

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

IN THE MATTER OF THE REHABILITATION  
OF TRIAD GUARANTY INSURANCE  
CORPORATION



NO. 12 CH 43895

FILED - CH  
CLERK OF THE CIRCUIT COURT  
CHANCERY DIVISION  
2018 JAN 30 PM 2:31  
DOROTHY BROWN

NOTICE OF MOTION

To: See Attached Service List

On FEB 15, 2018, at 10:00 a.m. or as soon thereafter as counsel  
may be heard, I shall appear before the Honorable Raymond W. Mitchell or any Judge sitting in that  
Judge's stead, in the courtroom usually occupied by him/her, located in room 2601 of the Richard J. Daley Center,  
50 W. Washington Street, Chicago, Illinois, and present  
the attached petition at which time you may appear.

Name Rory E. Hoskins Atty. No. 16819  
Address 222 Merchandise Mart Plaza, Suite 960 Attorney for Plaintiff/Rehabilitator  
Telephone 312-836-9500 City/Zip Chicago, IL 60654

PROOF OF SERVICE BY DELIVERY

I, Richard C. Abron, the non attorney\* certify that on the 30<sup>th</sup> day of  
January, 2018, I served this notice by delivering a copy personally to each person to whom it is directed.  
(\*strike one)

Under penalties as provided by law pursuant to 735 ILCS 5/1-109  
I certify that the statements set forth herein are true and correct.

Date January 30, 2018  
  
Signature/Certification

PROOF OF SERVICE BY MAIL

I, \_\_\_\_\_, the attorney/non attorney\* certify that I served this notice by mailing  
(\*strike one)  
a copy to \_\_\_\_\_ at \_\_\_\_\_  
(address on envelope)  
and depositing the same in the U.S. Mail at \_\_\_\_\_  
(place of mailing)  
at, or before, \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, with proper postage prepaid.

Date \_\_\_\_\_  
Signature/Certification

PROOF ELECTRONIC OF SERVICE (WHERE PERMISSIBLE)

I, \_\_\_\_\_ the attorney/non attorney\* certify that on the \_\_\_\_\_ day of \_\_\_\_\_  
I served this notice electronically \_\_\_\_\_ via the Clerk's Office E-Filing system, or \_\_\_\_\_ by telefax transmission  
(\_\_\_\_\_ pages) with consent of the recipient where permissible under Ill. Sup Ct. R.11, at fax no. \_\_\_\_\_, at \_\_\_\_\_ am/pm from 312-836-1944  
Date \_\_\_\_\_

NOTE: If more than one person served by mail, additional proof of service may be on the reverse side.

**SERVICE LIST**

**TRIAD GUARANTY INSURANCE CORPORATION**

**(Case No. 12 CH 43895)**

**COURTESY COPY TO:**

The Honorable Judge Raymond T. Mitchell  
Room 2601  
The Richard J. Daley Center  
50 West Washington Street  
Chicago, Illinois 60602

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

**IN THE MATTER OF THE REHABILITATION OF                    )  
TRIAD GUARANTY INSURANCE CORPORATION                ) Case No.: 12 CH 43895  
AND TRIAD GUARANTY ASSURANCE CORPORATION        )**

**PETITION FOR APPROVAL OF SETTLEMENT  
AGREEMENT AND AMENDED AND RESTATED  
CONSOLIDATED TAX ALLOCATION AGREEMENT**

JENNIFER HAMMER, Director of the Illinois Department of Insurance (the “Director”), in her capacity as statutory and court-affirmed rehabilitator (the “Rehabilitator”) of Triad Guaranty Insurance Corporation (“TGIC”) and Triad Guaranty Assurance Corporation (“TGAC”), by and through her attorneys, petitions this Honorable Court for the entry of an Order approving a settlement agreement and resulting amended tax allocation agreement, and in support thereof states as follows:

1. Petitioner is the statutory and court-affirmed Rehabilitator of TGIC and TGAC pursuant to Article XIII, 215 ILCS 5/187 *et seq.*, (“Article XIII”) of the Illinois Insurance Code, 215 ILCS 5/1 *et seq.*, (the “Code”) and an Order of Rehabilitation entered by this Court on December 12, 2012 (the “Rehabilitation Order”). By virtue of the entry of the Rehabilitation Order and the applicable provisions of Article XIII, the Director, acting solely as Rehabilitator, immediately took possession and control of the property, assets, business and affairs of TGIC and TGAC, and has taken such actions as the condition of TGIC, TGAC, the interests of TGIC’s policyholders, TGIC’s sole shareholder (Triad Guaranty Inc. (“TGI”)), TGIC’s and TGAC’s creditors, and the public require.

2. TGI filed a voluntary petition for bankruptcy under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) (Case No. 13-11452 (MFW)) on June 3, 2013.

3. On October 29, 2013, this Court entered the “Plan of Rehabilitation for Triad Guaranty Insurance Corporation” (the “Plan of Rehabilitation”).

4. On July 12, 2017, TGI and Wolfgang Holdings, LLC (“Wolfgang”) filed their Joint Plan of Reorganization of Triad Guaranty Inc. and Wolfgang Holdings LLC pursuant to Chapter 11 of the United States Bankruptcy Code, and on September 5, 2017 TGI and Wolfgang filed their Amended Joint Plan of Reorganization of Triad Guaranty Inc. and Wolfgang Holdings LLC (as amended, the “TGI Plan”).

5. The Rehabilitator filed an objection to the TGI Plan on November, 28, 2017 in order to preserve TGIC and TGAC’s interests, for federal income tax purposes, in approximately \$1,000,000,000 in net operating loss carryforwards (“NOLs”) that they had incurred in prior years.

6. Subject to the approval of this Court, as required under Section 192(2)<sup>1</sup>, 215 ILCS 5/192(2), of the Code, with respect to TGAC, and by Section 4.03 of the Plan of Rehabilitation with respect to TGIC<sup>2</sup>, the Rehabilitator, TGI, and Wolfgang have agreed to the terms of a settlement agreement (the “Settlement Agreement”), a copy of which is attached hereto as Exhibit 1, that resolves the Rehabilitator’s objection to the TGI Plan.

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1. Section 192(2), *id.*, authorizes the Rehabilitator, subject to the approval of the court supervising the rehabilitation proceedings, to compromise claims having a value in excess of \$25,000.

2. Section 4.03 of the Plan of Rehabilitation provides that, “[t]he Rehabilitator in his discretion may compromise or settle, doubtful, disputed or uncollectible debts or claims owing to or by Triad, and shall report the same to the Supervising Court. Any debt or claim having a separate value of \$500,000 or more, which the Rehabilitator deems should be compromised or settled in the best interests of Triad and its Policyholders and creditors, shall be submitted to the Supervising Court for its approval.”

7. The Settlement Agreement provides, *inter alia*, that the parties will amend the Consolidated Tax Allocation Agreement entered into by and between TGI and TGIC in 1993, and as amended in 2004 to make TGAC a party thereto (the "TAA"). The purpose of the TAA is to permit the three companies to file a consolidated tax return under Section 1051 of the Internal Revenue Code and related regulations.

8. The key terms and conditions of the Settlement Agreement require the parties to revise the TAA by entering into an Amended and Restated Consolidated Tax Allocation Agreement (the "Amended TAA") by adding, *inter alia*, provisions to achieve the following:

- a) TGIC and TGAC, under any circumstances, retain sufficient NOLs for their use to eliminate to the fullest extent possible liability for federal or state tax;
- b) TGIC and TGAC shall have not less than \$800 million of currently available NOLs. Approximately \$200 million in NOLs should be available for use by TGI, provided that TGIC and TGAC do not need more than \$800 million of the currently available NOLs;
- c) To the extent that TGI shelters taxable income through the use of NOLs attributable to TGIC or TGAC, TGI shall pay TGIC or TGAC, in cash, an amount equal to 50% of the actual tax savings it derived from such NOL use;
- d) TGI's obligation to compensate TGIC or TGAC for actual tax savings derived from TGIC or TGAC NOLs also applies to any future subsidiaries acquired or formed by TGI;
- e) The Amended TAA will apply to tax years 2018, 2019, 2020, 2021, and 2022. Thereafter the agreement for use of NOLs will be subject to renegotiation;
- f) In the event that TGIC and TGAC are finally liquidated and cease to file further income tax returns, TGI and the remaining members of the consolidated tax group may use any remaining NOLs attributable to TGIC or TGAC; and
- g) TGI and Wolfgang agree to not take any actions in violation of the Rehabilitation Order and to submit to the jurisdiction of the Rehabilitation Court in connection with any disputes with TGIC or TGAC related to the Amended TAA or the Settlement Agreement.

A copy of the Amended TAA is attached hereto as Exhibit 2.

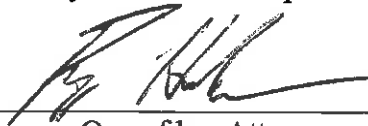
9. The Rehabilitator represents that the proposed Settlement Agreement, including the resultant Amended TAA, is in the best interests of TGIC and TGAC and their policyholders and creditors. The Settlement Agreement avoids further litigation and expense over the Rehabilitator's Objection to the TGI Plan, and, through the Amended TAA, preserves a sufficient quantity of NOLs to offset future income tax obligations of TGIC and TGAC while permitting TGIC and TGAC to share in any future tax savings created by use of the NOLs beyond what is required for TGIC and TGAC to offset their income tax liability.

WHEREFORE, the Rehabilitator requests that this Court enter an Order approving the (a) Settlement Agreement, and (b) Amended TAA, described herein.

Respectfully submitted,

Jennifer Hammer  
Director of the Illinois Department of Insurance,  
acting solely in her capacity as statutory and court-affirmed  
Rehabilitator of Triad Guaranty Insurance Corporation and  
Triad Guaranty Assurance Corporation

By: \_\_\_\_\_



One of her Attorneys

J. Kevin Baldwin  
Daniel A. Guberman  
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# EXHIBIT 1

## SETTLEMENT AGREEMENT

This is a Settlement Agreement ("Settlement Agreement") executed by Triad Guaranty Inc. ("TGI"), Wolfgang Holdings, LLC ("Wolfgang"), and Jennifer Hammer, Director of Insurance of the State of Illinois, in her capacity as statutory and court-affirmed Rehabilitator (the "Rehabilitator") for Triad Guaranty Insurance Corporation ("TGIC") and Triad Guarantee Assurance Corporation ("TGAC"). TGI, Wolfgang, and the Rehabilitator are collectively referred to herein as the "Parties."

### BACKGROUND

WHEREAS, on December 12, 2012, the Circuit Court of Cook County, Illinois, County Department, Chancery Division (the "Rehabilitation Court") entered an agreed order placing TGIC and TGAC in rehabilitation (the "Rehabilitation Order") (Case No. 12 CH 43895), thereby commencing the "Rehabilitation Proceeding"; and

WHEREAS, on June 3, 2013, TGI commenced a bankruptcy case (the "Bankruptcy Case") by filing a petition under chapter 11, title 11, United State Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") (Case No. 13-11452 (MFW)); and

WHEREAS, on July 12, 2017, TGI and Wolfgang filed their Joint Plan of Reorganization of Triad Guaranty Inc. and Wolfgang Holdings, LLC Pursuant to Chapter 11 of the United States Bankruptcy Code, and on September 5, 2017 TGI and Wolfgang filed their Amended Joint Plan of Reorganization of Triad Guaranty Inc. and Wolfgang Holdings, LLC (D.I. 516) (as amended, the "TGI Plan"); and

WHEREAS, on November 28, 2017, the Rehabilitator filed her objection to the TGI Plan;

WHEREAS, The Rehabilitator expects the Rehabilitation Proceeding to continue for at least the next five years from the date of execution of the Settlement Agreement. To the extent the Rehabilitation Proceeding is expected to take longer than such five-year period, the Parties agree to negotiate in good faith any amendments to this Settlement Agreement that would be required as a result thereof, such negotiations to commence no later than six months prior to the expiration of such five-year period and to include negotiations regarding the Sharing Percentage (as hereinafter defined), subject to the provisions set forth above and to be incorporated into the amended TAA (as hereinafter defined).

NOW, WHEREFORE, in order to avoid the costs, burdens, and distractions of litigation regarding the TGI Plan and other controversies that may exist among the Parties, the Parties now desire and, through the execution of this Settlement Agreement, intend to dispose of and resolve fully and completely any and all disputes, claims, issues, and differences between them, amicably and without further litigation, on the terms set forth below.

### SETTLEMENT

In consideration of the undertakings set forth in this Settlement Agreement, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. The Consolidated Tax Allocation Agreement (the "TAA"), effective October 18, 1993, executed by and among TGI and TGIC, as amended on December 7, 2004, to add TGAC as a party, shall be amended to reflect the agreement of the Parties, including, without limitation, in the following respects; except to the extent amended as provided below, all other provisions of the TAA shall remain in full force and effect:

(i) Section 2.1 shall be amended so as to indicate the following with respect to the net operating losses (the "NOLs") generated by TGIC or TGAC:

(A) The Parties intend that, under any circumstances, there will be sufficient NOLs available for use by TGIC and TGAC to eliminate – to the fullest extent such elimination is possible by utilizing NOLs generated by TGIC and TGAC – any liability of TGIC and TGAC to pay federal or state tax in any tax year.

(B) The allocation of currently available NOLs among the Parties is to be as follows: (a) not less than \$800 million of NOLs for the use of TGIC and TGAC in determining their tax due if computed on separate tax returns, pending submission of the final tax return for the consolidated tax group that includes TGIC/TGAC; and (b) approximately \$200 million of NOLs for the use of TGI in determining its tax due if computed on a separate tax return pending submission of the final tax return for the consolidated tax group that includes TGIC/TGAC. To the extent TGIC or TGAC require more than \$800 million of NOLs prior to, and including to offset COD income or otherwise in connection with, submission of the final tax return for the consolidated tax group, and (i) TGIC/TGAC have not generated additional NOLs sufficient to eliminate their taxable income, and (ii) TGI has not applied all of the \$200 million in NOLs to reduce the income of its and the other members of the consolidated tax group, then TGIC/TGAC shall be authorized to apply additional NOLs to reduce their taxable income to the extent such additional NOL used by TGIC and TGAC are attributable to losses incurred by TGIC and TGAC and not by other members of the consolidated group, and shall not be required to provide consideration to the other members of the consolidated tax group.

(ii) to add the following to Section 2.2:

If TGIC's or TGAC's separate tax return, as provided in Section 2.1, for the current or any prior taxable year, reflects an NOL, net capital loss, foreign tax credit, investment credit, or other similar tax credits collectively referred to herein as "Credits"), then TGI shall pay to TGIC or TGAC, as applicable, within 30 (thirty) days of the due date (taking into account any extensions therefor) for the consolidated federal income tax return for the taxable year in which any such Credits attributable to TGIC and TGAC are utilized to shelter taxable earned income of TGI (or its consolidated

subsidiaries other than TGIC and TGAC), or, if a refund is due to TGI within such taxable year, within 30 (thirty) days of receipt of such refund, cash equal to a percentage (the "Sharing Percentage") of the actual cash tax savings ("Tax Savings") realized by the consolidated tax group attributed to cash earned income of TGI (and its consolidated subsidiaries other than TGIC and TGAC), to the extent that any such Credits are actually utilized by the consolidated group to shelter cash earned income in the consolidated federal income tax return.

The Sharing Percentage shall be 50% of Tax Savings for the tax years commencing on January 1 of each of 2018, 2019, 2020, 2021, and 2022. The Sharing Percentage for subsequent tax years shall be determined by negotiation of the Parties in good faith, provided, however, that nothing in this Agreement shall constitute an agreement by the Rehabilitator to do any of the following (i) eliminate the Sharing Percentage; (ii) reduce the Sharing Percentage below 50% or maintain it at 50%, or (iii) forgo receipt of cash equal to the Sharing Percentage from and after the tax year beginning January 1, 2023, and provided, further, that nothing in this Agreement shall constitute an agreement by TGI (i) to continue the Sharing Percentage, (ii) maintain the sharing percentage at 50% or increase it above 50%, or (ii) commit to payment of cash equal to the Sharing Percentage from and after the tax year beginning January 1, 2023. Notwithstanding anything herein to the contrary, and pending the earlier of (i) agreement among TGI and the Rehabilitator on acceptable compensation to be paid by TGI to TGIC and/or TGAC for such use; and (ii) the dissolution of TGIC and TGAC, the Sharing Percentage shall continue to be 50% of Tax Savings for the tax year commencing on January 1, 2023. Tax Savings shall be calculated based on (i) the actual cash taxes that would have been payable but for the use of Credits to shelter taxable earned income, and (ii) after taking into account payment of Alternative Minimum Tax or any other cash tax payments, and other deductions and credits. Such payment obligation shall remain a liability of TGI until full payment has been made.

For the avoidance of doubt, (i) the Sharing Percentage shall apply solely to the use of Credits generated by TGIC and TGAC, and shall not apply to the use of any credits generated by TGI or any other member of the consolidated group; (ii) no payment will be owed by any other party to TGIC or TGAC in respect of Credits utilized by TGIC or TGAC to shelter taxable income generated by TGIC or TGAC; and (iii) no payment to TGIC or TGAC shall be required to the extent TGI utilizes Credits for non-cash tax items such as depreciation recapture, and similar items that do not reflect earned income of TGI.

- (iii) to provide that (A) no party to the TAA, without the express consent of all parties to the TAA, will take any action that violates or would cause TGI to violate Section 382 of the Internal Revenue Code, including, without limitation, any action to enter into or approve a transaction or transactions that would cause an ownership change as defined in Section 382(g)(1) of the Internal Revenue Code and (B) TGI (I) will take all actions necessary to preserve the tax attributes of the consolidated tax group, including, without limitation, the entirety of the NOLs existing at the time of the execution of this Settlement Agreement, subject to the utilization of such NOLs as contemplated in this agreement, and (II) will refrain from taking any action inconsistent with the commitment contained in the immediately preceding clause (B)(I);
- (iv) to provide that upon final liquidation of TGIC and TGAC, and the filing of a tax return for the consolidated tax group that is the final tax return to include TGIC and TGAC, and payment of any amounts due to the Internal Revenue Service for that year or any prior tax year, any remaining Credits shall remain available for the remaining members of the consolidated tax group;
- (v) to provide that the Rehabilitation Court shall have sole jurisdiction over any disputes arising among the Parties and/or their current and future affiliates and subsidiaries, including any party that is deemed to become, or does become a party to the TAA or the consolidated tax group, with respect to, without limitation, (A) this Settlement Agreement; (B) the rehabilitation proceeding or the Rehabilitation Order, or any liquidation proceeding or order for TGIC or TGAC; (C) the TAA, to the extent such dispute involves TGIC or TGAC, or directly and adversely affects the rights of TGIC or TGAC under this Settlement Agreement; and (D) the Tax Payment Agreement dated May 17, 2017 ("TPA"); provided, however, that (X) the Rehabilitation Court shall not have jurisdiction to adjudicate any disputes between TGI and other members of the consolidated group, if TGIC and TGAC are not parties to such dispute and such dispute has no direct, adverse effect on TGIC's or TGAC's rights under this Settlement Agreement, and (Y) the jurisdiction of the Rehabilitation Court provided for in this paragraph shall terminate when the estates of TGIC and TGAC are liquidated and/or the Rehabilitation Proceeding terminates.
- (vi) to require that upon filing with the Internal Revenue Service, TGI will provide copies of each consolidated tax return to TGIC and TGAC, along with all work papers used to prepared such tax return(s);
- (vii) to provide that TGIC and TGAC shall contribute to the cost of preparing and filing tax returns for the Consolidated Group. The accounting firm preparing and filing the returns shall keep itemized billing records of the

time and expenses relating to TGIC and TGAC, and such expenses shall be fairly apportioned and reimbursed to TGI;

- (viii) to provide that, in the event that the taxable income of any member of the Consolidated Group causes the Consolidated Group to incur a tax liability payable in cash despite the use of Credits, such as Alternative Minimum Tax, such member will promptly remit payment to TGI prior to the filing deadline for the applicable tax return; and
- (ix) to provide that, if TGIC or TGAC (in this context, each a "Member") makes a payment to TGI for any taxable year in excess of its liability computed under Article 2.1 of the TAA (prior to filing the return), the amount of the overpayment (the "Overpayment") shall be repaid to the Member for such entity's Overpayment. The repayment shall be made by TGI by (A) endorsing the applicable refund, or (B) making payment to the Member, upon receipt of the refund from the United States Treasury.

2. The order confirming the Plan (the "Confirmation Order") shall provide (i) for TGI to assume the TAA; (ii) that it is entered without prejudice to the Rehabilitator's rights to (a) seek any appropriate post-confirmation relief against TGI and/or its other affiliates in the Circuit Court and (b) argue for removal to the Circuit Court of any cause of action commenced post-confirmation in the Bankruptcy Court by or on behalf of TGI. Without limiting the foregoing sentence, TGI agrees that it shall not seek to have the Bankruptcy Court adjudicate any dispute that arises after the effective date of the Plan between or among, on the one hand, TGI or any future member of the Consolidated Group and, on the other hand, the Rehabilitator, TGIC or TGAC regarding the Rehabilitation Order, the TAA, or the TPA. The Confirmation Order shall also provide that nothing in the Plan is intended to, or shall be deemed to (i) alter or amend the Rehabilitation Order; or (ii) adjudicate the rights of the current and future members of the Consolidated Group to use the NOLs and other tax attributes, and that the rights of the current and future members of the Consolidated Group to use the NOLs and other tax attributes shall be governed by the TAA and applicable tax law.

3. The Bankruptcy Court shall have sole jurisdiction to enforce the Confirmation Order. Except as set forth herein, nothing herein shall be construed as a waiver of TGI's ability to seek to enforce any injunction, release, exculpation, or discharge provisions of the Plan.

4. TGI, Wolfgang, and TGI's consolidated subsidiaries other than TGIC and TGAC shall not take any actions in violation of the Rehabilitation Order.

5. To the extent any reform or amendment of the Internal Revenue Code or related rules/regulations ("Tax Reform") would (i) have an effect on any of the Parties' intent and goals hereunder, the Parties agree to negotiate in good faith to revise this Settlement Agreement so as to satisfy the intent of the Parties hereunder; (ii) negate or render unenforceable any of the provisions of this Settlement Agreement, the provisions of the Tax Reform shall govern.

6. The Parties shall work together in good faith to ensure that there will be no ownership change sufficient to trigger a loss of NOLs under Section 382 of the Internal Revenue

Code, provided, however, that nothing in this Section shall relieve TGI or any other party to the amended TAA from complying with its obligations thereunder regarding Section 382 of the Internal Revenue Code.

7. To the extent the Internal Revenue Service determines that any of the provisions of this Settlement Agreement are unenforceable, or requires payment of tax or application of Tax Credits inconsistent with the provisions of this Settlement Agreement, neither Party shall be deemed in breach of this Settlement Agreement as a result thereof.

8. The Parties will work together cooperatively and in good faith to share information and provide access to appropriate personnel for purposes of preparing the consolidated group tax return. Specifically, as the tax filer for the consolidated group, TGI will be given reasonable access to TGIC and TGAC personnel in Chicago and North Carolina and books and records for the purpose of preparing and filing the consolidated tax return.

9. Time being of the essence, and so long as the form of the amended TAA has been agreed to by the Parties, the Rehabilitator shall use her best efforts to file a motion (the "Settlement Motion") in the Rehabilitation Court no later than January 31, 2018, seeking approval of this Settlement Agreement and the revisions to the TAA provided for herein, and shall make best efforts to have the Rehabilitation Court consider the Settlement Motion by no later than February 15, 2018. Upon entry of an order granting the Settlement Motion (the "Circuit Court Order") the Parties shall execute the amended TAA.

10. The Rehabilitation Court shall retain jurisdiction to enforce the terms of this Settlement Agreement.

11. Neither this Settlement Agreement nor any of its provisions, terms or conditions constitutes an admission of liability or wrongdoing on the part of any of the Parties, nor shall this Settlement Agreement or any of its provisions, terms, or conditions be construed as an admission of liability or wrongdoing or offered or received into evidence in any action or proceeding as evidence of an admission of liability or wrongdoing. This Settlement Agreement may be offered or received into evidence in any action to enforce the terms and provisions of this Settlement Agreement.

12. All of the agreements, covenants, representations, and warranties between the Parties, expressed or implied, oral or written, concerning the subject matter of this Settlement Agreement are contained in this Settlement Agreement. All prior and contemporaneous conversations, negotiations, agreements, representations, covenants and warranties, concerning the subject matter of this Settlement Agreement are merged into this Settlement Agreement. Each party to this Settlement Agreement is being represented or has had the opportunity to be represented by her/his/its own attorney and this Settlement Agreement represents the collaborative drafting of all of the Parties.

13. Each Party shall bear its own legal fees and other expenses incurred through the effective date of the Plan, including, without limitation, those incurred in connection with the Bankruptcy Case, the Rehabilitation Proceeding, and the negotiation and drafting of this Settlement Agreement.

14. This Settlement Agreement may not be modified except by written agreement of all of the Parties duly executed by all of the Parties.

15. Electronic transmission of a signed Settlement Agreement shall constitute receipt of an original signed Settlement Agreement. This Settlement Agreement may be executed in counterparts and shall be binding upon and inure to the benefit of each of the Parties and their respective assigns, successors, predecessors, representatives, agents, attorneys, directors, officers, employees, affiliates and insurers.

16. The Background Section, above, is an integral part of this Settlement Agreement and is hereby incorporated and made a part hereof as though fully set forth herein.


17. The Rehabilitator represents that she has the authority and legal capacity to bind TGIC and TGAC and to enter into this Settlement Agreement for TGIC and TGAC, subject to the approval of the Rehabilitation Court.

18. The undersigned representatives of TGI and Wolfgang represent that they have the authority and legal capacity to bind TGI and Wolfgang, and to enter into this Settlement Agreement, subject to the approval of the Plan by the Bankruptcy Court.

19. The undersigned declare and agree that the consideration given under this Settlement Agreement is fair and equitable under all circumstances, and that the consideration set forth in this Settlement Agreement is all of the consideration that will be granted to each of the undersigned by or on behalf of TGI, Wolfgang and the Rehabilitator concerning the matters set forth in this Settlement Agreement.

AGREED AND ACCEPTED

Triad Guaranty Inc.

  
By: William T. Ratliff, III  
Its: Chairman and President

Dated: Jan. 4, 2018

Jennifer Hammer, Director of Insurance of the State of Illinois, in her capacity as statutory and Court-affirmed Rehabilitator for Triad Guaranty Insurance Corporation and Triad Guarantee Assurance Corporation

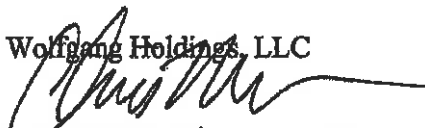
\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

Wolfgang Holdings, LLC

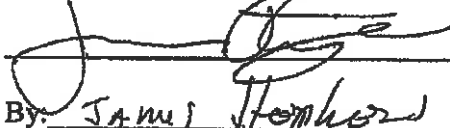


By: Chad M. Johnson

Its: MANAGER

Dated: 1/05/18

Jennifer Hammer, Director of Insurance of the  
State of Illinois, in her capacity as statutory  
and Court-affirmed Rehabilitator for Triad  
Guaranty Insurance Corporation and Triad  
Guarantee Assurance Corporation

  
By: James Stephens  
Its: Special Deputy  
Dated: 1-7-18

Wolfgang Holdings, LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_

# EXHIBIT 2

**AMENDED & RESTATED CONSOLIDATED TAX ALLOCATION AGREEMENT**

This Agreement, originally effective October 18, 1993, by and between Triad Guaranty Inc., a Delaware corporation (“Parent”) and Triad Guaranty Insurance Corporation (“TGIC”), an Illinois corporation, and amended effective December 7, 2004, by and among Parent, TGIC, and Triad Guaranty Assurance Corporation, an Illinois corporation (“TGAC”), is now hereby amended and restated effective \_\_\_\_\_, 2018 by and among Parent, TGIC and TGAC (Parent, TGIC and TGAC are sometimes collectively referred to as the “Group”.)

The members of the Group are affiliated corporations permitted to file a consolidated federal income tax return under provisions of Section 1501, et seq., of the Internal Revenue Code of 1986, as amended (the “Code”) and regulations promulgated thereunder ( the “Regulations”). The parties recognize by electing to file a consolidated federal income tax return certain benefits will accrue to all members of the Group. Therefore, the parties have determined that it is in their best interests to enter into an Agreement to file federal income tax returns on a consolidated basis.

In consideration of the mutual benefits to be derived from this Agreement, the parties agree as follows:

**ARTICLE ONE**  
**ELECTION TO FILE A CONSOLIDATED INCOME TAX RETURN**

The parties agree and elect to file a consolidated federal income tax return pursuant to the provisions of Section 1501, et seq., of the Code and Regulations promulgated thereunder.

**ARTICLE TWO**  
**METHOD OF ALLOCATION**

- 2.1 The consolidated tax liability of the Group shall be paid by the parties in the following manner:
- a. Each party shall pay that percentage of the total tax liability of the Group that the tax of such member, if computed on a separate return, would bear to the total amount of taxes for all members of the Group so computed. For purposes of this Agreement, the term “tax” shall exclude U. S. Government Mortgage Guaranty Tax and Loss Bonds purchased by a private mortgage insurer. The calculation of tax of such member shall be made pursuant to Regulation 1.1552-1(a)(2). Each subsidiary shall pay such amount to the Parent on the due date or dates that the Parent must make the payments to the Internal Revenue Service or as soon after that date as possible.
  - b. The parties to this Agreement intend that, under any circumstances, there will be sufficient net operating losses available for use by TGIC and TGAC to eliminate any liability of TGIC or TGAC to pay federal or state tax in any year, to the fullest extent such elimination is possible by utilizing net operating losses generated by TGIC or TGAC.
  - c. Pursuant to that certain Settlement Agreement entered into on or about January 8, 2017, between Parent, Wolfgang Holdings, LLC, TGIC and TGAC (the “Settlement Agreement”) in connection with the bankruptcy proceeding commenced by Parent on or about June 3, 2013 in the United States Bankruptcy Court for the District of Delaware, the Group’s currently available net operating losses are hereby allocated as follows: (i) not less than \$800 million of net operating losses for the use of TGIC and TGAC in determining their tax due if computed on separate returns, pending

submission of the final tax return for the Group; and (ii) approximately \$200 million of net operating losses for the use of Parent in determining its tax due if computed on a separate tax return, pending submission of the final tax return for the Group. To the extent TGIC or TGAC require more than \$800 million of net operating losses, including to offset cancellation of debt income or otherwise, up to and including submission of the final tax return for the Group, and (i) TGIC or TGAC have not generated additional net operating losses sufficient to eliminate their taxable income, and (ii) Parent has not applied all of the \$200 million in net operating losses to reduce its taxable income and the taxable income of any members of the Group other than TGIC and TGAC, then TGIC and TGAC shall be authorized to apply additional net operating losses to reduce their taxable income to the extent such additional net operating losses used by TGIC and TGAC are attributable to losses incurred by TGIC and TGAC and not by any other member of the Group, and TGIC and TGAC shall not be required to provide consideration to the Parent or other members of the Group for the use of such net operating losses.

2.2 Subject to the provisions of that certain Tax Payment Agreement dated May 17, 2017, executed by and among Parent, TGIC and TGAC (the “TPA”), if a member shall have made payments to the Parent for any taxable year in excess of its liability computed under Section 2.1 (whether determined on audit or otherwise), the amount of any overpayment shall be repaid to that member. The repayment shall be made to the member by the Parent no later than the date the payment would have been made to this member by the Internal Revenue Service had the member filed a separate return, or as soon thereafter as possible. In the event the Parent receives a tax refund from the Internal Revenue Service applicable to activities of the member, the Parent shall make payment to the member when the refund is received by the Parent, or as soon thereafter as possible. In the

event of a conflict between the terms of this Agreement and the terms of the TPA, the terms of the TPA shall control.

2.2.1 If TGIC's or TGAC's separate tax return, as provided in Section 2.1, for the current or any prior taxable year, reflects a net operating loss, net capital loss, foreign tax credit, investment credit, or similar tax credits (collectively, "Credits"), then Parent shall pay to TGIC or TGAC, as applicable, within 30 (thirty) days of the due date (taking into account any extensions therefor) for the consolidated tax return for the taxable year in which any such Credits attributable to TGIC and TGAC are utilized to shelter taxable earned income of Parent (or any member of the Group other than TGIC and TGAC), or, if a refund is due to Parent within such taxable year, within thirty (30) days of receipt of such refund, cash equal to a percentage (the "Sharing Percentage") of the actual cash tax savings ("Tax Savings") realized by the Group attributed to cash earned income of Parent (or any member of the Group other than TGIC and TGAC), to the extent such Credits are actually utilized by the Group to shelter cash earned income in the consolidated tax return.

2.2.2 The Sharing Percentage shall be fifty percent (50%) of Tax Savings for the tax years commencing on January 1 of each of 2018, 2019, 2020, 2021, and 2022. The Sharing Percentage for subsequent tax years shall be determined by negotiation of Parent, TGIC and TGAC in good faith, provided, however, that nothing in this Agreement shall constitute an agreement by TGIC or TGAC to do any of the following: (a) eliminate the Sharing Percentage; (b) reduce the Sharing Percentage below fifty percent (50%) or maintain it at fifty percent (50%); or (c) forgo receipt of cash equal to the Sharing Percentage from and after the tax year beginning January 1, 2023, and provided, further, that nothing in this Agreement shall constitute an agreement by Parent to: (a) continue the Sharing Percentage; (b) maintain the Sharing Percentage at fifty percent (50%) or increase it above fifty percent (50%); or (c) commit to payment of cash equal to the Sharing Percentage from and after the tax year beginning January 1, 2023. Notwithstanding anything herein to the contrary, and pending the earlier of: (a)

agreement among Parent, TGIC and TGAC on acceptable compensation to be paid by Parent to TGIC and TGAC for such use; and (b) the dissolution of TGIC and TGAC, the Sharing Percentage shall continue to be fifty percent (50%) of Tax Savings for the tax year commencing on January 1, 2023. Tax Savings shall be calculated based on: (a) the actual cash taxes that would have been payable but for the use of Credits to shelter taxable earned income; and (b) after taking into account payment of Alternative Minimum Tax or any other cash tax payments, and other deductions and credits. Such payment obligation shall remain a liability of Parent until full payment has been made.

2.2.3 For the avoidance of doubt: (a) the Sharing Percentage shall apply solely to the use of Credits generated by TGIC and TGAC, and shall not apply to the use of credit generated by Parent or any other member of the Group; (b) no payment will be owed by any other entity to TGIC or TGAC in respect of Credits utilized by TGIC or TGAC to shelter taxable income generated by TGIC or TGAC; and (c) no payment to TGIC or TGAC shall be required to the extent Parent utilizes Credits for non-cash tax items such as depreciation recapture and similar items that do not reflect earned income of Parent or any member of the Group other than TGIC and TGAC.

2.2.4 Upon final liquidation of TGIC and TGAC, and the filing of a consolidated tax return for the Group that is the final tax return to include TGIC and TGAC, and payment of any amounts due for that year or any prior tax year, any remaining Credits shall remain available for the remaining members of the Group.

2.3.1 If a member shall have made payments to the Parent for any taxable year in an amount less than its liability computed under Section 2.1 (whether determined on audit or otherwise), the member shall pay the Parent the amount of such deficiency. The payments shall be made no later than the date such payments would have been required by the Internal Revenue Service if the member had filed a separate return, or as soon thereafter as possible.

2.3.2 If TGIC or TGAC (in this context, each a “Member”) makes a payment to Parent for any taxable year in excess of its liability computed under Section 2.1 (prior to filing the return), the amount of the overpayment (the “Overpayment”) shall be repaid to the Member for such entity’s Overpayment. The repayment shall be made by Parent by (A) endorsing the applicable refund, or (B) making payment to the Member, upon receipt of the refund from the United States Treasury.

2.3.3 If a member of the Group causes the Group to incur a tax liability payable in cash despite the use of Credits, such as Alternative Minimum Tax, such member will promptly remit payment to Parent prior to the filing deadline for the applicable tax return.

2.4 Subsequent changes in the amount of a member's tax liability and the reimbursement payment shall be considered an intercompany payable or receivable and not a dividend or surplus contribution, as the case may be.

**ARTICLE THREE**  
**TERM AND CANCELLATION**

This Agreement shall take effect as of the day set forth on page 1 and shall continue until terminated by the mutual Agreement of the parties. In the event any party or parties cease to be affiliated with the Group, this Agreement automatically terminates to that corporation.

**ARTICLE FOUR**  
**AMENDMENTS AND NEW AFFILIATES**

4.1 This agreement may, from time to time, be amended, modified, and supplemented in such manner as may be mutually agreed upon by the parties. Any amendment, modification, or supplement to the Agreement shall be in writing and shall be executed by a duly appointed representative of each of the parties.

4.2 Any corporation formed as a subsidiary of any of the parties of this Group that become eligible to join in the filing of a consolidated return will not participate in the consolidated tax allocation until such time as the new entity has begun business for the purposes of amortizing start-up expenses as

defined under Code Section 195. At the time the entity has begun business for the purposes of amortizing start-up expenses or otherwise subsequently becomes eligible to join in the filing of a consolidated income tax return, it will automatically become subject to the terms of this Agreement and will be bound by it and will be entitled to all of the benefits of this Agreement; and no further action will be required on the part of the new entity or the parties to this Agreement.

4.3 Any corporation acquired as a subsidiary of any of the members of the Group that becomes eligible to join in the filing of a consolidated income tax return automatically becomes subject to the terms of this Agreement and will be bound by it and will be entitled to all of the benefits of this Agreement as if it had been an original party to this Agreement, and no further action will be required on the part of the new entity or the parties to this Agreement.

4.4 If any entity leaves the consolidated group or otherwise becomes ineligible to file a consolidated return, that entity shall not participate in this allocation Agreement from that date forward. However, any balances remaining due between members at the date a member becomes ineligible to file a consolidated return shall be settled as provided for in this Agreement.

#### **ARTICLE FIVE** **SEVERABILITY**

Every article, term, condition, and provision of this Agreement is declared to be independent of and severable from all other articles, terms, conditions, and provisions of the Agreement. Invalidation, whether judicial or otherwise, of any article, term, condition, or provision contained in the Agreement shall in no way effect any other provisions of this Agreement, all of which shall remain in full force and effect.

#### **ARTICLE SIX** **OWNERSHIP CHANGES**

6.1 Neither Parent, TGIC nor TGAC, nor any other entity subject to the terms of this Agreement, or expressly made a party to this Agreement through further amendment, absent the express consent of all parties to this Agreement, (a) shall take any action that violates or would cause Parent to violate Section 382 of the

Code, including, without limitation, any action to enter into or approve a transaction or transactions that would cause an ownership change as defined in Section 382(g)(1) of the Code.

6.2 Parent shall take all actions necessary to preserve the tax attributes of the Group, including, without limitation, the entirety of the net operating losses existing as of January 8, 2018, subject to the utilization of such net operating losses as permitted in this Agreement. Parent shall refrain from taking any action inconsistent with the obligations imposed upon Parent in this Article 6.

**ARTICLE SEVEN**  
**JURISDICTION OF THE REHABILITATION COURT**

7.1 On December 12, 2012, the Circuit Court of Cook County, Illinois (the "Rehabilitation Court") entered an order in Case No. 12 CH 43895 (the "Rehabilitation Proceeding") placing TGIC and TGAC in rehabilitation (the "Rehabilitation Order").

7.2 The Rehabilitation Court shall have sole jurisdiction over any disputes arising among the Group, and their current and future affiliates and subsidiaries, including any other entity that is deemed to become, or does become a party subject to the terms of this Agreement, or expressly made a party to this Agreement through further amendment, with respect to, without limitation:

- a. the Settlement Agreement;
- b. the Rehabilitation Proceeding or the Rehabilitation Order, or any liquidation proceeding or order for TGIC or TGAC;
- c. this Agreement, to the extent such dispute involves TGIC or TGAC, or directly and adversely affects the rights of TGIC or TGAC under the Settlement Agreement; and
- d. the TPA.

7.3 The sole jurisdiction of the Rehabilitation Court as provided in Section 7.2 shall terminate when the estates of TGIC and TGAC have been fully liquidated or the Rehabilitation Proceeding terminates.

7.4 The Rehabilitation Court shall not have sole jurisdiction to adjudicate any disputes between Parent and other entity that is deemed to become, or does become a party subject to the terms of this Agreement, or expressly made a party to this Agreement through further amendment, if TGIC or TGAC are not parties to such dispute and such dispute has no direct, adverse effect on TGIC's or TGAC's rights under the Settlement Agreement.

**ARTICLE EIGHT**  
**INCOME TAX RETURNS**

8.1 Upon filing any consolidated federal or state income tax return, Parent shall provide copies of each such consolidated return to TGIC and TGAC, along with all work papers used to prepare such consolidated return.

8.2 TGIC and TGAC shall contribute to the cost of preparing and filing consolidated returns for the Group. Parent shall cause the accounting firm preparing and filing the consolidated returns to keep itemized billing records of the time and expenses relating to TGIC and TGAC, and such expenses shall be fairly apportioned and reimbursed to Parent.

**AGREED:**

**TRIAD GUARANTY INC.**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**TRIAD GUARANTY INSURANCE CORPORATION**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**TRIAD GUARANTY ASSURANCE CORPORATION**

By: \_\_\_\_\_  
Title: \_\_\_\_\_