge that money damages would not be a sufficient remedy for any breach of the provisions of this Section 7.01 and that the non-breaching party shall be entitled to equitable relief in a court of law in the event of, or to prevent, a breach of this Section 7.01. In the event that a party learns or has reason to believe that Confidential Information of the other party or its Affiliates has been disclosed or accessed by an unauthorized Person, such party will immediately give notice of such event to its Liaison at the other party.

(b) Upon the written request of the other party, except to the extent otherwise required by Applicable Law and/or its internal policies and procedures, each party shall, at its election, promptly return to the other party or destroy all Confidential Information of the other party received under or pursuant to the performance of this Agreement (including, to the extent practicable, all copies (in any and all media) and summaries thereof) that is within such party's or its Affiliates' possession, power, custody or control. Notwithstanding the foregoing, each party may maintain a copy of the other party's Confidential Information in its restricted access files for actual or anticipated litigation, regulatory compliance or corporate record keeping purposes, and neither party shall be required to destroy any computer records or files containing any Confidential Information that have been created pursuant to automatic electronic archiving and back-up procedures in the ordinary course of business where it would be unduly burdensome to do so or would be contrary to Applicable Law; *provided* that any Confidential Information retained by such party or its Affiliates shall continue to be subject to Section 7.01(a). Promptly upon the written request of a party (and in any event within ten business days), the other party shall confirm in writing to such first party that it has complied with this Section 7.01(b).

Section 7.02. *Ownership of Assets.* (a) Masco Systems and any and all enhancements thereof or improvements thereto are and shall remain the sole exclusive property of the relevant Masco Entity(ies) and/or its Affiliates and/or its or their suppliers as applicable.

(b) TopBuild Systems and any and all enhancements thereof or improvements thereto are and shall remain the sole exclusive property of the relevant TopBuild Entity(ies) and/or its Affiliates and/or its or their suppliers as applicable.

(c) With respect to any Systems that a Masco Entity, a TopBuild Entity, or any of their respective Affiliates, as applicable, is required to maintain or enhance hereunder, as between the Masco Entities and the TopBuild Entities, all right, title and interest in and to such enhancements and any related documentation, whether created by the party that provides the Service or any employee, contractor, Affiliate or supplier on such party's behalf, shall be owned

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exclusively by and vested exclusively in the party or its Group member by whom the applicable System is owned, licensed or provided.

(d) As between any Masco Entity, on the one hand, and any TopBuild Entity, on the other hand, all right, title and interest in and to all data processed hereunder shall be owned exclusively by the Masco Entity or the TopBuild Entity that originally supplied it to the other; *provided* that all data created hereunder in connection with the delivery of any Service to Recipient or otherwise on behalf of Recipient shall be owned exclusively by Provider. Each of Masco and TopBuild hereby assign to the other, and shall cause any of its respective employees, contractors, Affiliates, suppliers or third parties performing Services on its behalf pursuant to this Agreement to assign to the other, as applicable, all right, title and interest that any Masco Entity or any TopBuild Entity, as applicable, may have in the other's or its Affiliates' data acquired hereunder.



Section 7.03. *Security.* Each party, its Affiliates and their respective employees, authorized agents and subcontractors shall only use or access such other party's and its Affiliates' Systems, premises or data to the extent such Person is authorized by the other party or pursuant to the terms hereof. Each party, its Affiliates and their employees, authorized agents and subcontractors shall comply with the other party's and its Affiliates' policies and procedures in relation to the use and access of the other party's and its Affiliates' Systems provided that they do not conflict with the terms of this Agreement; *provided* that to the extent such policies and procedures of Recipient make the provision of a given Service impracticable, Provider will be relieved of the obligation to provide such Service; *provided further* that Provider will give reasonable advance notice prior to terminating any Services pursuant to the preceding proviso.

Section 7.04. *Access to Information and Audit.* Subject to Applicable Law, each party shall, and shall cause its Affiliates to, with respect to any Service during the term of such Service, upon reasonable advance notice, afford the requesting party and its representatives reasonable access, during normal business hours, to the employees, properties, books and records and other documents that are reasonably requested in connection with the provision or receipt of such Service hereunder. Recipient or its representatives shall have reasonable access, after requesting such access in writing in advance, during normal business hours to such records for the purpose of verifying the accuracy of the invoices submitted regarding such amounts due. Any such investigation performed by or on behalf of Recipient shall be at Recipient's sole cost and expense. Recipient shall have the right to investigate Provider's books for this purpose for a period of one (1) year after the month in which the Services were rendered, except in those circumstances where contracts by Provider or any of its Affiliates with third parties limit the investigation period to less than one year.

Section 7.05. *Compliance with Applicable Law.* Each party shall (and shall cause its Affiliates to) at all times fully comply with all Applicable Law to

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which such party and its Affiliates (to the extent such Affiliates are engaged in the receipt or provision of Services) is subject in connection with the receipt or provision of Services hereunder, as applicable.

Section 7.06. *Labor Matters.* All labor matters relating to employees of Provider and its Affiliates (including, without limitation, employees involved in the provision of Services to Recipient or any of its Affiliates) shall be within the exclusive control of Provider, and Recipient shall not take any action affecting such matters. Nothing in this Agreement is intended to transfer the employment of employees engaged in the provision of any Service from one party or its Affiliates to the other or its Affiliates. All employees and representatives of a party and any of its Affiliates will be deemed for all compensation, employee benefits, tax and social security contribution purposes to be employees or representatives of such party or its Affiliates (or their subcontractors) and not employees or representatives of the other party or any of its Affiliates (or their subcontractors). In providing the Services, such employees and representatives of Provider and its Affiliates (or their subcontractors) will be under the direction, control and supervision of Provider or its Affiliates (or their subcontractors) and not of Recipient or its Affiliates.

Section 7.07. *Record Retention.* Each party shall take reasonable steps to preserve and maintain complete and accurate accounts, books, and records of and supporting documentation relating to the Services provided hereunder, which records shall be retained by such party and/or its Affiliates for the period of time specified in Provider's record retention policies and procedures (which shall comply with Applicable Law).

#### ARTICLE 8 MISCELLANEOUS

Section 8.01. *No Agency; Independent Contractor Status.* Nothing in this Agreement shall constitute or be deemed to constitute a partnership or joint venture between the parties hereto or constitute or be deemed to constitute any party the agent or employee of the other party for any purpose whatsoever and neither party shall have authority or power to bind the other or to contract in the name of, or create a liability against, the other in any way or for any purpose. The parties hereto acknowledge and agree that Provider is an independent contractor in the performance of each and every part of this Agreement and nothing herein shall be construed to be inconsistent with this status. Subject to the terms and conditions of this Agreement, Provider shall have the authority to select the means, methods and manner by which any Service is performed.

Section 8.02. *Subcontractors.* Provider may hire or engage one or more subcontractors to perform all or any of its obligations under this Agreement; *provided* that (i) Provider shall use the same degree of care in selecting any subcontractors as it would if such subcontractor was being retained to provide

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similar services to Provider and (ii) Provider shall in all cases remain responsible for ensuring that obligations with respect to the standards of services set forth in this Agreement are satisfied with respect to any Service provided by a subcontractor hired or engaged by Provider.

Section 8.03. *Force Majeure.* (a) For purposes of this Section 8.03, "**force majeure**" means an event beyond the reasonable control of either party, which by its nature was not foreseen by such party, or, if it was foreseen, was not reasonably avoidable, and includes without limitation, acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, threat, declaration, continuation, escalation or acts of war (declared or undeclared) or acts of terrorism, failure or shortage of energy sources, raw materials or components, strike, walkout, lockout or other labor trouble or shortage, delays by unaffiliated suppliers or carriers, and acts, omissions or delays in acting by any Governmental Authority or the other party.

(b) Without limiting the generality of Section 5.02, neither party shall be under any liability for failure to fulfill any obligation to provide Services under this Agreement, so long as and to the extent to which the fulfillment of such obligation is prevented, frustrated, hindered, or delayed as a consequence of circumstances of force majeure; *provided* that (i) such party shall have used commercially reasonable efforts to minimize to the extent practicable the effect of force majeure on its obligations hereunder and (ii) nothing in this Section 8.03 shall be construed to require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the reasonable judgment of the affected party, are contrary to its interests. It is understood that the settlement of a strike, walkout, lockout or other labor dispute will be entirely within the discretion of the affected party. The party affected by the force majeure event shall notify the other party of that fact as soon as practicable.

Section 8.04. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter hereof.

Section 8.05. *Notices.* Any notice, instruction, direction or demand under the terms of this Agreement required to be in writing shall be duly given upon delivery, if delivered by hand, facsimile transmission, or mail, to the following addresses:

If to Masco to:

Masco Corporation  
21001 Van Born Road  
Taylor, Michigan 48180  
Attn: General Counsel

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Facsimile: (313) 792-6430

with a copy to:

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, New York 10017  
Attn: John D. Amorosi  
Bruce Dallas  
Facsimile: (212) 701-5010

If to TopBuild to:

TopBuild Corp.  
260 Jimmy Ann Drive  
Daytona Beach, FL 32114  
Attn: General Counsel  
Facsimile: (386) 304-2144

with a copy to:

McDermott Will & Emery  
333 SE 2<sup>nd</sup> Ave #4500  
Miami, Florida 33131  
Attn: Harris C. Siskind  
Facsimile: (305) 347-6500

and

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, New York 10017  
Attn: John D. Amorosi  
Bruce Dallas  
Facsimile: (212) 701-5010

or such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other party hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day in the place of receipt.

Section 8.06. *Governing Law.* This Agreement shall be governed by and construed in accordance with the law of the State of Delaware, without regard to the conflicts of law rules of such state.

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Section 8.07. *Jurisdiction.* The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in the Delaware Chancery Court, or if such court shall not have jurisdiction, any federal court located in the State of Delaware or any Delaware state court, so long as one of such courts shall have subject matter jurisdiction over such suit, action or proceeding, and that any cause of action arising out of this Agreement shall be deemed to have arisen from the transaction of business in the State of Delaware, and each of the parties hereby irrevocably consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or outside of the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 8.05 shall be deemed effective service of process on such party.

Section 8.08. *Specific Performance.* Each party to this Agreement acknowledges and agrees that damages for a breach or threatened breach of any of the provisions of this Agreement would be inadequate and irreparable harm would occur. In recognition of this fact, each party agrees that, if there is a breach or threatened breach, in addition to any damages, the other nonbreaching party to this Agreement, without posting any bond, shall be entitled to seek and obtain equitable relief in the form of specific performance, temporary restraining order, temporary or permanent injunction, attachment, or any other equitable remedy which may then be available to obligate the breaching party (i) to perform its obligations under this Agreement or (ii) if the breaching party is unable, for whatever reason, to perform those obligations, to take any other actions as are necessary, advisable or appropriate to give the other party to this Agreement the economic effect which comes as close as possible to the performance of those obligations (including, but not limited to, transferring, or granting liens on, the assets of the breaching party to secure the performance by the breaching party of those obligations).

Section 8.09. *WAIVER OF JURY TRIAL.* EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 8.10. *Severability.* If any one or more of the provisions contained in this Agreement should be declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions

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contained in this Agreement shall not in any way be affected or impaired thereby so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a declaration, the parties shall modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner so that the transactions contemplated hereby are consummated as originally contemplated to the fullest extent possible.

Section 8.11. *Amendments; No Waivers.* (a) Any provision of this Agreement (including the Schedules hereto) may be amended or waived if, and only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by Masco and TopBuild, or in the case of a waiver, by the party against whom the waiver is to be effective.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Applicable Law.

Section 8.12. *Successors and Assigns.* The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns; *provided* that neither party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of the other party hereto. If any party or any of its successors or permitted assigns (i) shall consolidate with or merge into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) shall transfer all or substantially all of its properties and assets to any Person, then, and in each such case, proper provisions shall be made so that the successors and assigns of such party shall assume all of the obligations of such party under this Agreement.

Section 8.13. *Third Party Beneficiaries.* Except as set forth in Sections 5.02, 5.03 and 5.04, neither this Agreement nor any provision hereof is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any Person other than the parties hereto and their respective successors and permitted assigns.

Section 8.14. *Counterparts.* This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other party hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no

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effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

Section 8.15. *Construction and Interpretation.* The parties hereto agree that in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of its authorship of any of the provisions of this Agreement. Each party shall cause to be performed all actions, agreements and obligations set forth herein to be performed by any member of such party's Group.

Section 8.16. *Conflict of Terms.* If the terms of this Agreement conflict with terms of the Separation and Distribution Agreement with respect to any matter, then the terms of this Agreement will control. If the terms of this Agreement conflict with the terms of the Tax Matters Agreement with respect to any matter, then the terms of the Tax Matters Agreement will control.

*[Remainder of page intentionally left blank]*

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

MASCO CORPORATION

By: /s/ Kenneth G. Cole  
Name: Kenneth G. Cole  
Title: Vice President, General Counsel and Secretary

TOPBUILD CORP.

By: /s/ John G. Szniewajs  
Name: John G. Szniewajs  
Title: President and Treasurer

*(Signature Page to Transition Services Agreement)*

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**EMPLOYEE MATTERS AGREEMENT**

dated as of June 29, 2015

by and between

**MASCO CORPORATION**

and

**TOPBUILD CORP.****TABLE OF CONTENTS**

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## EMPLOYEE MATTERS AGREEMENT

EMPLOYEE MATTERS AGREEMENT dated as of June 29, 2015 (as the same may be amended from time to time in accordance with its terms, this **Agreement**) between Masco Corporation, a Delaware corporation ("**Masco**"), and TopBuild Corp., a Delaware corporation ("**TopBuild**").

### WITNESSETH:

WHEREAS, Masco has decided to distribute the common stock of TopBuild to the holders of Masco Common Stock (the "**Distribution**"); and

WHEREAS, in furtherance of the foregoing, Masco and TopBuild have entered into the Separation and Distribution Agreement dated as of June 29, 2015 (the "**Distribution Agreement**") and certain other agreements that will govern certain matters relating to the Distribution and the relationship of Masco and TopBuild and their respective Subsidiaries following the Distribution; and

WHEREAS, pursuant to the Distribution Agreement, Masco and TopBuild have agreed to enter into this Agreement for the purpose of allocating between them assets, liabilities, and responsibilities with respect to certain employee compensation and benefit plans and programs; and

WHEREAS, Masco and TopBuild have agreed that, except as otherwise specifically provided herein, the general approach and philosophy underlying this agreement is to allocate assets, liabilities and responsibilities between Masco and TopBuild on the basis of the employment relationships in effect at the time of the Distribution.

NOW, THEREFORE, in consideration of the mutual promises contained herein and in the Distribution Agreement, the parties agree as follows:

### ARTICLE 1 DEFINITIONS

Section 1.01. *Definitions.* (a) As used in this Agreement, the following terms shall have the following meanings. Any other capitalized term that is used, but not defined, herein shall have the meaning set forth in the Distribution Agreement.

"**Applicable Law**" shall have the meaning set forth in the Distribution Agreement.

"**Close of the Distribution Date**" means 11:59:59 P.M., Eastern Standard Time or Eastern Daylight Time (whichever shall then be in effect), on the Distribution Date.

"**Code**" shall have the meaning set forth in the Distribution Agreement.

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"**COBRA**" means the continuation coverage requirements for "group health plans" under Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and as codified in Code § 4980B and ERISA §§ 601 through 608.

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

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

"**Distribution Date**" shall have the meaning set forth in the Distribution Agreement.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, or any successor federal labor or employment law. Reference to a specific ERISA provision also includes any proposed, temporary, or final regulation in force under that provision.

"**FMLA**" means the Family Leave and Medical Act of 1993, as amended.

"**Immediately after the Distribution Date**" means 12:00 A.M., Eastern Standard Time or Eastern Daylight Time (whichever shall then be in effect), on the day after the Distribution Date.

"**Liabilities**" shall have the meaning set forth in the Distribution Agreement.

"**Masco Business**" shall have the meaning set forth in the Distribution Agreement.

"**Masco Common Stock**" shall have the meaning set forth in the Distribution Agreement.

"**Masco Defined Contribution Plan**" means each of the Masco Corporation 401(k) Plan and the Masco Corporation Hourly 401(k) Plan.

"**Masco Employee**" means each Person who, on the Distribution Date (a) is actively employed in the Masco Business and who is listed on the payroll records of any member of the Masco Group, (b) is on short-term disability leave, authorized leave of absence, military service or lay-off with recall rights and who was last actively employed in the Masco Business by any member of the Masco Group, (c) is an inactive or former employee and who was last actively employed in the Masco Business by any member of the Masco Group, including any former employee who has been on long-term disability leave or unauthorized leave of absence or who has terminated his or her employment, retired or died on or before the Distribution Date, and, in each case, their respective beneficiaries and dependents or (d) is an individual set forth on Schedule 1.01(a); *provided* that Masco Employees shall not include the individuals set forth on Schedule 1.01(b).

"**Masco Equity-Based Plans**" means the Masco Corporation 2014 Long Term Stock Incentive Plan, the Masco Corporation 2005 Long Term Stock Incentive Plan and the Masco Corporation 1991 Long Term Stock Incentive Plan.

"**Masco ERISA Affiliate**" means any entity that, together with Masco and after giving effect to the Distribution, would be treated as a single employer under Section 414(b) or (c) of the Code without regard to Sections 4069 and 4212(c) of ERISA.

"**Masco Group**" shall have the meaning set forth in the Distribution Agreement.

“**Masco Health and Welfare Plans**” means the plans set forth on Schedule 5.01(a).

“**Masco Retirement Plans**” means the Masco Corporation Pension Plan, the Masco Corporation Supplemental Executive Retirement Plan and the Masco Corporation Benefits Restoration Plan.

“**Multi-Employer Plan**” means any collectively bargained retirement or health or welfare plan or fund to which any TopBuild Business has ever had a contribution obligation under a collective bargaining agreement or otherwise, including (by way of example and not limitation) those plans shown on Schedule 1.01(c).

“**New TopBuild Health and Welfare Plans**” means new, duplicate or mirror plans, policies or programs, as applicable, adopted or to be adopted by TopBuild as of the Distribution Date, including those set forth on Schedule 5.01(b), that correspond to the Masco Health and Welfare Plans, with such changes therein as are necessary or appropriate to effectuate the terms of this Agreement.

“**Specified Masco Rights**” means any and all rights to enjoy, benefit from or enforce any and all restrictive covenants including, without limitation, covenants relating to non-disclosure, non-solicitation, non-competition, confidentiality or trade secrets, applicable or related, in whole or in part, to the Masco Business that are provided for, contained or set forth in any Masco Retirement Plan, any Masco Corporation Confidential Proprietary Information and Invention Assignment Agreement, in the Masco Equity-Based Plans or any award agreement issued thereunder, or pursuant to any non-competition, consulting, employment, termination, separation or severance agreement or arrangement (including by way of example and not limitation that certain Severance Benefit Agreement, including Masco’s payment obligations thereunder, dated June 2015 between Masco Corporation and Gerald Volas) with any TopBuild Employee or Masco Employee and to which any member of the TopBuild Group or the Masco Group is a party.

“**Specified TopBuild Rights**” means any and all rights to enjoy, benefit from or enforce any and all restrictive covenants including, without limitation covenants relating to non-disclosure, non-solicitation, non-competition, confidentiality or trade secrets, applicable or related, in whole or in part, to the TopBuild Business that are provided for, contained or set forth in any Masco Retirement Plan, any Masco Corporation

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Confidential Proprietary Information and Invention Assignment Agreement, in the Masco Equity-Based Plans or any award agreement issued thereunder, or pursuant to any non-competition, consulting, employment, termination, separation or severance agreement or arrangement (including by way of example and not limitation that certain Severance Benefit Agreement dated June 2015 between Masco Corporation and Gerald Volas) with any TopBuild Employee or Masco Employee and to which any member of the TopBuild Group or Masco Group is a party.

“**TopBuild Business**” shall have the meaning set forth in the Distribution Agreement.

“**TopBuild Employee**” means (i) each Person who, on the Distribution Date, is or has at any time been employed in the TopBuild Business who is not a Masco Employee and (ii) each Person listed on Schedule 1.01(b).

“**TopBuild ERISA Affiliate**” means any entity that, together with TopBuild and after giving effect to the Distribution, would be treated as a single employer under Section 414(b) or (c) of the Code without regard to Sections 4069 and 4212(c) of ERISA.

“**TopBuild Group**” shall have the meaning set forth in the Distribution Agreement.

“**Tax Matters Agreement**” shall have the meaning set forth in the Distribution Agreement.

(b) Each of the following terms is defined in the Section set forth opposite such term:

<b>TERMS</b>	<b>SECTION</b>
Employee Withholding Documents	7.11
Masco Retained Liabilities	2.01
Masco Bonus Liabilities	3.03
Masco Health and Welfare Liabilities	5.01
Masco Health and Welfare Plans	5.01
Masco Retained Liabilities	2.01
Masco WCP Liabilities	5.06
TopBuild Assumed Liabilities	2.01
TopBuild Bonus Liabilities	3.03
TopBuild DC Plan	4.01
TopBuild DC Plan Liabilities	4.01
TopBuild Health and Welfare Liabilities	5.01
TopBuild Assumed Liabilities	2.01
TopBuild WCP Liabilities	5.06
Retained Retiree Health and Life Liabilities	5.02
Retained DC Plan Liabilities	4.01
RSAs	3.03

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<b>TERMS</b>	<b>SECTION</b>
Standard Procedure	7.11

**ARTICLE 2**  
**GENERAL ALLOCATION OF LIABILITIES**

Section 2.01. *Allocation of Liabilities Generally.*

(a) Subject to the terms and conditions of this Agreement, effective as of the Close of the Distribution Date, Masco hereby assumes and agrees to pay when due, honor and discharge, the following Liabilities, whether incurred before, on or after the Distribution Date (“**Masco Retained Liabilities**”):

(i) all Liabilities to the extent relating to, arising out of or resulting from any employment, separation or retirement agreement or arrangement to the

extent applicable to any Masco Employee;

- (ii) the Masco Bonus Liabilities, Masco WCP Liabilities, Retained Retiree Health and Life Liabilities, Masco Health and Welfare Liabilities, Retained DC Plan Liabilities and all Liabilities to the extent relating to, arising out of or resulting from the Masco Equity-Based Plans and the Masco Retirement Plans;
  - (iii) all Liabilities to the extent relating to, arising out of or resulting from any other employee benefit plan or arrangement sponsored or maintained at any time after the Distribution Date by any of the Masco Companies to the extent applicable to any member of the Masco Group;
  - (iv) all Liabilities to the extent relating to, arising out of or resulting from any federal, state, local or foreign law, order or regulation (including, without limitation, ERISA and the Code) to the extent they relate to participation by any Masco Employee in any employee benefit plan sponsored or maintained by any member of the Masco Group, whether relating to events occurring on, prior to or after the Close of the Distribution Date or arising by reason of the transactions contemplated by this Agreement or otherwise;
  - (v) all statutory Liabilities with respect to any Masco Employee, which arise, directly or indirectly, by reason of the transactions contemplated by this Agreement; and
  - (vi) all other Liabilities attributable to actions specified to be taken by Masco under this Agreement.
- (b) Subject to the terms and conditions of this Agreement, effective as of Immediately after the Distribution Date, TopBuild hereby assumes and agrees to pay

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when due, honor and discharge, the following Liabilities, whether incurred before, on or after the Distribution Date ("**TopBuild Assumed Liabilities**"):

- (i) all Liabilities to the extent relating to, arising out of or resulting from any employment, separation or retirement agreement or arrangement (including, without limitation, claims founded in any theory of joint employer liability) to the extent applicable to any TopBuild Employee, including by way of example and not limitation that certain Severance Benefit Agreement, and Masco's payment obligations thereunder, dated June 2015 between Masco Corporation and Gerald Volas and separately assigned to TopBuild on even date herewith;
- (ii) the TopBuild Bonus Liabilities, the New TopBuild Health and Welfare Plans, TopBuild DC Plan Liabilities, TopBuild Health and Welfare Liabilities, and the TopBuild WCP Liabilities;
- (iii) all Liabilities to the extent relating to, arising out of or resulting from any other employee benefit plan or arrangement sponsored or maintained at any time after the Distribution Date by any member of the TopBuild Group;
- (iv) all Liabilities to the extent relating to, arising out of or resulting from any federal, state, local or foreign law, order or regulation (including, without limitation, ERISA and the Code) to the extent they relate to participation by any TopBuild Employee (A) in any New TopBuild Health and Welfare Plan or other employee benefit plan sponsored or maintained by any member of the TopBuild Group, or (B) in any Multi-Employer Plan at any time prior to, on or after the Distribution Date;
- (v) all statutory Liabilities with respect to any TopBuild Employee which arise, directly or indirectly, by reason of the transactions contemplated by this Agreement; and
- (vi) all other Liabilities attributable to actions specified to be taken by TopBuild under this Agreement.

Section 2.02. *Method of Settlement.* Notwithstanding anything herein to the contrary but except as set forth in Schedule 2.02, to the extent possible, any transfer or assumption of Liabilities (including, where applicable, assets or reserves corresponding to such Liabilities) pursuant to this Article 2 shall be effected, prior to the Distribution Date (through a corresponding adjustment in the relevant intercompany account balances of the parties hereto) or as soon thereafter as is reasonably practicable (through cash payments).

Section 2.03. *Further Assurances.*

- (a) On and after the date hereof, TopBuild will, at the reasonable request of Masco, execute, acknowledge and deliver all such endorsements, assurances, consents,

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assignments, transfers, conveyances, powers of attorney and other instruments and documents, and take such other actions necessary (i) to assign, transfer, convey and deliver to Masco, acting in its fiduciary capacity, all the assets to be transferred to Masco pursuant to this Agreement and (ii) to assist Masco in obtaining the consent and approval of all Governmental Authorities and other Persons required to be obtained by Masco to effect the transfer thereof and the assumption of the Masco Retained Liabilities by Masco or otherwise appropriate to carry out the transactions contemplated hereby.

- (b) On and after the date hereof, Masco will, at the reasonable request of TopBuild, execute, acknowledge and deliver all such endorsements, assurances, consents, assignments, transfers, conveyances, powers of attorney and other instruments and documents, and take such other actions necessary (i) to assign, transfer, convey and deliver to TopBuild, acting in its fiduciary capacity, all the assets to be transferred to TopBuild pursuant to this Agreement, and (ii) to assist TopBuild in obtaining the consent and approval of all Governmental Authorities and other Persons required to be obtained by TopBuild to effect the transfer thereof and the assumption of the TopBuild Assumed Liabilities by TopBuild or otherwise appropriate to carry out the transactions contemplated hereby.

Section 2.04. *Assignment of Certain Rights; Non-Solicitation.*

- (a) To the extent permitted by applicable law, Masco hereby assigns, to the maximum extent possible, on behalf of itself and the Masco Group, the Specified TopBuild Rights, to TopBuild, and Masco shall take such actions to effect such assignment pursuant to Section 2.03(b) as TopBuild may reasonably request.

- (b) To the extent permitted by applicable law, TopBuild hereby assigns, to the maximum extent possible, on behalf of itself and the TopBuild Group, the Specified Masco Rights, to Masco, and TopBuild shall take such actions to effect such assignment pursuant to Section 2.03(a) as Masco may reasonably request.

- (c) Masco and TopBuild agree that neither party, nor any of their respective Subsidiaries, shall, without the prior written approval of the other, directly or indirectly for 12 months after the Distribution Date, solicit any employee of the other party to terminate his or her relationship with any member of the TopBuild Group or Masco Group, respectively, *provided* that the foregoing shall not apply to (i) the use of an independent employment agency (so long as the agency was not directed to solicit such person) or (ii) as a result of the use of a general solicitation (such as an advertisement) not specifically directed to employees of the other party.

**ARTICLE 3**  
EMPLOYEES; ASSUMPTION AND/OR ADOPTION OF PLANS; OPTION ADJUSTMENTS

Section 3.01. *Employees.* No provision of this Agreement shall require Masco or TopBuild or any of their respective Subsidiaries to continue the employment of any of their respective employees following the Distribution Date.

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Section 3.02. *Adoption of Plans.*

(a) Effective as of not later than Immediately after the Distribution Date, TopBuild and any applicable member of the TopBuild Group shall adopt, or cause to be adopted, the New TopBuild Health and Welfare Plans, *provided* that nothing contained herein shall prevent TopBuild from terminating or amending such plans except to the extent such termination or amendment is precluded by Applicable Law, as would result in the loss of grandfathered status under the Patient Protection and Affordable Care Act or as otherwise provided herein.

(b) The New TopBuild Health and Welfare Plans shall be, with respect to all TopBuild Employees, in all respects the successors in interest to any corresponding Masco Health and Welfare Plans. With respect to TopBuild Employees, each New TopBuild Health and Welfare Plan and any other benefit plan, arrangement or policy applicable after the Distribution Date for TopBuild Employees shall provide that all service, compensation, and other benefit-affecting determinations, as of the Close of the Distribution Date, that were otherwise recognized under the corresponding Masco Health and Welfare Plan (for periods ending on the Distribution Date) shall, as of Immediately after the Distribution Date, receive full recognition and credit to the extent the recognition or credit can validly be taken into account under the New TopBuild Health and Welfare Plan to the same extent as if those items occurred under the Masco Health and Welfare Plans, except to the extent that duplication of benefits would result.

Section 3.03. *Masco Equity-Based Plan Retention; Equity Award Adjustments; Bonus and Other Payments.*

(a) *Masco Equity-Based Plans; Equity Award Adjustments.* In connection with the Distribution, Masco shall retain the Masco Equity-Based Plans and shall cause such actions to be taken thereunder as are necessary or appropriate to reflect the Distribution as provided in this Section 3.03(a).

(i) *Vested Options.* In connection with the Distribution and effective as of the Distribution Date, all outstanding vested options to purchase shares of Masco Common Stock, whether held by a current or a former Masco Employee, a current or a former TopBuild Employee or a current or former non-employee director of Masco will be adjusted pursuant to the terms of the applicable Masco Equity-Based Plan and Applicable Law to preserve the intrinsic value thereof and the ratio of the exercise price to the fair market value of Masco Common Stock. Such adjusted vested options held by TopBuild Employees will be exercisable for the period following their separation from Masco as is set forth in the Masco Equity-Based Plans or applicable award agreement or, if earlier, until the stated expiration date of the grant.

(ii) *Unvested Options.* In connection with the Distribution and effective as of the Distribution Date, any outstanding unvested options to purchase Masco Common Stock which are held by Masco Employees will be adjusted as described in Section 3.03 (a)(i). TopBuild will replace any

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outstanding unvested options to purchase shares of Masco Common Stock which are held by TopBuild Employees at the Close of the Distribution Date (and forfeited as a result of the Distribution) with long-term incentive awards of generally equivalent intrinsic value, and preserving the remaining vesting and expiration dates, under one or more long-term incentive plans to be adopted by TopBuild.

(iii) *Restricted Stock Awards.* In connection with the Distribution and effective as of the Distribution Date, awards of unvested shares of restricted stock (“RSAs”), whether held by a current or a former Masco Employee or a current or former non-employee director of Masco, or (to the extent not forfeited at the Distribution Date) a current or a former TopBuild Employee, will be adjusted pursuant to the terms of the applicable Masco Equity-Based Plan and Applicable Law to preserve the intrinsic value thereof. TopBuild will replace any outstanding unvested RSAs which are held by TopBuild Employees at the Close of the Distribution Date (and forfeited as a result of the Distribution) with long-term incentive awards of generally equivalent intrinsic value, and preserving the remaining vesting dates, under one or more long-term incentive plans to be adopted by TopBuild.

(iv) *Cash-Based Long-Term Awards.* In connection with the Distribution and effective as of the Distribution Date, the Liability for cash-based long-term performance awards granted under the applicable Masco Equity-Based Plan, whether held by a current or a former TopBuild Employee (pro-rated through the Distribution Date) or by a current or a former Masco Employee, will be retained by Masco.

(b) *Bonus and Other Payments.* Masco hereby retains Liability for all annual bonus payments for fiscal 2015 to Masco Employees (the “**Masco Bonus Liabilities**”). TopBuild hereby retains or assumes, as applicable, (i) all annual bonus payments for fiscal 2015 (including amounts accrued or payable with respect to the period of the fiscal year prior to the Distribution Date) to TopBuild Employees, (ii) all annual bonus payments (for the period of the fiscal year prior to the Distribution Date) for those persons shown on Schedule 1.01(b) under the Masco executive annual cash performance bonus, the Masco executive annual restricted share award performance bonus, and any other Masco annual bonus plan (together with the amounts in clause (i), the “**TopBuild Bonus Liabilities**”), and (iii) termination and severance and other liabilities accrued or payable to Masco Employees to whom an offer was made and accepted for employment with TopBuild effective as of the Distribution Date, which offer has been rescinded by TopBuild on or prior to the Distribution Date.

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**ARTICLE 4**  
DC AND RETIREMENT PLANS

Section 4.01. *Defined Contribution Plans.*

(a) Masco shall retain all Liabilities and obligations to the extent relating to, arising out of or resulting from benefits accrued by each Masco Employee under the Masco Defined Contribution Plans.

(b) Effective as of not later than Immediately after the Distribution Date, TopBuild or a TopBuild ERISA Affiliate shall adopt one or more savings plans for the benefit of TopBuild Employees intended to qualify under Section 401(a) of the Code (the “**TopBuild DC Plan**”). Not later than the end of the calendar year in which the Distribution Date occurs or as soon following the Distribution Date as is reasonably practicable, (1) Masco shall cause the Masco Defined Contribution Plan accounts of all TopBuild Employees which are held by the applicable Masco Defined Contribution Plan’s related trust to be transferred to the TopBuild DC Plan and its related trust, and



TopBuild shall cause those transferred accounts (all of which shall remain 100% vested) to be accepted by the TopBuild DC Plan and its related trust, and (2) the TopBuild DC Plan shall assume and be solely responsible for Liabilities only with respect to transferred accounts of such TopBuild Employees (all such assumed liabilities, "**TopBuild DC Plan Liabilities**"). Such transfer of accounts and related trust assets shall be in-kind, including loans, and shall be mapped to investment choices in the TopBuild DC Plan trust which are comparable to the investment choices which TopBuild Employees had designated under the Masco Defined Contribution Plan to the maximum extent practicable and shall not favor participants who are Masco Employees over participants who are TopBuild Employees. Any TopBuild DC Plan fund relating to Masco Common Stock shall be administered so as to permit transfers out of, but not additions to, such fund.

(c) After the Distribution Date, Masco shall retain all assets and Liabilities under the Masco Defined Contribution Plans except as otherwise provided in Section 4.01(b) ("**Retained DC Plan Liabilities**").

(d) TopBuild and Masco shall use their reasonable efforts to cause each of the trustees, custodians, advisors and administrators providing services and benefits under the New TopBuild Defined Contribution Plans and the Masco Defined Contribution Plans to maintain the fee structures based on the aggregate number of participants in both the New TopBuild Defined Contribution Plans and the Masco Defined Contribution Plans through the expiration of the financial fee or rate guarantees in effect as of the Close of the Distribution Date under the respective agreements separately rated or adjusted for the demographics, experience or other relevant factors related to the covered participants of TopBuild and Masco, respectively. To the extent they are not successful in such efforts, TopBuild and Masco shall each bear the revised fee structures attributable to the individuals covered by their respective defined contribution plans.

Section 4.02. *Retirement Plan Liabilities.* Masco shall retain and remain responsible for all assets and Liabilities under the Masco Retirement Plans accrued in

respect of Masco Employees and TopBuild Employees pursuant to the terms of the Masco Retirement Plans. For the avoidance of doubt, no TopBuild Employee shall accrue any benefit after the Distribution Date under the Masco Retirement Plans.

## ARTICLE 5 Health and Welfare Plans

Section 5.01. *Assumption of Health and Welfare Plan Liabilities; General Provisions.*

(a) Effective as of the Close of the Distribution Date and except to the extent provided in this Article 5, all Liabilities relating to claims incurred prior to, on or after the Distribution Date by each TopBuild Employee under the Masco Health and Welfare Plans shall be transferred to and assumed by TopBuild as of the Close of the Distribution Date ("**TopBuild Health and Welfare Liabilities**") under the corresponding New TopBuild Health and Welfare Plans. Masco shall retain all other Liabilities under the Masco Health and Welfare Plans ("**Masco Health and Welfare Liabilities**").

(b) TopBuild shall cause the New TopBuild Health and Welfare Plans to recognize and maintain all coverage and contribution elections made by TopBuild Employees under the Masco Health and Welfare Plans as of the Distribution Date and apply such elections under the New TopBuild Health and Welfare Plans for the remainder of the period or periods for which such elections are by their terms applicable. The transfer or other movement of employment from Masco to TopBuild at any time before the Close of the Distribution Date shall neither constitute nor be treated as a "status change" under the New TopBuild Health and Welfare Plans or the Masco Health and Welfare Plans.

(c) TopBuild shall cause the New TopBuild Health and Welfare Plans to recognize and give credit for all amounts applied to deductibles, out-of-pocket maximums, and other applicable benefit coverage limits with respect to which such expenses have been incurred by TopBuild Employees under the Masco Health and Welfare Plans for the remainder of the year in which the Distribution Date occurs to the extent recognized under the comparable Masco Health and Welfare Plans.

(d) TopBuild shall provide coverage to TopBuild Employees under the New TopBuild Health and Welfare Plans without the need to undergo a physical examination or otherwise provide evidence of insurability to the extent provided under the comparable Masco Health and Welfare Plans.

(e) TopBuild shall cause the New TopBuild Health and Welfare Plans to recognize and credit all service of each TopBuild Employee recognized by the corresponding Masco Health and Welfare Plans before the Close of the Distribution Date for all purposes, including, but not limited to, severance, disability, vacation and paid time off. On or as soon as reasonably practicable after the Distribution Date, Masco shall deliver to TopBuild a schedule setting forth the accrued and unused vacation and paid time off for each TopBuild Employee as of the Distribution Date, and TopBuild shall

assume and be responsible for all Liabilities therefor which, for the avoidance of doubt, shall be included in TopBuild Health and Welfare Liabilities.

(f) Education or tuition reimbursement liabilities shall be the responsibility of the employer of the tuition reimbursement program participant at the time the education or tuition reimbursement request is formally submitted by the program participant in accordance with the terms and conditions of such program.

Section 5.02. *Post-Retirement Health and Retired Life Insurance Benefits.* Other than for the coverages set forth on Schedule 1.01(c)(ii) which are carried on the books of TopBuild and so, for the avoidance of doubt, shall be retained by TopBuild, Masco shall be responsible for providing to TopBuild Employees who are eligible to receive post-retirement medical or retired life insurance coverage under the Masco Health and Welfare Plans and retire prior to the Close of the Distribution Date and to all Masco Employees such coverage under the Masco Health and Welfare Plans ("**Retained Retiree Health and Life Liabilities**"), in each case pursuant to the terms of the applicable Masco Health and Welfare Plans. Nothing herein shall prevent (i) Masco from amending or terminating such plans or (ii) notwithstanding Section 2.04(c) hereof, TopBuild from actively employing any retired Masco Employees.

Section 5.03. *Effect of Change in Rates.* TopBuild and Masco shall use their reasonable efforts to cause each of the insurance companies, point-of-service vendors and third-party administrators providing services and benefits under the New TopBuild Health and Welfare Plans and the Masco Health and Welfare Plans to maintain the premium and/or administrative rates based on the aggregate number of participants in both the New TopBuild Health and Welfare Plans and the Masco Health and Welfare Plans through the expiration of the financial fee or rate guarantees in effect as of the Close of the Distribution Date under the respective contracts, policies, and agreements separately rated or adjusted for the demographics, experience or other relevant factors related to the covered participants of TopBuild and Masco, respectively. To the extent they are not successful in such efforts, TopBuild and Masco shall each bear the revised premium or administrative rates attributable to the individuals covered by their respective health and welfare plans.

Section 5.04. *COBRA and HIPAA.*

(a) Masco shall be solely responsible for administering compliance with the health care continuation coverage requirements of COBRA and the Masco Health and Welfare Plans (i) with respect to Masco Employees and, (ii) for the limited purposes of initial notification and premium administration compliance through the Distribution Date, with respect to TopBuild Employees and their dependents who incur a COBRA qualifying event prior to the Distribution Date.

(b) Effective as of Immediately after the Distribution Date, TopBuild shall solely be responsible for administering compliance with the health care continuation coverage requirements of COBRA and the New TopBuild Health and Welfare plans with respect to (i) TopBuild Employees and their dependents who incur a COBRA qualifying

event on or after the Distribution Date and (ii) those TopBuild Employees described in Section 5.04(a)(ii).

(c) For periods before the Distribution Date, Masco shall be responsible for administering compliance with the portability requirements under the Health Insurance Portability and Accountability Act of 1996 with respect to TopBuild Employees and beginning not later than Immediately after the Distribution Date TopBuild shall be responsible for filing all necessary employee change notices with respect to and in accordance with applicable Masco policies and procedures. Effective as of the Close of the Distribution Date, Masco shall be solely responsible for administering compliance with such health care continuation coverage and portability requirements with respect to Masco Employees, and TopBuild shall be solely responsible for administering compliance with such requirements with respect to TopBuild Employees.

Section 5.05. *Leave of Absence Programs and FMLA.*

(a) TopBuild shall be responsible for administering compliance with the TopBuild leave of absence programs and FMLA with respect to TopBuild Employees.

(b) Effective as of the Close of the Distribution Date: (i) TopBuild shall adopt, and shall cause each member of the TopBuild Group to adopt, leave of absence programs; (ii) TopBuild shall honor, and shall cause each member of the TopBuild Group to honor, all terms and conditions of leaves of absence which have been granted to any TopBuild Employee under a Masco leave of absence program or FMLA before the Distribution Date, including such leaves that are to commence after the Distribution Date; (iii) Masco and each member of the Masco Group shall be solely responsible for administering leaves of absence and compliance with FMLA with respect to their employees; and (iv) TopBuild and each member of the TopBuild Group shall recognize all periods of service of each TopBuild Employee with the Masco Group to the extent such service is recognized by Masco for the purpose of eligibility for leave entitlement under the Masco leave of absence programs and FMLA.

(c) As soon as administratively possible and not later than the Close of the Distribution Date, Masco shall provide to TopBuild copies of all records pertaining to the Masco leave of absence programs and FMLA with respect to all TopBuild Employees to the extent such records have not been provided previously to TopBuild or a member of the TopBuild Group.

Section 5.06. *TopBuild Workers' Compensation Program.*

(a) (i) Effective as of the Close of the Distribution Date, TopBuild shall assume, retain and be responsible for all workers' compensation Liabilities relating to claims incurred prior to, on or after the Distribution Date by TopBuild Employees (the "**TopBuild WCP Liabilities**").

(ii) Effective as of the Close of the Distribution Date, Masco shall assume, retain and be responsible for all workers compensation Liabilities relating

to claims incurred prior to, on or after the Distribution Date by Masco Employees ("**Masco WCP Liabilities**").

(iii) For the avoidance of doubt, workers' compensation Liabilities in respect of claims incurred prior to, on or after the Distribution Date by any current or former employee shall be the responsibility of such employee's employer on the Distribution Date or, in the case of former employees, any such former employee's last employer prior to the Distribution Date; and in each case where there is a question as to the date of claim occurrence in fixing such Liabilities, an independent claims administrator shall be appointed to allocate such Liability based on its determination of the date of claim occurrence.

(b) Masco and TopBuild shall cooperate with respect to the issuance of new, or transfer of, existing workers' compensation policies and licenses.

Section 5.07. *Flexible Benefit Plans.* To the extent any TopBuild Employee contributed to an account under a Masco Health and Welfare Plan that provides or constitutes a health care or dependent care flexible spending account ("**Masco Flex Plan**") during the calendar year that includes the Distribution Date, effective the Close of the Distribution Date Masco shall transfer to the corresponding New TopBuild Health and Welfare Plan the account balances of such TopBuild Employees for such calendar year under the Masco Flex Plan, regardless of whether the account balance is positive or negative.

Section 5.08. *Application of Article 5 to the TopBuild Group.* Any reference in this Article 5 to "TopBuild" shall include a reference to the TopBuild Group when and to the extent TopBuild has caused a member of the TopBuild Group to (a) become a party to a vendor contract, group insurance contract, or HMO letter agreement associated with a New TopBuild Health and Welfare Plan, (b) become a self-insured entity for the purposes of one or more New TopBuild Health and Welfare Plans, (c) assume all or a portion of the Liabilities or administrative responsibilities for benefits which arose before the Distribution Date under a Masco Health and Welfare Plan and which were expressly assumed by TopBuild pursuant to the terms of this Agreement, or (d) take any other action, extend any coverage, assume any other Liability or fulfill any other responsibility that TopBuild would otherwise be required to take under the terms of this Article 5, unless it is clear from the context that the particular reference is not intended to include a member of the TopBuild Group. In all such instances in which a reference in this Article 5 to "TopBuild" includes a reference to a member of the TopBuild Group, TopBuild shall be responsible to Masco for ensuring that the member of the TopBuild Group complies with the applicable terms of this Agreement.

**ARTICLE 6**  
**INDEMNIFICATION**

With respect to indemnification, the parties hereto agree to the Article 6, *Release; Indemnification*, of the Distribution Agreement.

**ARTICLE 7**  
**GENERAL PROVISIONS**

Section 7.01. *Notices.* Any notice, instruction, direction or demand under the terms of this Agreement required to be in writing shall be duly given upon delivery, if delivered by hand, facsimile transmission, or mail, to the following addresses:

If to Masco, to:

Masco Corporation  
21001 Van Born Road  
Taylor, Michigan 48180  
Attn: General Counsel  
Facsimile: (313) 792-6430

with a copy to:

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, New York 10017  
Attn: John D. Amorosi  
Bruce Dallas  
Facsimile: (212) 701-5010

If to TopBuild, to:

TopBuild Corp.  
260 Jimmy Ann Dr  
Dayton Beach, FL 32114  
Attn: General Counsel  
Facsimile: (386) 304-2144

with a copy to:

McDermott Will & Emery  
333 Avenue of the Americas, Suite 4500  
Miami, Florida 33131  
Attn: Harris C. Siskind  
Facsimile: (305) 347-6500

and

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, New York 10017  
Attn: John D. Amorosi  
Bruce Dallas

Facsimile: (212) 701-5010

or such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other party hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day in the place of receipt.

Section 7.02. *Amendments; No Waivers.* (a) Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by Masco and TopBuild, or in the case of a waiver, by the party against whom the waiver is to be effective.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 7.03. *Successors and Assigns.* The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; *provided* that neither party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of the other parties hereto. If any party or any of its successors or permitted assigns (i) shall consolidate with or merge into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) shall transfer all or substantially all of its properties and assets to any Person, then, and in each such case, proper provisions shall be made so that the successors and assigns of such party shall assume all of the obligations of such party under the Distribution Documents.

Section 7.04. *Governing Law.* This Agreement shall be construed in accordance with and governed by the law of the State of Delaware, without regard to the conflicts of laws rules thereof.

Section 7.05. *Jurisdiction.* The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in the Delaware Chancery Court, or if such court shall not have jurisdiction, any federal court located in the State of Delaware or any Delaware state court, so long as one of such courts shall have subject matter jurisdiction over such suit, action or proceeding, and that any cause of action arising out of this Agreement shall be deemed to have arisen from the transaction of business in the State of Delaware, and each of the parties hereby irrevocably consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that

any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or outside of the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 7.01 shall be deemed effective service of process on such party.

Section 7.06. *Counterparts; Effectiveness.* This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof

signed by the other party hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

Section 7.07. *Entire Agreement; No Change in Control or Severance Event.* (a) This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and thereof and supersedes all prior agreements, understandings and negotiations, both written and oral, between the parties with respect to the subject matter hereof and thereof. No representation, inducement, promise, understanding, condition or warranty not set forth herein has been made or relied upon by any party hereto or any member of their Group with respect to the transactions contemplated by this Agreement. To the extent that the provisions of this Agreement are inconsistent with the provisions of the Tax Matters Agreement, the provisions of the Tax Matters Agreement shall prevail.

(b) Neither the Distribution nor the consummation of the transactions contemplated herein or under the Distribution Agreement shall constitute a change in control for purposes of, or trigger or otherwise give rise to any severance obligations or entitlements under, any Masco or TopBuild plan, program, agreement or arrangement.

Section 7.08. *No Third Party Beneficiaries.* Nothing contained in this Agreement is intended to constitute an amendment to any plan or arrangement governed by ERISA, or to confer upon any person or entity other than the parties hereto and their respective successors and permitted assigns, any benefit, right or remedies under or by reason of this Agreement.

Section 7.09. *Headings.* The section and other headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

Section 7.10. *Severability.* If any one or more of the provisions contained in this Agreement should be declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired thereby so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a declaration, the parties shall modify this

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Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner so that the transactions contemplated hereby are consummated as originally contemplated to the fullest extent possible.

Section 7.11. *Withholdings.* To the extent consistent with the terms of the Tax Matters Agreement, the party that is responsible for making a payment hereunder shall be responsible for making the appropriate withholdings, if any, attributable to such payments.

[Signature Page Follows]

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

MASCO CORPORATION

By: /s/ Kenneth G. Cole  
Name: Kenneth G. Cole  
Title: Vice President, General Counsel and Secretary

TOPBUILD CORP.

By: /s/ John G. Szniewajs  
Name: John G. Szniewajs  
Title: President and Treasurer

[Signature Page to Employee Matters Agreement]

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## TopBuild Spin-Off from Masco Corporation Completed and Trading as Independent Company Begins

DAYTONA BEACH, Fla., July 1, 2015 /PRNewswire/ — TopBuild Corp. (NYSE: BLD), the leading installer and distributor of insulation products to the United States construction industry, announced today the successful completion of its spin-off from Masco Corporation (NYSE: MAS) into an independent, publicly-traded company.

TopBuild is comprised of the former Masco Contractor Services business, now called TruTeam, a nationwide installer of insulation, and Service Partners, a nationwide distributor of residential insulation products and related accessories. TopBuild reported revenue of \$1.5 billion in 2014, which represents a compound annual growth rate of 12% since 2012.

After market close on June 30, 2015, Masco Corporation distributed to its stockholders one share of TopBuild common stock for every nine shares of Masco common stock held at time of close of business on the record date of June 19, 2015. TopBuild common stock will begin “regular-way” trading today under the symbol “BLD” on the New York Stock Exchange.

“Today we begin a new chapter in the exciting TopBuild story by becoming a separately traded public company. As the leading installer and distributor of insulation products in the United States, we serve residential and commercial builders of all sizes from coast to coast. Our geographic presence and industry leading service positions us extremely well to drive shareholder value,” said Jerry Volas, TopBuild’s Chief Executive Officer.

He continued, “Being part of Masco for the past 20 years has provided TopBuild with the people, processes and systems to prosper as a separate company. On behalf of our 8,000 associates nationwide, I would like to thank everyone at Masco who has contributed to our success. We welcome Masco’s shareholders as our own and we look forward to continued success.”

### About TopBuild

TopBuild Corp. is the leading installer and distributor of insulation products to the United States construction industry, based on revenue. TopBuild provides insulation installation services nationwide through its Contractor Services business, TruTeam, which has over 190 installation branches located in 43 states. TopBuild also distributes insulation nationwide through its Service Partners business from over 70 distribution centers located in 35 states. In addition to insulation products, TopBuild also installs and distributes other building products, including rain gutters, garage doors, fireplaces, shower enclosures, closet shelving and roofing. Further, TopBuild is a leader in building science and winner of the 2015 Energy Star Partner of the Year award from the U.S. Department of Energy. More information on TopBuild and its TruTeam and Service Partners divisions may be found at [www.topbuild.com](http://www.topbuild.com).

### Safe Harbor Statement

Statements contained in this press release that reflect our view about future performance constitute “forward-looking statements” under the Private Securities Litigation Reform Act of 1995. You can identify these statements by forward-looking words such as “believe,” “anticipate,” “appear,” “may,” “might,” “will,” “should,” “intend,” “plan,” “estimate,” “expects,” “assume,” “seek,” “forecast,” “anticipates,” “appears,” “believes,” “estimates,” “predicts,” “potential,” or “continue,” the negative of these terms and other similar references to future period. These views involve risks and uncertainties that are difficult to predict and, accordingly, our actual results may differ materially from the results discussed in our forward-looking statements. We caution you against relying on any of these forward-looking statements. Our future performance may be affected by our reliance on residential new construction, residential repair/remodel and commercial construction, our reliance on third-party suppliers and manufacturers, our ability to attract, develop and retain talented personnel and our sales and labor force, our ability to maintain consistent practices across our locations, our ability to maintain our competitive position, and our ability to realize the expected benefits of our spin-off from Masco Corporation. We discuss many of the risks we face under the caption entitled “Risk Factors” in the information statement filed a part of our Registration Statement on Form 10. Our forward-looking statements in this press release speak only as of the date of this press release. Factors or events that could cause of actual results to differ may emerge from time to time, and it is not possible for us to predict all of them. Unless required by law, we undertake no obligation to update publicly any forward-looking statements as a result of new information, future events or otherwise.

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### Contact

Investor Relations and Media  
Idalia Rodriguez  
IR@topbuild.com  
386-304-2088

To view the original version on PR Newswire, visit:<http://www.prnewswire.com/news-releases/topbuild-spin-off-from-masco-corporation-completed-and-trading-as-independent-company-begins-300107321.html>

SOURCE TopBuild Corp.

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