

EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

JAMES SMITH and JERRY HONSE,

Plaintiffs,

v.

GREATBANC TRUST CO., BOARD OF
DIRECTORS OF TRIAD
MANUFACTURING, INC., DAVID
CAITO, ROBERT HARDIE, MICHAEL K.
McCORMICK, ELIZABETH J.
McCORMICK, ELIZABETH J.
McCORMICK SECOND AMENDED AND
RESTATED REVOCABLE LIVING
TRUST, MICHAEL K. McCORMICK
SECOND AMENDED AND RESTATED
REVOCABLE LIVING TRUST, DAVID M.
CAITO REVOCABLE TRUST, and FIRST
AMENDED AND RESTATED ROBERT
HARDIE REVOCABLE TRUST,

Defendants

Civ. A. No. 20-02350-RAG-YBK

CLASS ACTION SETTLEMENT AGREEMENT

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INTRODUCTION

Subject to approval by the United States District Court for the Northern District of Illinois, this Class Action Settlement Agreement is made and entered into by and among Plaintiffs James Smith and Jerry Honse, individually and on behalf of the Class, and Defendants GreatBanc Trust Co. (“GreatBanc”), Board of Directors of Triad Manufacturing, Inc., David Caito, Robert Hardie, Michael McCormick, Elizabeth J. McCormick, Elizabeth J. McCormick Second Amended and Restated Revocable Living Trust, Michael K. McCormick Second Amended and Restated Revocable Living Trust, David M. Caito Revocable Trust, and First Amended and Restated Robert Hardie Revocable Trust (the “Triad Defendants”) (collectively, GreatBanc and the Triad Defendants shall be referred to as the “Defendants”). Plaintiffs agree to settle claims against Defendants, subject to the terms and conditions below. All capitalized terms will have the meaning ascribed thereto in Section I of this Agreement.

RECITALS

WHEREAS, on April 15, 2020, Plaintiff James Smith initiated a class action lawsuit (ECF No. 01), docketed as Case No. 1:20-cv-02350-RAG in the United States District Court for the Northern District of Illinois, asserting claims on behalf of himself and a class of participants of the ESOP for alleged violations of ERISA;

WHEREAS, on June 1, 2020, the Triad Defendants moved to compel arbitration (ECF No. 49) and the District Court denied the motion on August 21, 2020 (ECF No. 51);

WHEREAS, Triad Defendants appealed the denial of their motion to compel arbitration and the Seventh Circuit affirmed the denial of the motion to compel arbitration, *Smith v. Bd. Of Dirs. Of Triad Mfg., Inc.*, 13 F. 4th 613 (7th Cir. 2021);

WHEREAS, Defendants filed their Answers to the Complaint (Dkt. 45 and 79);

WHEREAS, on January 17, 2023, Plaintiffs filed a motion for class certification and Defendants did not oppose such motion. (ECF No. 130);

WHEREAS, Plaintiffs and Defendants conducted arms-length negotiations at a mediation session with Michael Young on December 8, 2022, continued negotiations after the mediation session, and signed a written Settlement Term Sheet on April 11, 2023;

WHEREAS, as part of discovery and prior to mediation and the execution of the Settlement Term Sheet, the Parties conducted extensive discovery regarding the merits and potential recoveries for Plaintiffs' claims;

WHEREAS, Plaintiffs served document subpoenas on Defendants and third parties and reviewed tens of thousands of pages of documents produced by Defendants and third parties in the course of discovery in the Action;

WHEREAS, Plaintiffs and Defendants took depositions of key witnesses;

WHEREAS, as a result of the factual investigation and legal research conducted by Class Counsel concerning the claims asserted in the Action and discovery, Class Counsel have concluded that terms of this Settlement are fair, reasonable, adequate and in the best interests of both the Class and the Plan, and have agreed to settle the Action on the terms set forth herein;

WHEREAS, Defendants deny the material allegations asserted in the Action; deny any wrongdoing or liability whatsoever; and state that they are entering into the Settlement solely to avoid the cost, disruption, and uncertainty of litigation;

WHEREAS, the Parties desire to promptly and fully resolve and settle with finality all of the claims on the terms set forth herein and subject to the approval of the Court;

WHEREAS, each of the undersigned counsel represent that their respective clients have been informed of and consent to the provisions set forth below;

NOW, THEREFORE, the Parties, in consideration of the promises, covenants and agreements herein described, and for other good and valuable consideration, acknowledged by each of them to be satisfactory and adequate, and without any admission or concession as to any matter of fact or law, and intending to be legally bound, do hereby agree as follows:

I. DEFINITIONS

As used in this Agreement, the following terms have the following meanings, unless a section or subsection of this Agreement specifically provides otherwise. Capitalized terms used in this Agreement, but not defined in this Section I, will have the meaning ascribed to them elsewhere in this Agreement.

A. “2015 ESOP Transaction” means the December 28, 2015 transaction whereby GreatBanc, in its capacity as Trustee of the Triad ESOP, purchased the stock of Triad Manufacturing, Inc., from the Selling Shareholder Defendants.

B. “Action” means the action pending in this Court styled James Smith and Jerry Honse, on behalf of themselves individually and on behalf of all other similarly situated, v. GreatBanc Trust Co., Board of Directors of Triad Manufacturing, Inc., David Caito, Robert Hardie, Michael McCormick, Elizabeth J. McCormick, Elizabeth J. McCormick Second Amended and Restated Revocable Living Trust, Michael K. McCormick Second Amended and Restated Revocable Living Trust, David M. Caito Revocable Trust, and First Amended and Restated Robert Hardie Revocable Trust, Case No. 1:20-cv-0250-RAG.

C. “Cash Payment Amount” means two million and five hundred thousand dollars (\$2,500,000.00) paid by or on behalf of Defendants (or their Insurers), described in Section III below.

D. “Class” means: All participants in the Triad ESOP from December 17, 2015 through December 31, 2022 who vested under the terms of the Plan, and those participants’ beneficiaries, excluding the Excluded Persons defined below.

E. “Class Counsel” means Cohen Milstein Sellers & Toll PLLC and Feinberg, Jackson, Worthman & Wasow LLP.

F. “Class Member” means an individual who is a member of the Class.

G. “Class Notice” means the form of notice provided to the Class Members that complies with the requirements of Section II in this Agreement, Rule 23, and as approved by the Court.

H. “Class Representatives” means Plaintiffs.

I. “Complaint” means the Amended Complaint (ECF No. 99) and any subsequent operative complaints filed in this Action.

J. “Court” or “District Court” means the United States District Court for the Northern District of Illinois.

K. “Defendants” means GreatBanc Trust Co. (“GreatBanc”) and the Board of Directors of Triad Manufacturing, Inc., David Caito, Robert Hardie, Michael McCormick, Elizabeth J. McCormick, Elizabeth J. McCormick Second Amended and Restated Revocable Living Trust, Michael K. McCormick Second Amended and Restated Revocable Living Trust, David M. Caito Revocable Trust, and First Amended and Restated Robert Hardie Revocable Trust (collectively the “Triad Defendants”).

L. “Defendants Related Parties” means Defendants and their parents, subsidiaries, affiliates, shareholders and members, and each and all of the respective past, present, and future officers, directors, employees, attorneys, agents, or insurers of any of them, and their respective

predecessors, successors, assigns, successors, heirs, executors and administrators, both individually and in their capacities as directors, officers, fiduciaries, administrators, shareholders, members, employees, agents, insurers and attorneys.

M. “Defense Counsel” means Ford Harrison LLP and Moore & Van Allen PLLC.

N. “Excluded Persons” means the following persons who are excluded from the Class: (a) the individual Defendants (David Caito, Robert Hardie, Michael McCormick, Elizabeth McCormick), and (b) legal representatives, successors, heirs, and assigns of any such excluded persons.

O. “ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

P. “Escrow Account” an account established by Class Counsel in the name of Triad ESOP Litigation Settlement Fund into which the Cash Payment Amount is to be paid.

Q. “Expense Award” will have the meaning set forth in Section VI of this Agreement.

R. “Fee Award” will have the meaning set forth in Section VI of this Agreement.

S. “Final Approval Motion” means the motion to be filed by Class Counsel requesting that the Court grant final approval of the Settlement pursuant to Fed. R. Civ. P. 23(e).

T. “Final Order” means the Order and Final Judgment, substantially in the form of an Order described in Section VIII below.

U. “Insurers Related Parties” means any insurance company (“Insurer” or “Insurers”) that makes a payment into the Escrow Account or reimburses Defendants for a payment they made into the Escrow Account and includes such insurance company’s respective past, present and future employees, principals, agents, attorneys, accountants, auditors, advisors, directors,

officers, shareholders, owners, representatives, predecessors, successors, heirs, executors, administrators, trustees, affiliates, parents, subsidiaries, successors, assigns, insurers, reinsurers and any person acting on their behalf.

V. “Non-Appealable” means an order entered by the Court is no longer subject to appeal, which will occur when: (i) if no appeal is taken therefrom, on the date on which the time to appeal therefrom (including any extension of time) has expired; or (ii) if any appeal is taken therefrom, on the date on which all appeals therefrom, including any petitions for rehearing or re-argument, petitions for rehearing *en banc*, and petitions for writ of *certiorari* or any other writ, or any other form or review, have been finally disposed of, such that the time to appeal therefrom (including any extension of time) has expired, in a manner resulting in an affirmance of the Final Order.

W. “Preliminary Approval Order” means the “Order Preliminarily Approving Settlement, Approving Form of Notice, and Setting Final Approval Hearing” in this Action, substantially in the form described in Section VIII.

X. “Plaintiffs” mean James Smith and Jerry Honse.

Y. “Plaintiffs’ Counsel” means Class Counsel.

Z. “Seller Notes” means collectively, the Amended and Restated Junior Subordinated Promissory Notes, dated December 31, 2018, made by Triad Manufacturing, Inc. in favor of the First Amended and Restated Robert Hardie Revocable Trust dated September 5, 2001, the David M. Caito Revocable Trust dated June 20, 1997, the Michael K. McCormick Second Amended and Restated Revocable Living Trust Agreement dated December 22, 2008, and the Elizabeth J. McCormick Second Amended and Restated Revocable Living Trust Agreement dated December 22, 2008.

AA. “Selling Shareholder Defendants” means David Caito, Michael McCormick, Elizabeth McCormick, Robert Hardie, the Elizabeth J. McCormick Second Amended and Restated Revocable Living Trust, Michael K. McCormick Second Amended and Restated Revocable Living Trust, David M. Caito Revocable Trust, and First Amended and Restated Robert Hardie Revocable Trust.

BB. “Service Awards” will have the meaning set forth in Section VI of this Agreement.

CC. “Settled Class Claims” means the claims that the Class will release pursuant to this Settlement as provided in Section VIII.

DD. “Settlement” means the settlement and compromise of this Action as provided for in this Settlement Agreement.

EE. “Settlement Administrator” means the person whom Class Counsel may hire, subject to Court approval, who is to be responsible for, among other things, providing Class Notice to Class Members and/or otherwise assisting with the administration of the Settlement.

FF. “Settlement Agreement” means this Class Action Settlement Agreement and any accompanying Exhibits, including any subsequent amendments thereto and any Exhibits to such amendments.

GG. “Settlement Fund” means the Cash Payment Amount plus any earnings and interest thereon, minus any Court-approved deductions and expenses.

HH. “Settling Parties” or “Parties” means Plaintiffs, on behalf of themselves and the Class and the Defendants.

II. “Stout” means Stout Risius Ross, LLC or any other financial advisor retained by GreatBanc to perform the annual valuation of the ESOP.

JJ. “Tax” or “Taxes” means any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any governmental authority, including income tax and other taxes and charges on or regarding franchises, windfall or other profits, gross receipts, property, sales, use, capital stock, payroll, employment, social security, workers’ compensation, unemployment compensation, or net worth; taxes or other charges in the nature of excise, withholding, *ad valorem*, stamp, transfer, value added or gains taxes; license, registration and documentation fees; and customs’ duties, tariffs, and similar charges.

KK. “Term Sheet” means the agreement fully executed on April 11, 2023, signed by Class Counsel on behalf of Plaintiffs and the Class and Defense Counsel on behalf of Defendants.

LL. “Termination Notice” will have the meaning set forth in Section XII of this Settlement Agreement.

MM. “Triad” means Triad Manufacturing, Inc.

NN. “Triad ESOP”, “ESOP”, or the “Plan” means the Triad Manufacturing, Inc. Employee Stock Ownership Plan.

OO. “Warrants” means the Warrants to Purchase Shares of Common Stock, dated as of January 6, 2016 by Triad Manufacturing Inc. to the First Amended and Restated Robert Hardie Revocable Trust dated September 5, 2001, the David M. Caito Revocable Trust dated June 20, 1997, the Michael K. McCormick Second Amended and Restated Revocable Living Trust Agreement dated December 22, 2008, and the Elizabeth J. McCormick Second Amended and Restated Revocable Living Trust Agreement dated December 22, 2008.

II. CLASS NOTICE

1. **Provision of Class Notice.** Upon the Court's preliminary approval of this Settlement Agreement or by the date specified by the Court, the Settlement Administrator will be responsible for providing Class Notice to the Class Members.

2. **Contents.** The Class Notice will contain a brief description of the claims advanced by the Class, a summary of the terms of the Settlement Agreement, information on the attorneys' fees and costs sought by Class Counsel, describe the consideration received by the Class and the Plan from the proposed Settlement, and provide information about the Final Approval Hearing, in the form approved by the Court.

3. **Method of Providing Class Notice.** Class Notice will be provided to each individual Class Member: (a) by either electronic notification (if available and approved by the Court) to all Class Members, or, if unavailable or not approved by the Court, by mailing via first class US Mail to all Class Members, and (b) by posting the Class Notice on websites maintained by Class Counsel and the Settlement Administrator. Defendants will cooperate with Class Counsel to facilitate providing Class Notice and other settlement-related communications by providing any known email addresses and mailing addresses for all Class Members, to the extent such information is reasonably available in the records of Defendants.

4. **Settlement Administrator.** Class Counsel will select the Settlement Administrator, subject to approval by the Court. The Parties and their counsel will reasonably cooperate with the Settlement Administrator to facilitate providing Notice and other settlement-related communications and administration.

5. **Undeliverable Notices.** In the event that a Class Notice sent by U.S. Mail or electronic mail are returned as undeliverable, the Settlement Administrator will make

reasonable efforts to obtain a valid mailing address and promptly resend the Class Notice to the Class Member by U.S. Mail.

6. **Class Data.** Within five (5) business days after this Settlement Agreement is fully executed, Defendants will, to the extent not already disclosed, provide Class Counsel and the Settlement Administrator with the following:

(a) Contact information in electronic form for each person previously identified as a Class Member, to the extent such information is reasonably available in Defendants' files: (1) name (2) a street mailing address; (3) telephone number(s); (4) electronic mail address(es); (5) Social Security number, (6) sufficient information identifying the beneficiary Class Member (including any persons who has a QDRO) for each participant Class Member who is divorced or deceased (including any known contact or other identifying information), (7) the amount of shares and vested shares held by each Class Member as of 12/31/2022; and (8) the number of shares purchased from each Class Member from 2015 through 2022.

(b) Sufficient information to identify the Excluded Persons and excluded the persons from the data in Paragraph 6(a).

(c) Defendants will also provide other information reasonably requested by Class Counsel or the Settlement Administrator.

7. **Class Notice Costs and Expenses.** All costs and expenses for the Settlement Administrator will be paid from the Settlement Fund.

III. SETTLEMENT CONSIDERATION

1. **Payment of Cash Payment Amount into Escrow Account.** As consideration for settlement of the Class's claims, Defendants will pay a total of \$2,500,000 ("Cash Payment") into an escrow account to be established by Class Counsel. Defendants will

pay this amount in three installments. The first installment of \$500,000 is due twenty-one (21) days after the entry of the preliminary approval order. The second installment of \$500,000 is due sixty (60) days after the entry of the preliminary approval order. The third installment of \$1,500,000 is due three (3) business days after the final approval hearing date. If any amount of the Cash Payment is not paid into the escrow account within the time required by this Paragraph, Defendants will pay interest on the unpaid amount at 7% per year from the date the payment was due until the date that the payment is made. The Cash Payment is designated for Plaintiffs' Counsel's attorney fees and expenses, class representative service awards, and settlement administration expenses. Plaintiffs' request for attorney fees and expenses, class representative service awards, and settlement administration expenses shall be subject to Court approval.

2. **Custody of Settlement Fund.** The Settlement Fund held in the Escrow Account will be deemed to be in the custody of the Court and will remain subject to the jurisdiction of the Court and will be administered in accordance with the terms of this Settlement Agreement and the Orders of the Court. Except as provided herein, the Settlement Fund will not be released from the Escrow Account until the Final Order becomes Non-Appealable or the Settlement is terminated in accordance with this Agreement.

3. **Management of the Settlement Fund.** Until three (3) business days after entry of the Final Order if there are no objections from Class Members, or the Final Order becomes Non-Appealable if there are one or more objections from Class Members, or until the Settlement is terminated in accordance with this Agreement, the Settlement Fund will be held in the Escrow Account established by Class Counsel, for which an Escrow Agent will act pursuant to the terms of the respective Escrow Agreement or as ordered by the Court. Class Counsel will have the sole right and duty to manage the Settlement Fund in compliance with the terms of the

Final Order. At no time will Defendants have any duty or authority to hold, manage, or invest any portion of the Settlement Fund. Any earnings or interest earned by the Settlement Fund will become part of the Settlement Fund.

4. **Qualified Settlement Fund.** The Settlement Fund is intended by the Settling Parties to be a “qualified settlement fund” for federal income tax purposes under Treas. Reg. § 1.468B-1 at the earliest date possible.

5. **Reduction of Accrued Interest on Seller Notes.** Upon the Final Order becoming Non-Appealable, the accrued interest on the Seller Notes held by the Selling Shareholder Defendants shall be reduced by a total amount of \$15,000,000.00.

6. **Warrant Reduction.** Upon the Final Order becoming Non-Appealable, the number of Warrants issued by Triad to the Selling Shareholder Defendants will be reduced by 150,000 warrants. No new warrants will be issued to the Selling Shareholder Defendants within twenty-four (24) months of the entry of the Final Order.

7. **Warrant Strike Price.** Upon the Final Order becoming Non-Appealable, the strike price of the Selling Shareholder Defendants’ Warrants will be increased to \$9.45 to offset the increase in equity value associated with the debt reduction in Section III.5 based on the Stout exhibits attached hereto as Exhibit A. Exhibit A shall be kept confidential in accordance with the Confidentiality Order and shall be filed under seal with the Court.

8. **Payments to Class Members Whose Shares Were Repurchased on or Before 12/31/2022.** Within forty-five (45) days of the Final Order becoming Non-Appealable, Defendants shall pay to each Class Member who has already had vested shares repurchased on or before December 31, 2022 an additional \$8.20 per share for each Triad share that he or she sold to the Company and/or ESOP. The Selling Shareholder Defendants shall provide the necessary

funds to the ESOP administrator and the ESOP administrator will send checks to these Class Members. The ESOP administrator shall be responsible for any tax withholding and will report the payments on a Form 1099.

9. **Effectuating Documents.** Within fourteen (14) days of the Final Order becoming Non-Appealable, Defendants shall provide Class Counsel with copies of the documents effectuating the reduction of the accrued interest on the Seller Notes, Warrant reduction, increase in the Warrant strike price, and additional payments to terminated participant Class Members.

10. **Triad Not Paying Cash Payment Amount.** Triad will neither pay the Cash Payment Amount nor provide an indemnification to the Defendants for the Cash Payment Amount. Triad will also not make the payment required in Section III.8 above (Payments of \$8.20 per share to each terminated participant for each share that he or she sold to Triad or the ESOP on or before 12/31/2022). Defendants warrant and represent that neither Triad nor the ESOP will pay the Cash Payment Amount or indemnify or reimburse Defendants for any portion of the Cash Payment Amount or payments to terminated participants.

11. **Defendants' Representation and Warranty Regarding 2022 Annual ESOP Valuation.** Defendants represent and warrant that the exhibits attached as Exhibit A accurately state the updated conclusion of value for the 12/31/2022 annual ESOP valuation. Defendants further represent and warrant that the calculated equity value impact of the \$15 million accrued interest reduction to be \$5.32 per share as of 12/31/2022.

IV. DISTRIBUTIONS FROM THE SETTLEMENT FUND

1. **Expenses Before the Effective Date.** Until the Final Order becomes Non-Appealable or the Settlement is terminated in accordance with this Agreement, Class Counsel will be authorized to pay from the Settlement Fund (a) any actual or estimated taxes on any

income earned on the Settlement Fund and, (b) all costs and expenses related to the preparation of such tax filings or payments. Any dispute regarding the reasonableness of any expense incurred, paid, or owing will be adjudicated by the Court, but in no event will the Settling Parties cause or allow the Settlement Fund to fail to make a tax payment in a timely manner.

2. **Attorneys' Fees, Expenses/Costs and Service Awards.** Pursuant to any deadline set by the Court, Class Counsel may file any motion with the Court requesting the payment of attorneys' fees, reimbursement of litigation expenses and costs, and/or service awards to the Class Representatives out of the Settlement Fund. Any amounts awarded by the Court will be paid from the Settlement Fund as directed by Class Counsel.

3. **Tax Reserve After the Effective Date:** Upon the Final Order becoming Non-Appealable, Class Counsel will be authorized to establish a reserve from the Settlement Fund to pay any taxes that are or will be owed (but not yet due) and for expenses related to payment of taxes or filing of tax returns or to the extent that there are other costs of administration of the Settlement.

4. **Costs and Expenses Related to Administration & Distribution.** Defendants will bear any costs and expenses of administration of the Settlement other than Class Notice, including any costs relating to distribution of payments to terminated participant Class Members who had Triad shares repurchased prior to 12/31/2022 and the implementation of the other Settlement consideration terms. No Defendant shall charge the ESOP or any Class Member any fees or expenses for collecting and providing data necessary to provide Class Notice and/or administer the Settlement.

5. **Tax Liability.** The Settling Parties will not have any liability or responsibility for the payment of any Taxes incurred by or with respect to the Settlement Fund, and any such Taxes will be paid out of the Settlement Fund.

V. SETTLEMENT ADMINISTRATION

1. **Appointment of Settlement Administrator.** Class Counsel will select the Settlement Administrator subject to Court approval to administer the Settlement and will report to Class Counsel and the Court. Any Settlement Administrator will have experience providing notice to Class Members in employment or employee benefit class action settlements.

2. **Settlement Administrator's Responsibilities.** The Settlement Administrator will undertake the following tasks to administer this Settlement consistent with the terms of this Settlement and the Orders of the Court and such other procedures required by the Court or as jointly directed by Class Counsel and Defense Counsel:

- (a) Within fourteen (14) days of the entry of the Preliminary Approval Order, send the Class Notice Packet via U.S. Postal mail and/or email to the Class Members in accordance with this Settlement Agreement and any order of the Court and undertake to trace and re-mail all undeliverable Notice Packets or other reasonable steps to locate missing Class Members;
- (b) Provide Counsel for the Settling Parties with copies of any objections to the Settlement (to the extent such objections are not filed with the Court);
- (c) Respond to questions from Class members or refer Class Members to Class Counsel for responses;
- (d) Maintain and staff a toll-free phone number and a web site until at least six (6) months after the date of the Final Order;
- (e) File with the Court a declaration confirming compliance with the

procedures approved by the Court for providing notice to the Class;

(f) Monitor the Qualified Settlement Fund and file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitations the returns described in Treas. Reg. Section 1.468B-2(k)); and

(g) Any other responsibilities set forth in this Agreement; and any other responsibilities agreed to by the Settling Parties related to administration of the Settlement and consistent with the orders of the Court or any other responsibilities ordered by the Court.

3. **Prohibition on Assessment of Expenses to the Class.** The accounts of the Class Members in the Triad ESOP will not be charged or assessed any amount by Defendants (or their service providers) for any of the following: (1) payment of the Cash Payment Amount, or (2) expenses related to administration or implementation of this Settlement.

4. **Tax Treatment of the ESOP.** Defendants will use their best efforts to ensure that the Settlement will not adversely affect the tax-qualified status of the ESOP. Defendants will be responsible for all costs associated with any steps that they undertake to ensure the continued tax qualification of the ESOP with respect to the Settlement.

VI. PAYMENT OF FEES, SERVICE AWARDS, AND REIMBURSEMENT OF COSTS AND EXPENSES

1. **Attorneys' Fees & Expenses from the Settlement Fund.** Class Counsel will be entitled to file a motion on behalf of Plaintiffs seeking an award of attorneys' fees and reimbursement of expenses and costs from the Settlement Fund. On or before the deadline set in the Preliminary Approval Order, Class Counsel will file a motion with the Court for an award from the Settlement Fund of: (a) attorney's fees (the "Fee Award"), (b) service awards for Plaintiffs ("Service Awards"), and (c) reimbursement of litigation costs and expenses (the

“Expense Award”). Any Fee Award, Expense Award or Service Award will be paid solely from the Settlement Fund and is subject to the Court’s approval at the Final Approval Hearing.

2. **Payment of Fees/Expenses to Class Counsel.** All amounts to be paid pursuant to this Section will be paid into an account designated by Class Counsel to be distributed as directed by Class Counsel. Neither Defendants nor their Insurers will have any input as to the division of such fees and expenses among Plaintiffs’ Counsel.

3. **Payment of Reasonable Settlement Administration Expenses and Taxes.** The Settlement Administrator is authorized to pay all reasonable expenses of administering the Settlement from the Settlement Fund. The Class is responsible for paying all taxes and tax-related expenses incurred in connection with the taxation of the income of the Settlement Fund, and all such taxes and expenses shall be paid out of the Settlement Fund.

4. **Timing of Payment of Attorneys’ Fees, Reimbursement of Expenses and Service Awards.** In the event that this Court grants any request for attorneys’ fees, reimbursement of expenses or a Service Award as part of or at the same time as Final Judgment, disbursement of such payments may be made as follows:

(a) Subject to approval by the Court, if there are no objections to the Settlement or Class Counsel’s request for attorney fees or expenses, Class Counsel will be entitled to take a distribution from the Settlement Fund of the Fee Award and the Expense Award and the Service Awards awarded by the Court three (3) business days after the entry of the Court’s order(s) awarding such fees and expenses.

(b) Subject to approval by the Court, if there are objections to the Settlement or Class Counsel’s request for attorney fees, costs and expenses, Service Awards, or a portion thereof, Class Counsel will be entitled to take a distribution from the Settlement

Fund of the Fee Award, the Expense Award and Service Awards awarded by the Court of such amount of attorneys' fees, expenses/costs, and/or Service Awards as to which there is no appeal thirty-five (35) days after entry of the Final Order and the balance upon the Final Order becoming Non-Appealable.

5. **Non-Materiality of Award of Attorneys' Fees, Reimbursement of Expenses or Service Award to Settlement.** In the event that this Court refuses to award attorneys' fees, allow reimbursement of expenses/costs or permit a service award, in whole or in part, or any such award is rejected or modified on appeal, such rejection or modification will not constitute a material modification of this Settlement Agreement, will not void this Settlement Agreement and will not provide a basis for any party to withdraw from this Settlement Agreement.

6. **No Reversion of Cash Payment Amount.** No portion of the Cash Payment Amount will revert to Defendants or their Insurers.

7. **Defendants' Attorneys' Fees & Expenses Related to Settlement.** No amounts will be charged by the Triad Defendants to any participants in the ESOP in connection with the administration or distribution of the proceeds of the Settlement to members of the Class. No Defendant shall charge the ESOP or any participants any fees or expenses for collecting and providing data necessary to provide Class Notice and/or administer the Settlement.

VII. NO ADMISSION OF WRONGDOING

1. This Settlement Agreement embodies a compromise of disputed claims and nothing in the Settlement Agreement will be interpreted or deemed to constitute any finding of wrongdoing by Defendants or give rise to any inference of liability in this or any other proceeding. This Settlement Agreement will not be offered or received against Defendants as any admission by any such party with respect to the truth of any fact alleged by Plaintiffs or the

validity of any claim that had been or could have been asserted in the Action or in any litigation or of any liability, negligence, fault, or wrongdoing of any such party.

2. Neither this Settlement Agreement nor the Term Sheet is, or may be deemed to be, or may be used as an admission of, or evidence of any infirmity in the Claims asserted by Plaintiffs and Class Members.

3. This Settlement Agreement may be used in such proceedings as may be necessary to consummate or enforce this Settlement Agreement or the Final Order, and any Party may file this Settlement Agreement and/or the Final Order in any action that may be brought against it or any of the Released Parties to support a claim, a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim, or in any action that may be brought to enforce any claim assigned pursuant to this Settlement Agreement. Defendants may use and disclose this Settlement Agreement in connection with any proceeding or claim involving any of their insurers or any governmental agency with respect to the ESOP.

VIII. PRELIMINARY AND FINAL APPROVAL ORDERS

1. **Preliminary Approval Order.** Class Counsel, on behalf of the Class, will move the Court to enter the Preliminary Approval Order (“Preliminary Approval Motion”). The Preliminary Approval Motion will seek an Order in a form agreed upon by the Settling Parties which will provide for, among other things:

(a) Approval of the Settlement Class.

(b) Preliminary Approval of the Settlement as set forth in this

Settlement Agreement, subject to further hearing and determination under Fed. R. Civ. P. 23(e);

(c) Approval of the form of Class Notice and the manner of distribution and publication which is consistent with this Agreement, Rule 23 and the requirements of due process;

(d) Set deadlines by which all objections to the Settlement must be made, any exclusions (if any) must be made, or any submissions to the Settlement Administrator regarding their ESOP account data must be made;

(e) Schedule a hearing date at least one hundred (100) days from the date on which the Preliminary Approval Motion is filed for the Court to determine whether the Settlement Agreement should be finally approved as fair, reasonable and adequate, and whether an Order finally approving the Settlement Agreement should be entered (“Final Approval Hearing”);

(f) Provide that no objection to the Settlement Agreement will be heard and no papers submitted in support of said objection will be received and considered by the Court at the Final Approval Hearing unless the objection and reasons therefore, along with copies of any supporting papers, are filed with the Clerk of the Court and served on the Parties at least twenty-one (21) days before the Fairness Hearing;

(g) Provide that the Final Approval Hearing may be continued from time to time by Order of the Court if necessary, and without further notice to the Class;

(h) Provide a deadline for filing of a Final Approval Motion and for Class Counsel’s application for Fee Award, Service Awards, and Expense Award; and

(i) Require Defendants to produce the Class Data required pursuant to Section II.6 of this Agreement.

2. **Final Approval of the Settlement.** If the Court preliminarily approves this Settlement, and if Class Counsel has not exercised its right to withdraw pursuant to Paragraph IX.2, Class Counsel will file a Final Approval Motion. Defendants will either join in or not oppose the Final Approval Motion. The Final Approval Motion will seek entry of a proposed Final Order in a form to be agreed-upon by the Settling Parties and will, among other things:

- (a) Order Final Approval of the Settlement set forth in this Settlement Agreement;
- (b) Adjudge that the Settlement is fair, reasonable and adequate to the Class pursuant to Rule 23(e);
- (c) Dismiss the Action against Defendants with prejudice;
- (d) Adjudge that Plaintiffs and the Class will be deemed conclusively to have released and waived any and all Settled Class Claims against the Released Parties as provided in this Settlement Agreement;
- (e) Bar and permanently enjoin the Parties and the Class from prosecuting any and all Settled Claims, as provided in this Settlement Agreement, against any Party for whom they have released claims;
- (f) Determine Class Counsel's request(s) for Fee Award, Service Awards, and Expense Award;
- (g) Retain exclusive jurisdiction, without affecting the finality of the Order entered, with regard to: (i) implementation of this Settlement Agreement; (ii)

disposition of the Settlement Fund; and (iii) enforcement and administration of this Settlement Agreement, including the release provisions thereof; and

(h) Find that notice to the appropriate state and federal officials has been provided as required by CAFA and that Defendants have satisfied their obligations pursuant to 28 U.S.C. § 1715.

IX. CONDITIONS OF SETTLEMENT

1. **Court Approval.** Each of the following is an express condition of Settlement: (a) the Court enters a Preliminary Approval Order; (b) the Court enters the Final Order.

2. **Independent Fiduciary Approval.** The Settlement is subject to approval by an Independent Fiduciary consistent with Prohibited Transaction Exemption 2003-39.

(a) Defendants will propose an Independent Fiduciary to Class Counsel for approval, which shall not be unreasonably withheld.

(b) The Independent Fiduciary's fee shall be split evenly between Defendants and the Class subject to a reasonable cap to be agreed upon by all Parties.

(c) Within forty-five (45) days after the Court enters a Preliminary Approval Order, the Independent Fiduciary will issue its final opinion. If the Independent Fiduciary issues an opinion that does not approve all aspects of this Settlement Agreement, the Parties shall meet and confer within seven (7) days of receipt of the Independent Fiduciary's opinion to try to resolve the issues raised by the Independent Fiduciary. Defendants or Class Counsel will have the right, but not the obligation, to withdraw from the Settlement Agreement so long as such right is exercised within fourteen (14) days of receipt of the Independent Fiduciary's opinion. If either party exercises such right under this provision, then the entire

Settlement Agreement will be void and the parties will revert to their respective positions in the Litigation as of February 8, 2023.

X. ISSUANCE OF NOTICE UNDER THE CLASS ACTION FAIRNESS ACT

1. **CAFA Notice.** Pursuant to CAFA, Defendants, at their own expense, will prepare and provide the CAFA Notice, including the notices to the United States Department of Justice, the United States Department of Labor, and to the Attorney Generals of all states in which the Class Members reside, as specified by 28 U.S.C. § 1715, within ten (10) days of the filing of this Settlement Agreement with the District Court.

2. **CAFA Notice Provided to Class Counsel.** Defendants will provide Class Counsel with a copy of the CAFA Notice and materials that the Defendants sent to the Appropriate Officials within three (3) business days after such notices have been sent. The CAFA Notice and materials will be provided automatically and without further request by Class Counsel.

XI. RELEASES

Upon the Final Order becoming Non-Appealable, and provided that each Party has performed all of the respective obligations under this Settlement Agreement to be performed on or prior to such date by such Party:

1. **Release of the Released Parties by the Class.** In consideration for the Settlement Consideration and other consideration described herein, Plaintiffs and the Class, their representatives, spouses, heirs, beneficiaries, dependents and/or assigns will dismiss with prejudice their claims asserted in the Complaint against Defendants and will forever release Defendants and Defendants Related Parties from all claims Plaintiffs and the Class, their representatives, spouses, heirs, beneficiaries, dependents, and/or assigns currently have or may have, of any nature whatsoever, known or unknown, at law in equity, or otherwise, relating to or

arising out of the Litigation, the Complaint or based upon the same factual predicate alleged in the Complaint, including but not limited to any claims for attorneys' fees, costs, expenses or sanctions, whether the Claim arises under ERISA or any federal law, state law, foreign law, common law doctrine, rule, regulation, or otherwise. Notwithstanding the foregoing, Plaintiffs and the Class are not releasing (A) any claims to enforce the Settlement Agreement, including the express warranties and covenants in the Settlement Agreement; and (B) individual claims for benefits pursuant to the ESOP Plan documents.

2. **Release of Plaintiffs and the Class by Defendants.** Defendants will forever release Plaintiffs, each Class Member, and Class Counsel from (a) each and every claim that could have been asserted in the Litigation related to the filing of the Litigation including any claims for attorneys' fees, costs, expenses or sanctions, that relate to the filing, commencement, prosecution or settlement of the Litigation whether such Claim arises under ERISA or any federal law, state law, foreign law, common law doctrine, rule, regulation or otherwise; and (b) any claims challenging the correctness of any Class Member's accounts/benefits relating to the benefit provided by this Settlement Agreement.

XII. EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION

1. **Termination Notice.** In the event that the Court refuses to grant Preliminary Approval or enter the Final Approval Order, or approval of the Settlement is reversed on appeal or materially altered, either Class Counsel or Defendants may void this Settlement by providing written notice to counsel for all other Parties to the Settlement within fourteen days (14) days after the event prompting the right to terminate ("Termination Notice"). In the event that one of the conditions of this Settlement set forth in Section IX is not met and the Final Order has not become Non-Appealable, the Named Plaintiffs and Defendants may void the Settlement within the time period specified herein.

2. **Effectiveness of Termination Notice.** The Termination Notice will become effective to void the Settlement Agreement only if and after the Settling Parties have failed to reach a written agreement within thirty (30) days of the event triggering the Termination Notice to modify this Settlement Agreement to resolve the issue.

3. **Effect of Termination.** In the event that the Court refuses to grant Preliminary Approval or enter the Final Approval Order, or such approval is reversed on appeal and one of the Settling Parties exercises its right to terminate the Settlement Agreement within the time specified above, or any other circumstance which causes the Final Order to not become Non-Appealable and the Parties have not entered into a written modification of the Settlement Agreement within thirty (30) days of such occurrence: (a) the monies in the Escrow Account (including any interest or earnings accrued while in Escrow, but less any amount paid or owing for taxes or other expenses reasonably incurred by Class Counsel or the Settlement Administrator while in Escrow in connection with administering the Settlement Agreement, including any amounts necessary to prepare tax returns, tax liabilities or monies paid or owing to the Settlement Administrator) will be returned to each payor, pro rata according to the amount of its/his respective payment(s) into the Settlement Fund upon written request within ten (10) business days of such written request; (b) the Settling Parties will not be released from the claims asserted in this Litigation; (c) both this Agreement and the Term Sheet will be void *ab initio*; and (d) the Parties' positions, rights and responsibilities will be deemed to have reverted to their respective status in this Action as of February 8, 2023, and, except as may otherwise be expressly provided herein, the Settling Parties will proceed in all respects as if this Settlement Agreement and the Term Sheet never existed.

4. Class Counsel, the Settlement Administrator, escrow agent, or any other party alleging that they have paid “reasonable expenses” for the purposes of settlement administration which are not returnable to the any payor as set forth in subsection (a) herein shall be required to provide any and all documents demonstrating each “reasonable expense” including but not limited to the reason for the expense, the date the expense was incurred, the amount of the expense, which shall include any hourly bills kept in the regular course of business by Class Counsel, the Settlement Administrator, escrow agent, or any other party, to Defendants within seven (7) business days following a written request by Defendants for such information. To the extent there is a disagreement over whether an expense was “reasonable” and/or solely for the purpose of settlement administration, the Parties shall be required to submit the dispute to the Court presiding over the matter as of February 8, 2023, who shall make a final and binding decision on whether the expense should be returned to the payor.

XIII. MISCELLANEOUS PROVISIONS

1. **Joint Press Release.** The Parties will issue a mutually agreed press release. The parties will not issue any press release regarding the Settlement other than the mutually agreed press release. Other than the mutually agreed press release or communications jointly approved by all Parties or the Court, the Parties and their counsel will not initiate any communications designed to publicize the Settlement with third parties other than Class Members. Nothing in this Agreement will prevent Class Counsel from posting public documents filed with the Court on a website in order to provide information to Class Members or otherwise limit Class Counsel’s communications with Class Members.

2. **Tax Advice Not Provided.** No opinion or advice concerning the Tax consequences of the Settlement Agreement has been given or will be given by counsel involved in the Action to the Class, nor is any representation or warranty in this regard made by virtue of

this Settlement Agreement. The Tax obligations of the Class and the determination thereof are the sole responsibility of each Class Member, and it is understood that the Tax consequences may vary depending on the particular circumstances of each Class Member.

3. **Binding Effect.** This Settlement Agreement will be binding upon, and inure to the benefit of, the successors, assigns, executors, administrators, affiliates, heirs and legal representatives of the Settling Parties and Released Parties, provided, however, that no assignment by any Settling Party will operate to relieve such party of its obligations hereunder.

4. **Good Faith.** The Settling Parties: (a) acknowledge that it is their intent to consummate this Settlement; (b) agree to exercise their best efforts and to act in good faith to cooperate to the extent necessary to effectuate and implement all terms and conditions of this Settlement Agreement; and (c) agree to exercise their best efforts and to act in good faith to cooperate to the extent necessary to obtain the fullest possible participation of all Class Members in any Settlement. The Settling Parties and their counsel agree to cooperate fully with one another in seeking entry of the Preliminary Approval Order and final approval of the Settlement. The Settling Parties also agree to promptly execute and/or provide such documentation as may be reasonably required to obtain preliminary and final approval of this Settlement.

5. **Exhibits.** Any exhibits attached hereto and identified herein are hereby incorporated by reference as though fully set forth herein.

6. **Modification.** This Settlement Agreement may be amended or modified only by written instrument signed by Class Counsel on behalf of Plaintiffs and the Class and by Defense Counsel on behalf of Defendants or their respective successors in interest.

7. **Representations.** This Settlement Agreement constitutes the entire agreement among the Settling Parties, and no representations, warranties or inducements have

been made to any party concerning this Settlement Agreement or the Term Sheet, other than the representations, warranties, and covenants contained and memorialized in such documents. In the event of any conflicts between this Settlement Agreement, the Term Sheet, or any other document, the Settling Parties agree that this Settlement Agreement will control.

8. **Authorization.** Each signatory to this Settlement Agreement represents that he or she is authorized to enter into this Settlement Agreement on behalf of the respective parties he or she represents.

9. **Counterparts.** This Settlement Agreement may be executed in one or more original, photocopied, or facsimile counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument.

10. **Governing Law.** All terms of this Settlement Agreement will be governed by and interpreted according to the laws of the State of Illinois without regard to its rules of conflicts of law and in accordance with the laws of the United States.

11. **Headings.** The headings in this Settlement Agreement are used for purposes of convenience and ease of reference only and are not meant to have any legal effect, nor are they intended to influence the construction of this Settlement Agreement in any way.

12. **Waiver.** The waiver by one party of any breach of this Settlement Agreement by any other party will not be deemed a waiver of any other breach of this Settlement Agreement. The provisions of this Settlement Agreement may not be waived except by a writing signed by the affected party, or counsel for that party, or orally on the record in court proceedings.

13. **Continuing Jurisdiction.** The Settling Parties agree to submit to the jurisdiction of the Court and will be bound by the terms of this Settlement Agreement, including,

without limitation, disputes related to implementing and enforcing the Settlement embodied in this Settlement Agreement. Any and all disputes related to claims that are not satisfactorily resolved by the Settling Parties will be submitted to the Court for final resolution. The Final Order will provide that the Court will have continuing jurisdiction over this Settlement.

14. **Enforcement of this Agreement.** In the event that any Party to this Agreement believes that another Party to this Agreement has breached the terms of this Agreement, that Party will notify the alleged breaching Party and Counsel in writing setting forth the nature of the breach and the requested method to cure the breach at least 14 days prior to filing any litigation to enforce the terms of the Settlement Agreement (and if the allegedly breaching party is a Class Member regardless of whether that Class Member has separate counsel, Defendants must also notify Class Counsel in writing). In the event that the allegedly breaching Party fails to cure the alleged breach as set forth in the written notification after fourteen (14) days, the other Party may then file an action to enforce the Settlement Agreement. A Party who achieves success on the merits in demonstrating a breach occurred, that the breach could have been reasonably cured within fourteen (14) days (or another time set forth in the written notification), and that the breach was not cured within that time, will be entitled to attorneys' fees and expenses consistent with the standards of ERISA § 502(g)(1).

15. **No Party Is the Drafter.** The Settlement Agreement is deemed to have been drafted by all Settling Parties hereto, as a result of arm's-length negotiations among the Settling Parties. Whereas all Settling Parties have contributed substantially and materially to this Settlement Agreement, it will not be construed more strictly against one party than another.

16. **Extensions.** The Settling Parties reserve the right, subject to the Court's approval, to request any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.

17. **Evidentiary Effect.** Neither this Settlement Agreement nor the Settlement, nor any negotiation, nor act performed, nor document executed, nor proceedings held pursuant to or in forbearance of this Settlement Agreement or the Settlement, even if this Settlement Agreement is cancelled or terminated: (a) is, or may be deemed to be, or may be used as an admission of, or evidence of the validity of any Settled Claims, or of any wrongdoing, negligence, misrepresentation, violation or liability of any Settling Party; (b) is, or may be deemed to be, or may be used as an admission of, or evidence of any infirmity in the Complaint or Claims asserted by the Class; or (c) is, may be deemed to be, or may be used as an admission of, or evidence of, any fault or omission of any Settling Party in any civil, criminal or administrative proceeding in any court, administrative agency, or tribunal, including in this Action. However, this Settlement Agreement may be used in such proceedings as may be necessary to consummate or enforce this Settlement Agreement, the Settlement, or the Final Order; and any Settling Party may file this Settlement Agreement and/or the Final Order in any action to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

18. **Final and Complete Resolution.** The Settling Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to this Action. The Settlement compromises claims which are contested and will not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling

Parties agree that the amount paid to the Settlement Fund and the other terms of the Settlement Agreement were negotiated in good faith at arm's-length by the Settling Parties and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

19. **Duplicative Provisions.** In interpreting this Settlement Agreement, duplicative and/or overlapping release provisions will not be presumed or construed to be intended to release separate claims or have different meanings. Neither prior versions of this Settlement Agreement or the Term Sheet, nor the negotiating history of these terms will be used to aid in any interpretation or construction of those terms.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby have caused this Settlement Agreement to be executed by them or their duly authorized counsel, on the dates set forth below.

[Signature page follows]

FOR PLAINTIFFS, CLASS REPRESENTATIVES AND ON BEHALF OF THE CLASS

Dated: April 19, 2023

COHEN MILSTEIN SELLERS & TOLL PLLC

Michelle C. Yau (admitted pro hac vice)

Daniel R. Sutter (admitted pro hac vice)

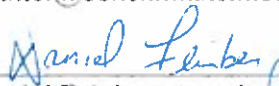
Caroline Bressman (admitted pro hac vice)

1100 New York Ave. NW • Fifth Floor Washington, DC 20005

(202) 408-4600

myau@cohenmilstein.com

dsutter@cohenmilstein.com


Daniel Feinberg (*pro hac vice*)

FEINBERG, JACKSON, WORTHMAN & WASOW LLP

2030 Addison Street, Suite 500

Berkeley, CA 94704

Tel: (510) 269-7998

Fax: (510) 269-7994

Email: dan@feinbergjackson.com

Attorneys for Plaintiffs & the Class

FOR DEFENDANTS

Dated: April 19, 2023


FORDHARRISON, LLP

Matthew D. Grabell (Illinois Bar: 6312929)

271 -17th Street, NW, Suite 1900

Atlanta, GA 30363

mgrabell@fordharrison.com

Telephone: (404) 888-3820

Benjamin P. Fryer (admitted pro hac vice)

6000 Fairview Road, Suite 1200

Charlotte, NC 28210

bfryer@fordharrison.com

Telephone: (980) 282-1900

Facsimile: (980) 282-1949

Attorneys for Triad Defendants

MOORE & VAN ALLEN PLLC

Mark A. Nebrig (admitted pro hac vice)

Joseph Piligian (admitted pro hac vice)

FOR PLAINTIFFS, CLASS REPRESENTATIVES AND ON BEHALF OF THE CLASS

Dated: April __, 2023

COHEN MILSTEIN SELLERS & TOLL PLLC

Michelle C. Yau (admitted pro hac vice)

Daniel R. Sutter (admitted pro hac vice)

Caroline Bressman (admitted pro hac vice)

1100 New York Ave. NW • Fifth Floor Washington, DC 20005

(202) 408-4600

myau@cohenmilstein.com

dsutter@cohenmilstein.com

Daniel Feinberg (*pro hac vice*)

FEINBERG, JACKSON, WORTHMAN & WASOW LLP

2030 Addison Street, Suite 500

Berkeley, CA 94704

Tel: (510) 269-7998

Fax: (510) 269-7994

Email: dan@feinbergjackson.com

Attorneys for Plaintiffs & the Class

FOR DEFENDANTS

Dated: April __, 2023

FORDHARRISON, LLP

Matthew D. Grabell (Illinois Bar: 6312929)

271 – 17th Street, NW, Suite 1900

Atlanta, GA 30363

mgrabell@fordharrison.com

Telephone: (404) 888-3820

Benjamin P. Fryer (admitted pro hac vice)

6000 Fairview Road, Suite 1200

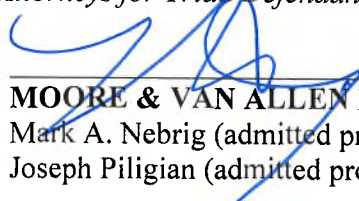
Charlotte, NC 28210

bfryer@fordharrison.com

Telephone: (980) 282-1900

Facsimile: (980) 282-1949

Attorneys for Triad Defendants



MOORE & VAN ALLEN PLLC

Mark A. Nebrig (admitted pro hac vice)

Joseph Piligian (admitted pro hac vice)

100 North Tryon Street, Suite 4700
Charlotte, North Carolina 28205
Telephone: (704) 331-3602
Facsimile: (704) 339-5974
marknebrig@mvalaw.com
joepiligian@mvalaw.com
Attorneys for Defendant GreatBanc Trust Company