

**SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement (“Agreement”) is made effective as of August 28, 2013, by, between, and among the following undersigned parties:

The Federal Deposit Insurance Corporation (“FDIC”), as Receiver for Prosperan Bank (“FDIC-R”), Scott A. Johnson, James S. Kloosterboer, and Richard T. Sandquist (collectively, the “Settling D&Os”), and the Chubb & Son division of Federal Insurance Company (“Chubb”) (individually, the FDIC-R, the Settling D&Os and Chubb may be referred to herein as a “Party” and collectively as the “Parties”).

**RECITALS**

WHEREAS:

1. Prior to November 6, 2009, Prosperan Bank (“the Bank”) was a depository institution organized and existing under the laws of the State of Minnesota.

2. On November 6, 2009, the Bank was closed by the Minnesota Department of Commerce and pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation 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.

3. Among the assets to which the FDIC-R succeeded were any and all of the Bank’s claims, demands, and causes of action against its former directors and officers arising from the performance, nonperformance and manner of performance of their respective functions, duties and acts as directors and/or officers of the Bank.

4. The FDIC-R has asserted certain claims against the Settling D&Os, each of whom had served at various times as a director and/or officer of the Bank. The Settling D&Os have

denied and continue to deny liability for the FDIC-R's claims. No lawsuit has been filed by the FDIC-R against the Settling D&Os.

5. Chubb issued Forefront Portfolio for Community Banks Policy Number (b)(4)

(b)(4) including directors and officers liability coverage (the "Chubb Policy"), which insured the directors and officers of the Bank according to the terms, provisions and conditions of the Chubb Policy, for the policy period from March 12, 2007 to March 12, 2010. The Settling D&Os made claims under the Chubb Policy for coverage of the claims asserted against them by the FDIC-R. Chubb has reserved its rights to deny coverage under the Chubb Policy for the claims asserted by the FDIC-R against the Settling D&Os.

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

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency of which consideration is hereby acknowledged, and in reliance upon the Recitals, which are incorporated by reference into the rest of this Agreement and are a material part of this Agreement, the undersigned Parties agree, each with the other, as follows:

#### **SECTION I. Payments**

As an essential covenant and condition to this Agreement, within ten (10) business days after the effective date of this Agreement ("Payment Date"), Chubb shall pay the FDIC-R the sum of one million, two hundred fifty thousand dollars (\$1,250,000.00) ("Settlement Funds").

A. The Settlement Funds shall be delivered to the FDIC-R by Chubb by check to Barbara Arnold, Federal Deposit Insurance Corporation, 3501 Fairfax Drive, Arlington, VA 22226.

B. In the event that the full Settlement Funds are not received by FDIC-R on or before the Payment Date due to intentional non-payment, the FDIC-R, in its sole discretion, shall have i) the right at any time prior to receipt of all the Settlement Funds to declare this Agreement null and void, ii) the right to extend this Agreement for any period of time until it receives those Settlement Funds, and/or iii) the right to enforce this Agreement against the Party or Parties failing to deliver the Settlement Funds, in which event the non-delivering Party or Parties agree to jurisdiction in Federal District Court in the District of Minnesota. Any decision by the FDIC-R to extend the terms of this Agreement shall not prejudice its rights to declare this Agreement null and void at any time prior to receipt of the Settlement Funds or to enforce the terms of this Agreement. In the event the FDIC-R declares this Agreement null and void, the Settling D&Os agree to waive any statute of limitations, laches or similar defenses to the FDIC-R's claims against them. Should the FDIC-R declare this Agreement null and void it will be in all respects.

## **SECTION II. Releases**

A. FDIC-R's Release. Effective upon the payment of the Settlement Funds pursuant to Section I, and except as provided in Paragraph II.F below and except for claims for breach of this Agreement, the FDIC-R, solely in its capacity as receiver of the Bank and not in its corporate capacity, for itself and its successors and assigns, hereby releases and discharges the Settling D&Os, Bruce C. Bennett, Thomas M. Weiner, Michael S. Hohenwald, Patrick J. Kelly, Bruce A. Hendrickson, Randall Bednar, Barry Crawford, Al Steffens, and all other former directors, officers, and employees of the Bank, and their respective heirs, legatees, beneficiaries, executors, administrators, agents, attorneys, representatives, successors and assigns (collectively the "Releasees"), from any and all claims, demands, contracts, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, known or unknown, belonging to or that

ever did belong to the FDIC-R, that arise from or relate to the Releasees' performance, nonperformance, or manner of performance of their respective functions, duties, actions and omissions as officers, directors and/or employees of the Bank or its affiliates, including but not limited to their actions or failure to act in their respective capacities as directors, officers and/or employees of the Bank. This release includes, but is not limited to, any and all claims the FDIC-R has or ever had against the Releasees under FIRREA, any and all claims for dishonest or fraudulent acts, negligence, gross negligence, or breach of fiduciary duty, any and all claims arising under any statute or common law, and any and all claims that arise from or relate to the Chubb Policy. Claims released herein by the FDIC-R are referred to as "FDIC Claims."

B. Settling D&Os' Release. Upon the release granted in Paragraph II.A. above becoming effective, and except for claims for breach of this Agreement, the Settling D&Os, on behalf of themselves individually and their respective heirs, legatees, beneficiaries, executors, administrators, agents, attorneys, representatives, successors and assigns, hereby release and discharge the FDIC-R and its employees, officers, directors, agents, representatives, attorneys, administrators, successors and assigns, from any and all claims, demands, contracts, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, known or unknown, that arise from or relate to the Bank or its affiliates or to the performance, nonperformance, or manner of performance of the Settling D&Os' respective functions, duties and actions as officers, directors and/or employees of the Bank or its affiliates or that arise from or relate to the Chubb Policy; except with respect to any claims which are not released pursuant to Paragraph II.F. The Settling D&Os expressly reserve all defenses, rights and claims they have as to the FDIC-R with respect to any claims which are not released pursuant to Paragraph II.F.

C. Release of Settling D&Os by Each Other.

Upon the releases granted in Paragraphs II.A and II.B above becoming effective, and except for claims for breach of this Agreement, Settling D&Os and their respective heirs, legatees, beneficiaries, executors, administrators, agents, attorneys, representatives, successors and assigns, hereby release and discharge each other, and/or any person who may be considered an "insured" as defined by the Chubb Policy, from any and all claims, demands, contracts, obligations, actions and causes of action, direct or indirect, in law or in equity, known or unknown, that arise from or relate to the performance, nonperformance, or manner of performance of their respective functions, duties and actions as officers, directors and/or employees of the Bank or its affiliates.

D. Release of Chubb by FDIC-R.

Upon the releases granted in Paragraphs II.A and II.B above becoming effective, and except for claims for breach of this Agreement, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges Chubb, its parents, subsidiaries, affiliates and reinsurers, and its respective employees, officers, directors, agents, attorneys, representatives, successors and assigns, from any and all claims, demands, contracts, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, known or unknown, that arise from or relate to the Chubb Policy. The FDIC-R agrees that any interest it may have under the Chubb Policy shall be extinguished upon the payment of the Settlement Funds as provided in Section I.

E. Release of FDIC-R by Chubb.

Upon the releases granted in Paragraph II.D above becoming effective, and except for claims for breach of this Agreement, Chubb, for itself and its successors and assigns, and on behalf of its parents, subsidiaries and affiliates, and their successors and assigns, hereby releases and discharges the FDIC-R, and its employees, officers, directors, agents, attorneys, representatives, successors and assigns, from any and all claims, demands, contracts, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, known or unknown, that arise from or relate to FDIC Claims or the Chubb Policy.

F. Exceptions from Releases.

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 D&Os 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 ("Excluded Obligations"), including without limitation any claims acquired by the FDIC-R as successor in interest to the Bank or any person or entity other than the Bank with respect to such Excluded Obligations, and

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

c. which are not expressly released in Paragraph II.A.

2. Notwithstanding any other provision, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing or compromising the jurisdiction and/or

authority of the FDIC in the exercise of its supervisory and/or regulatory capacities, or to diminish its ability to institute administrative enforcement proceedings seeking removal, prohibition or any other administrative enforcement action. Notwithstanding any other provision, this Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through the Department of Justice, the United States Attorney's Office, or any other federal agency. In addition, the FDIC-R specifically reserves the right to seek court-ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, et. seq., if appropriate.

### **SECTION III. Waiver of Dividends and Proceeds from Litigation**

To the extent, if any, that the Settling D&Os are or were creditors or shareholders of the Bank, and by virtue thereof are or may be 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 on or arising out of, in whole or in part, the closing of the Bank, or any alleged acts or omissions by the FHLBB, OTS, RTC, FDIC, the FSLIC Resolution Fund or the United States government in connection with the Bank or its receivership, they hereby knowingly assign to the FDIC-R any and all rights, titles and interest in and to any and all such dividends, payments or other distributions, or such proceeds.

### **SECTION IV. Termination**


In the event the FDIC-R exercises its right to terminate this Agreement pursuant to Section I.B, then, for the purposes of any statute of limitations or other time-based defense to any of the claims of the FDIC-R, the Parties to this Agreement hereby agree that the statute of limitations shall be deemed to be extended to 12:59 p.m. on the 30<sup>th</sup> day after the FDIC-R terminated this Agreement.

**SECTION V. Notices**

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

If to the FDIC-R:

L. Anthony Lehr  
Counsel  
FDIC, Legal Division  
Professional Liability Unit  
Virginia Square, L. William Seidman Center  
3501 Fairfax Drive  
Arlington, VA 22226

(b)(6) 


with a copy to:

Richard G. Morgan  
Bowman and Brooke LLP  
150 South Fifth Street, Suite 3000  
Minneapolis, MN 55402

(b)(6) 

If to Settling D&Os:

Randall M Lending  
Vedder Price P.C.  
222 North LaSalle Street  
Chicago, Illinois 60601

(b)(6)   
Counsel for Settling D&Os

If to Chubb:

Nora B. Neary  
Senior Claims Officer  
Specialty Claim Discipline-Northern Claims  
Chubb Group of Insurance Companies  
Fifth Avenue Place  
120 Fifth Avenue  
Pittsburgh, PA 15222

(b)(6) 

with a copy to Randall M. Lending at the address above.



**SECTION VI. Representations and Acknowledgements**

A. No Admission of Liability. The undersigned Parties each acknowledge and agree that this Agreement and all negotiations, discussions and proceedings in connection with this settlement shall not be deemed or constitute an admission by the Settling D&Os of fault, liability or wrongdoing as to any facts or claims and shall not be offered or received in evidence or otherwise used by any person in any other action or proceeding for any purpose, except in connection with a proceeding to enforce this Agreement. There has been no adjudication by any court pursuant to which the Settling D&Os have been determined to have caused a loss to the Bank. The Settling D&Os deny any fault, liability or wrongdoing as to any facts or claims alleged or asserted by FDIC-R in the FDIC Claims and in any other action or proceeding. Payment by Chubb shall not be an admission of coverage.

B. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties named herein and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties hereto; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Party or Parties subscribed thereto upon the execution by all Parties to this Agreement. Signed signature pages may be delivered by facsimile, e-mail or .pdf transmission, which will constitute complete delivery without the necessity of delivery of original signed signature pages.

C. Binding Effect. Each of the undersigned persons represents and warrants that they are a Party 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, legatees, beneficiaries, administrators, affiliates, representatives, successors, and assigns.

D. Choice of Law/Forum. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the State of Minnesota, without regard to conflicts of law rules. Any legal action brought to enforce this Agreement shall be brought in the United States District Court for the District of Minnesota, unless that Court lacks jurisdiction, in which event, or upon a final order determining a lack of jurisdiction, the Parties agree to jurisdiction in the Minnesota Fourth Judicial District, Hennepin County.

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. This Agreement may not be amended or modified, nor may any of its provisions be waived, except by another written instrument signed by the Party or Parties to be bound thereby, or by their respective authorized attorney(s) or other representative(s).

F. Specific Representations, Warranties, and Disclaimer. Each Settling D&O has submitted to the FDIC-R a signed and notarized Personal Financial Statement (FDIC Form 7600/01). The Settling D&Os represent that there have been no material changes since the submission of the signed and notarized Personal Financial Statement, other than as disclosed in writing to the FDIC-R before the effective date of this Agreement. The Parties expressly acknowledge that, in determining to settle the claims released herein, the FDIC-R has reasonably and justifiably relied upon the accuracy of the Personal Financial Statement and other financial information submitted by each Settling D&O to the FDIC-R.

If one or more of the Settling D&Os failed to disclose in their Personal Financial Statement any material interest, legal, equitable, or beneficial, in any asset (each such Settling D&O a "Non-Disclosing Settling D&O"), then each such Non-Disclosing Settling D&O agrees to cooperate fully with the FDIC-R to transfer his entire interest in each such asset to the FDIC-R and to sign any and all documents necessary to transfer his interest in the asset to the FDIC-R. In addition, the FDIC-R, in its sole discretion, may exercise one or more or all of the following remedies as to each Non-Disclosing Settling D&O: (a) the FDIC-R may declare the releases granted to the Non-Disclosing Settling D&Os to be null and void; (b) the FDIC-R may retain the Settlement Funds; and/or (c) the FDIC-R may sue the Non-Disclosing Settling D&O for damages, an injunction, and specific performance for the breach of this Agreement. The Settling D&Os agree that each Non-Disclosing Settling D&O consents to the FDIC-R filing suit asserting any of the claims that the FDIC-R has against him, agree that any release of such claims in this Agreement shall be null and void as to such a suit, and agree to waive any statute of limitations, laches or similar defenses to the FDIC-R's claims in such a suit. A Non-Disclosing Settling D&O shall not be entitled to offset against any claim of the FDIC-R in such a suit any portion of the Settlement Funds paid to the FDIC-R.

Notwithstanding the FDIC-R's right to exercise the remedies set forth in this Section, the releases provided by FDIC-R and the other Settling D&Os to each other, the releases provided by FDIC-R to Chubb, and Chubb's releases of FDIC-R shall remain valid and in effect.

G. Reasonable Cooperation. The undersigned Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement.

H. Time is of the Essence. Time is of the essence with respect to all provisions of this settlement agreement, including, but not limited to, the terms relating to payment.

I. Advice of Counsel. Each Party hereby acknowledges that he, she, 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, her, or its counsel.

J. Title and Captions. All section titles and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

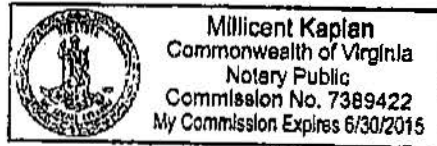
K. Authorship/Construction. This Agreement sets forth terms and agreements jointly negotiated by the Parties. It is expressly agreed that this Agreement shall not be construed for or against any Party by reason of which Party drafted it.

L. Agreement Not Confidential. Pursuant to 12 U.S.C. § 1821(s), this Agreement cannot be and shall not be deemed to be confidential.

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 Prosperan Bank

(b)(6) \_\_\_\_\_  
By: \_\_\_\_\_  
Name: L. ANTHONY LEHR  
Title: Counsel  
Dated: 8-28-13



SIGNED AND SWORN TO BEFORE ME  
THIS 28<sup>th</sup> DAY OF AUGUST, 2013.

(b)(6) \_\_\_\_\_  
\_\_\_\_\_  
NOTARY PUBLIC

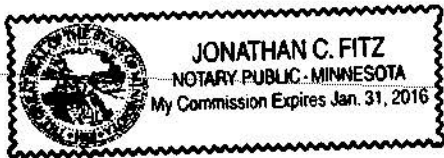
SCOTT A JOHNSON, an Individual

(b)(6)



Dated: 8/30/13

SIGNED AND SWORN TO BEFORE ME  
THIS 30<sup>th</sup> DAY OF August, 2013.



(b)(6)



NOTARY PUBLIC

JAMES S. KLOOSTERBOER, an Individual

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

SIGNED AND SWORN TO BEFORE ME  
THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2013.

\_\_\_\_\_  
NOTARY PUBLIC

SCOTT A. JOHNSON, an Individual

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

SIGNED AND SWORN TO BEFORE ME  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2013.

\_\_\_\_\_  
NOTARY PUBLIC

JAMES S. KLOOSTERBOER, an Individual

(b)(6)

\_\_\_\_\_

Dated: 8/30/13

SIGNED AND SWORN TO BEFORE ME  
THIS 30 DAY OF August, 2013.

(b)(6)

\_\_\_\_\_

NOTARY PUBLIC



RICHARD T. SANDQUIST, an Individual

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

SIGNED AND SWORN TO BEFORE ME  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2013.

\_\_\_\_\_  
NOTARY PUBLIC

FEDERAL INSURANCE COMPANY  
By: Chubb & Son, a division of Federal Insurance Company,  
Manager

(b)(6)

\_\_\_\_\_

By: \_\_\_\_\_  
Name: *Nora B. Deary*  
Title: *Sr. Claims Officer*

SIGNED AND SWORN TO BEFORE ME  
THIS *4th* DAY OF *September*, 2013.

(b)(6)

\_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

*J*  
COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Sharon A. Bubacz, Notary Public  
City of Pittsburgh, Allegheny County  
My Commission Expires May 16, 2017  
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

RICHARD T. SANDQUIST, an Individual

(b)(6) [Redacted Signature]

Dated: *Sept 4, 2013*

SIGNED AND SWORN TO BEFORE ME  
THIS 4<sup>th</sup> DAY OF September, 2013.

**Amanda M. Komro**  
**NOTARY PUBLIC**  
**STATE OF WISCONSIN**

*ex: 817/16*

(b)(6) [Redacted Signature]

NOTARY PUBLIC

FEDERAL INSURANCE COMPANY  
By: Chubb & Son, a division of Federal Insurance Company,  
Manager

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

SIGNED AND SWORN TO BEFORE ME  
THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2013.

\_\_\_\_\_  
NOTARY PUBLIC