

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made by, between, and among the following undersigned parties:

The Plaintiff Federal Deposit Insurance Corporation (“FDIC”) as Receiver for BestBank (“FDIC-R”); and Glenn M. Gallant (“Gallant”), Douglas R. Baetz (“Baetz”), Century Financial Group, Inc. (“CFG”), and Berwyn Holdings, Inc. (“Berwyn”) (collectively, the “Settling Defendants”). The FDIC-R and one or more of the Settling Defendants may be referred to herein individually as a “Party” and collectively as the “Parties.”

### RECITALS

#### WHEREAS:

Prior to July 23, 1998, BestBank of Boulder, Colorado (“Bank”) was a depository institution organized and existing under the laws of the State of Colorado;

On July 23, 1998, the State of Colorado Division of Banking closed the Bank and, pursuant to 12 U.S.C. § 1821(c), the FDIC was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R succeeded to all rights, titles, powers, and privileges of the Bank, including those with respect to its assets;

Among the assets to which the FDIC-R succeeded were all of the Bank’s claims, demands, and causes of action against professionals and others who provided services to the Bank;

On October 29, 1998, and July 7, 2000, the FDIC-R filed claims against the Settling Defendants and others who it alleged caused losses to the Bank that are now pending in the United States District Court for the District of Colorado in a case captioned *The Federal Deposit Insurance Corporation as Receiver for BestBank v. Mattar, et al.*, Case No. 1:98-cv-02374 (D. Colo.) (“FDIC-R Lawsuit”), which has been consolidated with claims filed by Berwyn against the FDIC-R on July 27, 2000, in a case captioned *Berwyn Holdings, Inc. v. FDIC, et al.*, Case No. 1:00-00584 (D. Colo.) (“Berwyn Lawsuit” and, collectively with the FDIC-R Lawsuit, the “Action”). The Berwyn Lawsuit alleged that the closing of BestBank was improper and sought

damages of more than \$47 million. The Settling Defendants deny liability for the claims asserted against them by the FDIC-R. The FDIC-R denies liability for the counterclaims.

On March 31, 2010, in *United States of America v. Glenn M. Gallant, et al.*, Case No. 03-cr-00232-RPM-4 (D. Colo.) (the “Gallant Criminal Case”), the United States District Court for the District of Colorado entered judgment against Gallant and sentenced Gallant to 135 months in prison and ordered Gallant to pay \$49,388,500 in restitution to the FDIC-R (the “Gallant Restitution Judgment”) and \$12,500 in restitution to David M. Taffet, Executive Manager Lippincott, LLC (the “Gallant-Taffet Restitution Judgment”). In its judgment, the Court specified that the Gallant-Taffet Restitution Judgment is “joint and several with codefendant Douglas R. Baetz” and is “to be paid in full before payment is to be made to the F.D.I.C.”

On April 1, 2010, in *United States of America v. Douglas R. Baetz, et al.*, Case No. 03-cr-00232-RPM-5 (D. Colo.) (the “Baetz Criminal Case”), the United States District Court for the District of Colorado entered judgment against Baetz and sentenced Baetz to 135 months in prison and ordered Baetz to pay \$49,531,412 in restitution to the FDIC-R (the “Baetz Restitution Judgment”) and \$12,500 in restitution to David M. Taffet, Executive Manager Lippincott, LLC (the “Baetz-Taffet Restitution Judgment”). In its judgment, the Court specified that the Baetz-Taffet Restitution Judgment is “joint and several with codefendant Glenn M. Gallant” and is “to be paid in full before payment is to be made to the F.D.I.C.” All appeals in connection with the Gallant Criminal Case and the Baetz Criminal Case have concluded and the Gallant Restitution Judgment, the Gallant-Taffet Restitution Judgment, the Baetz Restitution Judgment, and the Baetz-Taffet Restitution Judgment are final.

On February 19, 2010, in *United States of America v. Thomas Alan Boyd*, Case No. 03-cr-00232-RPM-4 (D. Colo.) (the “Boyd Criminal Case”), the United States District Court for the District of Colorado entered judgment against Thomas Alan Boyd (“Boyd”) and sentenced Boyd to 90 months in prison, and in a separate order entered on April 9, 2010, ordered Boyd to pay \$11,893,816 in restitution to the FDIC-R (the “Boyd Restitution Judgment”). On February 19, 2010, in *United States of America v. Jack O. Grace, Jr., et al.*, Case No. 03-cr-00232-RPM-5 (D. Colo.) (the “Grace Criminal Case”), the United States District Court for the District of Colorado

entered judgment against Jack O. Grace, Jr. ("Grace") and sentenced Grace to 72 months in prison, and in a separate order entered on April 9, 2010 ordered Grace to pay \$16,545,082 in restitution to the FDIC-R (the "Grace Restitution Judgment"). The Court further ordered that "restitution for defendants Boyd and Grace is owed joint and several with each other and with codefendants Glenn M. Gallant and Douglas R. Baetz." All appeals in connection with the Boyd Criminal Case and the Grace Criminal Case have concluded and the Boyd Restitution Judgment and the Grace Restitution Judgment are final.

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of further litigation in the Action.

NOW THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency of which consideration they hereby acknowledge, the Parties agree, each with the other, as follows:

#### **SECTION I: Assignments to FDIC-R**

A. As an essential covenant and condition to this Agreement, the Settling Defendants hereby knowingly assign to the FDIC-R any and all of their interest in funds deposited in an insured deposit account formerly maintained by Pueblo Bank & Trust, Boulder, Colorado, in the name of Century Financial Group NBCA Reserve Account, account number  which has (b)(4) been transferred to the FDIC-R. Any amounts that are received by the FDIC-R under the assignment in this paragraph I.A. shall be paid by the FDIC-R to the Clerk of Court for the District Court of Colorado to be applied to the Gallant-Taffet Restitution Judgment and the Baetz-Taffet Restitution Judgment, and then to the Gallant Restitution Judgment and the Baetz Restitution Judgment, in accordance with the terms of those judgments.

B. To the extent, if any, that the Settling Defendants or any other persons or entities controlled by the Settling Defendants, are or were the owners of any deposit accounts at the Bank and by virtue thereof are or may have been entitled to a payment or other distribution upon resolution of the FDIC's receivership of the Bank, including but not limited to any payment relating to insured or uninsured deposits, the Settling Defendants hereby knowingly assign to the FDIC-R any and all rights, titles, and interests in and to any and all such payments or other

distributions, or proceeds. Any amounts that are received by the FDIC-R under the assignment in this paragraph I.B. shall be applied as a dollar-for-dollar credit to amounts owed by Gallant under the Gallant Restitution Judgment and by Baetz under the Baetz Restitution Judgment.

## **SECTION II: Stipulation and Dismissal**

A. Within ten (10) business days after the full execution of this Agreement by all of the Parties, Steven C. Choquette of Choquette & Hart LLP shall re-enter his appearance for all of the Settling Defendants in the FDIC-R Lawsuit (Case No. 1:98-cv-02374) and the Berwyn Lawsuit (Case No. 1:00-cv-00584) for the sole purpose of lifting the stay and accomplishing the dismissal of the Action pursuant to this Agreement, and the Parties shall file in each of the FDIC-R Lawsuit (Case No. 1:98-cv-02374) and the Berwyn Lawsuit (Case No. 1:00-cv-00584) a Joint Motion to Lift Stay entered by the District Court in the Action on March 22, 2013, Dkt. # 505, in the form attached hereto as Exhibit A.

B. Contemporaneous with the filing of the Joint Motions to Lift Stay, the Parties shall file in each of the FDIC-R Lawsuit (Case No. 1:98-cv-02374) and the Berwyn Lawsuit (Case No. 1:00-cv-00584) a Joint Stipulation of Dismissal with Prejudice of all claims and counterclaims they have or could have asserted in the Action, with each party to bear his or its own attorney's fees and costs, in the form attached hereto as Exhibit B.

## **SECTION III: Releases**

### **A. The FDIC-R's Releases.**

Upon the Court's dismissal of the Action with prejudice, and except as provided in Section III.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges the Settling Defendants and their respective heirs, executors, trustees, administrators, representatives, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the FDIC-R that arise from or relate to the Bank or to the claims FDIC-R did or could have asserted in the Action.

### **B. The Settling Defendants' Releases.**

Effective simultaneously with the release granted in Section III.A. above, Gallant and Baetz, on behalf of themselves individually, and CFG and Berwyn, for themselves, and their

respective heirs, executors, trustees, administrators, agents, representatives, parents, subsidiaries, affiliates, and their successors and assigns, hereby release and discharge the FDIC-R and its employees, officers, directors, representatives, successors and assigns from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to the Bank or to claims the Settling Defendants did or could have asserted in the Action.

C. Exceptions from Releases by FDIC-R.

1. Notwithstanding any other provision of this Agreement, the FDIC-R does not release, and expressly preserves fully and to the same extent as if this Agreement had not been executed, any claims or causes of action:

a. Against the Settling Defendants or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to the FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by the FDIC-R as successor in interest to the Bank or any person or entity other than Bank; and

b. Against any person or entity not expressly released by the FDIC-R in this Agreement.

2. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing or compromising the jurisdiction and authority of the FDIC in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement proceedings seeking removal, prohibition, or any other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person.

3. Notwithstanding any other provision of this Agreement, this Agreement does not waive, purport to waive, or intend to waive, any claims that have been brought or could be brought by the United States through the Department of Justice or the United States Attorney's Offices for the District of Colorado or any other federal judicial district, or any other department or agency of the United States as defined by 18 U.S.C. § 6. In addition, the FDIC-R

specifically reserves the right to receipt of and to seek court ordered restitution pursuant to the relevant provisions of the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3322 and 3663 *et seq.*, if appropriate, including receipt of payments pursuant to the Gallant Restitution Judgment and the Baetz Restitution Judgment.

4. Notwithstanding any other provision of this Agreement, except as set forth in Section IV below, this Agreement does not release, compromise, diminish, waive, purport to waive, intend to waive, impact, or in any way impair the restitution owed to the FDIC-R or the FDIC-R's rights or claims to such restitution pursuant to the Gallant Restitution Judgment and the Baetz Restitution Judgment, both of which shall remain in full force and effect until paid in full, waived, or extinguished.

#### **SECTION IV: Motions for a Reduction in Criminal Restitution Judgments**

Notwithstanding any other provision of this Agreement, the FDIC-R will request that the United States Attorney's Office for the District of Colorado file a motion in the Gallant and Baetz criminal cases for a reduction in the Gallant Restitution Judgment and the Baetz Restitution Judgment, for an amount not to exceed \$3 million, based on the following: (a) a Letter of Credit Century paid BestBank that was cancelled by the FDIC-R after the failure of BestBank, (b) payments received by FDIC-R on credit card accounts owned by Century pursuant to a Participation Agreement, and (c) payments received by the FDIC-R on credit card accounts owned by BestBank. The United States Attorney's Office for the District of Colorado has advised the FDIC-R that it is willing to file a motion for a reduction in criminal restitution as set forth above. Notwithstanding that representation, the Parties understand that a formal position on any motion for a reduction in criminal restitution will be in the sole discretion of the United States Attorney's Office for the District of Colorado. The FDIC-R reserves the right to address any additional requests for a reduction, waiver, or extinguishment of the Gallant Restitution Judgment and/or the Baetz Restitution Judgment at the time the requests are made and based on the circumstances presented at that time.

## **SECTION V: Other Credits Against Gallant and Baetz Restitution Judgments**

A. In the FDIC-R Lawsuit, the FDIC-R asserted claims against Boyd. In or about June 2002, the FDIC-R entered into a written settlement agreement (“Boyd Settlement”) with Boyd and his wife, Lori Boyd (collectively, the “Boyd”), pursuant to which the Boyds agreed to pay FDIC-R the sum of \$1 million (“Boyd Settlement Amount”). The Boyds subsequently paid FDIC-R the sum of \$400,000. The remainder of the Boyd Settlement Amount, plus any applicable interest, is still due and owing from the Boyds to the FDIC-R. The FDIC-R agrees that any amounts the FDIC-R has received or does receive from the Boyds under the Boyd Settlement shall be applied as a dollar-for-dollar credit to amounts owed by both Gallant under the Gallant Restitution Judgment and by Baetz under the Baetz Restitution Judgment.

B. FDIC-R further agrees that any amounts FDIC-R has or does receive from Boyd pursuant to the Boyd Restitution Judgment and/or from Grace pursuant to the Grace Restitution Judgment shall be applied as a dollar-for-dollar credit to amounts owed by both Gallant under the Gallant Restitution Judgment and by Baetz under the Baetz Restitution Judgment.

## **SECTION VI: Waiver of Dividends and Proceeds from Litigation**

To the extent, if any, that any of the Settling Defendants are or were a shareholder of the Bank or its holding company, if any, and by virtue thereof are or may have been entitled to a dividend, payment, or other distribution upon resolution of the receivership of the Bank or proceeds in any litigation that has been or could be brought against the United States based upon or arising out of, in whole or in part, the closing of the Bank, or any alleged acts or omissions by the FDIC in any capacity, the United States government, or any agency or department of the United States government in connection with the Bank, its conservatorship or receivership, the Settling Defendants hereby knowingly assign to the FDIC-R any and all rights, titles, and interests in and to any and all such dividends, payments, distributions, or proceeds.

## **SECTION VII: Representations and Acknowledgments**

A. Authorized Signatories. All of the undersigned persons represent and warrant that they are Parties hereto or are authorized to sign this Agreement on behalf of the respective Party, and that they have the full power and authority to bind such Party to each and every provision of

this Agreement. This Agreement shall be binding upon and inure to the benefit of the undersigned Parties and their respective heirs, executors, trustees, administrators, representatives, successors and assigns.

B. Advice of Counsel. Each Party hereby acknowledges that he or it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to that Party by his or its counsel.

C. Revival of Corporate Charters. As conditions precedent to the FDIC-R's obligations under this Agreement, the Settling Defendants represent and warrant that the following requirements have been satisfied:

1. The Settling Defendants have provided the FDIC-R with documents establishing that the corporate charters of CFG and Berwyn have been revived in CFG's and Berwyn's states of incorporation, and;

2. The Settling Defendants have provided the FDIC-R with corporate resolutions authorizing CFG and Berwyn to enter into this Agreement, and to take all actions necessary to implement the terms of this Agreement.

#### **SECTION VIII: Reasonable Cooperation**

The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing, or causing their agents and attorneys to do, whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording, and entry, of any documents necessary to conclude the Action, and to otherwise perform the terms of this Agreement.

#### **SECTION IX: Other Matters**

A. No Admission of Liability. The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims and defenses, that this Agreement is not an admission or evidence of fault, wrongdoing, or liability by any of them regarding any claim or defense that was or could have been asserted by them in the Action, and that this Agreement shall not be offered or received in evidence by or against any Party except to enforce or interpret its terms.

B. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties; and upon delivery to the Parties' respective counsel of each such executed counterpart, the combined counterparts shall be deemed a complete original, binding the Parties to this Agreement.

C. Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable federal law or, in its absence, the laws of the State of Colorado.

D. Notices. Any notices required hereunder shall be sent by registered mail, first class, return receipt requested, and by email, to the following:

If to the FDIC-R: Robert J. DeHenzel, Jr., Esq, Federal Deposit Insurance Corporation, 3501 Fairfax Drive, Arlington, VA 22226, (703) 562-2361, [REDACTED] and Robert R. (b)(6) Bell, Esq., Mullin Hoard and Brown LLP, 500 S. Taylor Street, #800, Amarillo, TX 79101;

(b)(6) (806) 372-5050; [REDACTED]

If to the Settling Defendants: Steven C. Choquette, Esq., Choquette & Hart LLP, 600 Grant Street, Suite 206, Denver, CO 80203; (303) 863-8072; [REDACTED] (b)(6)

E. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein and supersedes any prior agreements or understandings. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed by the Parties bound thereby, or by their respective authorized attorney(s) or other representative(s).

F. Titles and Captions. All Section titles or captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

G. No Confidentiality. The undersigned Parties acknowledge that this Agreement shall not be confidential and will be disclosed pursuant to the FDIC's applicable policies, procedures, and other legal requirements.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

**FEDERAL DEPOSIT INSURANCE CORPORATION  
AS RECEIVER FOR BESTBANK**

(b)(6)

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

Title: Counsel

Date: 3/28/17

Print Name: Robert J. DeHenzel, Jr.

**GLENN M. GALLANT**

Date: \_\_\_\_\_

Glenn M. Gallant

**DOUGLAS R. BAETZ**

Date: \_\_\_\_\_

Douglas R. Baetz

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

**FEDERAL DEPOSIT INSURANCE CORPORATION  
AS RECEIVER FOR BESTBANK**

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

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

Date: \_\_\_\_\_ Print Name: \_\_\_\_\_

**GLENN M. GALLANT**

(b)(6)

Date: 3/28/17

\_\_\_\_\_

Glenn M. Gallant

**DOUGLAS R. BAETZ**

(b)(6)

Date: 3/28/17

\_\_\_\_\_

Douglas R. Baetz

CENTURY FINANCIAL GROUP, INC.

(b)(6)

Date: 3/28/17

By:

Its: President

BERWYN HOLDINGS, INC.

(b)(6)

Date: 3/28/17

By:

Its: PRESIDENT

Approved as to Form:

(b)(6)



Robert R. Bell

*Counsel for the FDIC-R*

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Steven C. Choquette

*Counsel for Settling Defendants*

**Approved as to Form:**

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Robert R. Bell

*Counsel for the FDIC-R*

(b)(6)



Steven C. Choquette

*Counsel for Settling Defendants*