

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

American Bancorporation,

Bky. Case No. 14-31882 (KAC)

Debtor.

Chapter 11

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**APPLICATION OF DEBTOR TO EMPLOY AND APPROVE TERMS OF  
COMPENSATION OF CARL MARKS SECURITIES LLC  
AS FINANCIAL ADVISOR**

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TO: United States Bankruptcy Judge and the United States Trustee and other parties in interest identified in Local Rule 2014-1.

American Bancorporation (the “Debtor” or the “Applicant”) hereby submits this application (the “Application”) seeking to employ Carl Marks Securities LLC (“CMS”) as financial advisor to the Debtor in the above-captioned Chapter 11 bankruptcy case pursuant to Sections 327(a) and 328(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

**RELIEF REQUESTED**

The Debtor requires the services of a financial advisor to advise it regarding the strategic alternatives available to it and to assist in the implementation of a strategic plan, including a prospective reorganization, sale or merger, in one or more transactions that may arise during this Chapter 11 bankruptcy case, as more fully described below. The Debtor has determined that the retention and employment of

CMS, a registered broker-dealer that has substantial experience in handling reorganization, recapitalization and sale transactions (both inside and outside of bankruptcy), will provide substantial benefits to this estate. The Debtor seeks an order (a) authorizing it to retain and employ CMS as its financial advisor effective as of June 16, 2014, and (b) approving the terms and conditions under which CMS will be retained and compensated by the Debtor in this case. A true and correct copy of the Financial Advisory Agreement dated June 16, 2014 between the Debtor and CMS is attached as Exhibit A hereto (the "Agreement").<sup>1</sup> In support of this Application, the Debtor relies upon and incorporates the Unsworn Declaration of Evan Tomaskovic attached as Exhibit B hereto (the "Tomaskovic Declaration"). In further support of the Application, the Debtor represents as follows:

BASIS FOR RELIEF REQUESTED

1. Under Section 327 of the Bankruptcy Code, a debtor-in-possession may employ one or more professionals, that do not hold or represent an interest adverse to the bankruptcy estate and that are disinterested, to assist the debtor-in-possession in carrying out its duties under the Bankruptcy Code. 11 U.S.C. § 327(a).

2. Section 328 of the Bankruptcy Code provides, in pertinent part, that under Section 327 of the Bankruptcy Code a professional may be employed "on any reasonable terms and conditions of employment, including . . . *on a fixed percentage fee basis, or on a contingent fee basis.*" 11 U.S.C. § 328(a) (emphasis added).

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Agreement, unless the context requires otherwise.

3. Bankruptcy Rule 2014 provides, in part, that an order approving the employment of professionals retained by the Debtor pursuant to Section 327 shall be made by application. Fed. R. Bankr. 2014.

4. By this Application, the Debtor requests that the Court approve the employment and compensation arrangements described in the Agreement pursuant to Section 328(a) of the Bankruptcy Code. The employment arrangement contained in the Agreement is beneficial to the bankruptcy estate. The arrangement and compensation have been structured to minimize the burdens on the Debtor and provide proper inducement for CMS to act expeditiously and prudently with respect to the matters to which it will be employed.

#### JURISDICTION

5. This Court has jurisdiction over this Application under 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue of the Debtor's Chapter 11 bankruptcy case, as well as any proceedings arising in this case, is proper under 28 U.S.C. §§ 1408 and 1409.

6. This Application arises under 11 U.S.C. §§ 327 and 328, and Bankruptcy Rule 2014. This Application is filed under Local Rules 2014-1 and 9013-4.

#### BACKGROUND

7. An involuntary petition commencing the Chapter 11 bankruptcy case of the Debtor was filed on May 1, 2014. The Debtor filed a consent to the entry by the Court of an order for relief under Chapter 11 of the Bankruptcy Code. The Order for Relief was entered by the Court on May 27, 2014. The bankruptcy case is pending in

this Court and the Debtor continues to manage its property and affairs as a debtor and debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

8. The Debtor is a Minnesota corporation registered as a bank holding company under the Bank Holding Company Act of 1956, as amended. As a bank holding company, the Debtor and its subsidiary are subject to oversight and regulation by the Board of Governors of the Federal Reserve System. The Debtor owns 100% of the issued and outstanding shares of American Bank of St. Paul, d.b.a. American Bank (the “Bank”). The Bank, which is not a debtor and continues to operate in the ordinary course of business, was formed in 1972. The Bank is an FDIC-insured institution that currently has six retail branch locations in Minnesota and employs approximately 73 people. The Bank owns 100% of the issued and outstanding shares of AmeriNational Community Services, Inc. (“AmeriNational”), which further employs approximately 87 people. AmeriNational’s operations include loan servicing, credit underwriting, compliance monitoring and multi-family housing services for clients that include government agencies, financial institutions and non-profit entities.

#### NECESSITY

9. The Debtor, in its business judgment, believes that the assistance of a financial advisor that can assist it in connection with the evaluation, pursuit and consummation of a value maximizing strategy is essential to the successful administration of the bankruptcy case. The Debtor has determined that the retention of a financial advisor is necessary to advise it in evaluating strategic alternatives and to assist in the implementation of a strategic plan, which could include a prospective

reorganization of the Debtor, the Debtor's assets, and the assets of the Debtor's direct and indirect subsidiaries, including a possible sale or merger in one or more transactions.

10. The Debtor considered a number of potential firms who could serve as its financial advisor and who were experienced in reorganization, recapitalization, bankruptcy sales and community banking transactions. The Debtor interviewed four firms, conducting a detailed review of their qualifications, experience and expertise, including proposed fees and structures for services to be provided in this case. The Debtor also consulted with representatives of creditors during its interview and selection process, including representatives of certain holders of junior subordinated indentures and related trust preferred securities ("TruPS") that are petitioning creditors in this Chapter 11 proceeding.

11. The Debtor has selected CMS to serve as its financial advisor based on the interviews and the qualifications, experience and expertise of CMS, and believes that its selection and engagement of CMS on the terms set forth in the Agreement is supported by the petitioning creditors.

#### QUALIFICATIONS AND EXPERIENCE

12. The professionals of CMS involved in this engagement provide services through CMS and its affiliate Carl Marks Advisory Group LLC ("CMAG"). CMS's professionals have extensive experience working with financially troubled entities in complex financial and operational restructurings, both in Chapter 11 cases and out-of-court restructurings, and its principals have served as restructuring and financial

advisors to numerous debtors-in-possession, committees and other parties in bankruptcy proceedings. CMS is an investment banking firm and registered broker-dealer that provides a wide array of investment banking, financial advisory services, including merger and acquisition advice, financial restructuring advice, sourcing of capital, valuations and expert testimony. CMS's professionals also provide services through CMAG, a respected restructuring advisory and turnaround firm, having been named one of the outstanding turnaround firms in the United States for thirteen consecutive years by Turnarounds & Workouts, a national publication focused on distressed businesses in the U.S. and Canada. CMS's professionals have significant experience in structuring and advising parties in connection with the development and implementation of strategies for securing capital and sale transactions conducted pursuant to Section 363 of the Bankruptcy Code.

13. The professionals involved in this engagement regularly represent community banks in a number of capitalization and restructuring matters and have also served as financial advisor to holders of TruPS or to Official Committees of Unsecured Creditors in a number of recent bank holding company bankruptcy cases, both through CMS and through CMAG, including *In re Idaho Bancorp.*, Bky. Case No. 14-00662 (Bankr. D. Idaho), *In re First Mariner Bancorp.*, Bky. Case No. 14-11952 (Bankr. D. Md.), *In re North Texas Bancshares, Inc.*, Bky. Case No. 13-12699 (Bankr. D. Del.), *In re Rogers Bancshares, Inc.*, Bky. Case No. 13-13838 (Bankr. E.D. Ark.). Accordingly, the Debtor believes that CMS and its professionals are well-qualified to be its financial advisor and to assist the Debtor in pursuing a plan or transaction that maximizes value for the

benefit of the bankruptcy estate.

SERVICES TO BE PROVIDED

14. The Debtor and CMS have entered into the Agreement, which governs the relationship between the parties. The terms and conditions of the Agreement, including the proposed compensation and other terms, were heavily negotiated, and reflect the parties' mutual agreement as to the substantial efforts that will be required in this engagement.

15. Pursuant to the Agreement, CMS will work with the Debtor and its legal representatives to develop and review possible strategies and alternatives available to the Debtor and its direct and indirect subsidiaries to accomplish the Debtor's objectives in this case. To support the Debtor's implementation of its selected strategy, CMS will:

- a. Assist or participate in negotiations with the parties in interest, including, without limitation, any current or prospective creditors of, holders of equity in, or claimants against the Debtor and/or their respective representatives in connection with a Transaction;
- b. Assist or participate in negotiations with the parties in interest in connection with one or more transactions whereby control of or a material interest in the securities, assets or business of the Debtor is acquired by or disposed of through the sale, exchange or disposition of capital stock, debt or assets, a conversion of debt to equity, a lease of assets with or without a purchase option, a merger or consolidation, a tender or exchange offer, a leveraged buy-out, a minority investment, the formation of a joint venture or partnership, or any other business combination or similar transaction, whether consummated through a court approved sale transaction under Section 363 of the Bankruptcy Code or similar mechanism, and/or pursuant to a Plan of Reorganization;
- c. Advise the Debtor on the risks and benefits of considering a transaction with respect to its strategic alternatives to maximize value, whether pursuant to a sale, a Plan of Reorganization or otherwise;

- d. Review the business plan of the Debtor and the Subsidiaries and other information in working with management to prepare a Confidential Information Memorandum and other related documents describing a possible sale Transaction to stimulate interest among potential acquirers or merger candidates (collectively, the "Acquirers");
- e. Formulate and implement a strategy for identifying prospective Acquirers, approaching them and ascertaining their level of interest in a Transaction;
- f. Assist the Debtor in its determination of appropriate values to be received in a Transaction;
- g. Coordinate the sales effort, due diligence process, manage data flow between management and potential Acquirers and lead in the negotiation and structuring of the aspects and financial terms of each proposed Transaction;
- h. Submit, analyze the relative merits of, and discuss with the Debtor proposals from all interested parties, coordinate the negotiation process with the Debtor, participate in negotiations, and otherwise reasonably assist the Debtor in effectuating the Transaction;
- i. Make one or more presentations to the Debtor's Board of Directors and creditors for the purpose of assisting in making a reasoned and well informed decision regarding one or more proposed Transactions, and providing analysis of, and advice regarding, competing bids, and responding to questions from the Board of Directors of the Debtor and creditors regarding the foregoing;
- j. With the participation and approval of the Board of Directors of the Debtor or its designated representatives, negotiate with selected potential Acquirers, assist in structuring a Transaction and bidding procedures on terms deemed acceptable to the Debtor in an effort to maximize value, manage the documentation and closing process associated with the Transaction, and facilitate discussions between the legal, accounting, tax and business transaction teams of the Debtor and its Subsidiaries and the selected Acquirers with the objective of reaching a closing on terms acceptable to the Debtor;
- k. Work with the Debtor and its advisers in providing evidentiary support for the Debtor's conclusion that the selected course of action is in the best interests of the Debtor and the bankruptcy estate;



- l. Testify before the bankruptcy court on matters relating to a Transaction, CMS's marketing efforts and engagement; and
- m. Perform other such services as may reasonably be required and mutually agreed upon by the Debtor and CMS.

FEES AND EXPENSES

16. All aspects of the compensation arrangement between the Debtor and CMS have been heavily negotiated and structured with reference to the results achieved and ultimate benefit to the Debtor. All fees and expenses payable by the Debtor are tied to the closing of one or more Transactions.

17. The Debtor and CMS each acknowledges and agrees that the benefit to the Debtor and the bankruptcy estate of CMS's services under the Agreement will not be measured by reference to the number of hours expended by CMS's professionals in the performance of such services but will be solely measured by the benefit to the Debtor and the bankruptcy estate of the possible transactions contemplated and the contribution of CMS's services thereto. As such, as compensation for the financial advisory services to be rendered by CMS, the Debtor has agreed to pay CMS a completion fee (a "Completion Fee") based upon the successful consummation of one or more Transactions for the benefit of the bankruptcy estate. The Completion Fee will be paid in cash and earned in full and due upon the closing of each Transaction with any party during the term of the Agreement or with any Covered Party within the Residual Period or, in the case of a plan, upon the effective date of a Plan of Reorganization confirmed by the Bankruptcy Court.

18. Under the Agreement, the Completion Fee will be in an amount equal to

4.0% of the Transaction Value of any Transaction. Notwithstanding the foregoing, the aggregate Completion Fee payable by the Debtor in connection with the closing of all Transactions shall not be less than \$500,000. The Debtor, in consultation with representatives of certain of the petitioning creditors, has reviewed the Completion Fee and minimum fee components of the engagement and evaluated their reasonableness with reference to both assessments of value that may be achieved in connection with the consummation of one or more Transactions as well as other comparable market transactions. Based upon those assessments, the Debtor believes the fee structure, including the minimum fee, is both reasonable and necessary to induce CMS to undertake the engagement.

19. CMS will also be entitled to reimbursement for all reasonable out-of-pocket expenses incurred by it in the performance of its duties under the Agreement (the "Expenses") upon the closing of a Transaction and upon presentation of appropriate documentation to the Debtor; provided that such Expenses shall not exceed \$50,000 in the aggregate without the prior written consent of the Debtor. The Expenses shall include, but not be limited to, transportation of any of CMS's personnel, employees or associates on business related to the Engagement, cost of hotels, meals, research, etc. Such Expenses shall also include reasonable legal fees CMS may incur in retaining its own counsel, to the extent necessary, in connection with its performance under the Agreement. Any legal counsel that may be retained by CMS, if any, shall not be a professional retained by the Debtor or represent the bankruptcy estate and shall be subject to the requirement that that the Debtor first consents to the retention of such

counsel in writing (which consent shall not be unreasonably withheld or delayed). All Expenses will be reimbursed by the Debtor upon the closing of a Transaction after receipt of invoices therefore, which shall be submitted promptly after the end of each week in which CMS renders services and shall be subject to allowance as set forth below.

20. Pursuant to Sections 330 and 331 of the Bankruptcy Code and the Bankruptcy Rules, CMS will apply to the Court for the interim and final allowance of any Completion Fee and for the reimbursement of all Expenses as a professional person pursuant to, and subject to the standard of review of, Section 328(a) of the Bankruptcy Code and not subject to any other standard of review under Section 330 of the Bankruptcy Code.

21. It is not the general practice of investment banking firms to keep detailed time records similar to those customarily kept by attorneys and other professionals who are compensated on an hourly basis. The Debtor believes that CMS's investment banking and general restructuring expertise, knowledge of the capital markets, and mergers and acquisitions capabilities will inure to the benefit of the Debtor such that the value to the bankruptcy estate of CMS's services will derive in substantial part from that expertise and experience regardless of the number of hours expended. In addition, because the structure and amount of CMS's compensation in this case is as a contingent Completion Fee in a fixed amount, the Debtor requests that CMS not be required to maintain detailed time records in accordance with Bankruptcy Rule 2016(a), Local Rule 2016-1 and any applicable U.S. Trustee Guidelines in connection with services it renders

in this case or be required to submit detailed time records in support of its interim and final fee applications. Instead, the Debtor proposes that CMS and its professionals maintain summary time records, in one-hour increments, indicating a general description of the work performed and the professionals performing the services on behalf of the Debtor, exclusive of any requirement to keep time records on a project category basis. Further, CMS will maintain detailed records of any actual and necessary costs and expense incurred in connection with the services. CMS shall present all such records in any interim or final application filed with the Court, which may be filed in conjunction with or as soon as practicable following a hearing by the Court on the approval of a Transaction contemplated by the Financial Advisory Agreement.

22. CMS's proposed fee and expense reimbursement arrangement with the Debtor as memorialized in the Agreement contains reasonable terms and is comparable to those generally charged by investment banking and financial advisory firms of similar stature for comparable engagements. The engagement is designed to minimize the burden on the bankruptcy estate by tying payment to the closing of a Transaction and to compensate CMS fairly for the benefits to the bankruptcy estate that result from a closing of a Transaction attributable to the work of CMS's professionals.

#### INDEMNIFICATION

23. Financial advisors and investment banking firms rely heavily on information provided by debtors in making contacts with potential investors, acquirers and other parties to a potential transaction. This is particularly true in transactions that involve recapitalizations and securities transactions. It is customary both in Chapter 11

and outside Chapter 11, for this reason, that financial advisors receive indemnification from the entities for whom they work.

24. Under the Agreement, the Debtor acknowledges that CMS will be relying on information furnished by the Debtor in the performance of its services and the Debtor agrees to provide to CMS information that is in all material respects complete and accurate. CMS will not be independently verifying such information. Annex I of the Agreement includes standard engagement provisions relating to indemnification that the Debtor has negotiated at arm's length and believes are reasonable under the circumstances and customary in scope. The Agreement provides, among other things, that the Debtor will indemnify and hold CMS and its affiliates and their related parties harmless if, in connection with any services, work or matters relating to or arising out of the Agreement, such parties become involved in any capacity in any claim, action or legal proceeding.

25. The indemnity agreement is a material component of the Agreement and served as an inducement for CMS to undertake its obligations and render services. The indemnity provisions make it clear that no indemnification is available for losses that result from CMS's willful misconduct, fraud, bad faith, self-dealing or gross negligence. Further, under the terms of Agreement, if, before the earlier of (a) the entry of an order confirming a Plan of Reorganization in this case (that order having become a final order no longer subject to appeal), and (b) the entry of an order closing this Chapter 11 case, CMS believes that it is or may be entitled to the payment of amounts by the Debtor on account of the Debtor's indemnification obligations under the Agreement, CMS must

file an application in this Court, and the Debtor shall not pay any such amounts before the entry of an order by the Court approving the payment. CMS has consented to the jurisdiction of this Court for purposes of enforcing the Agreement and for addressing payment on account of any claim of indemnification, if any, that may arise.

26. The terms for indemnification are standard engagement provisions and reflect the qualifications and limits on such terms that are customary for CMS and other similar financial advisors as approved in this and other jurisdictions. *See, e.g., United Artists Theatre Co. v. Walton (In re United Artists Theatre Co.)*, 315 F.3d 217, 234 (3d Cir. 2003)(finding the indemnification agreement between the debtor and the financial advisor to be reasonable under Section 328 of the Bankruptcy Code); *In re Baltimore Emergency Servs. II, LLC*, 291 B.R. 382, 386 (Bankr. D. Md. 2003); *In re Lyman Holding Company, et. al.*, Bky. Case No. 11-45190, Dkt. Nos. 409, 410 & 441 (Bankr. D. Minn. 2012) (application of committee of unsecured creditors); *In re Lyman Holding Company, et. al.*, Bky. Case No. 11-45190, Dkt. Nos. 37 & 140 (Bankr. D. Minn. 2011); *In re Lyman Holding Company, et. al.*, Bky. Case No. 11-45190, Dkt. Nos. 126 & 143 (Bankr. D. Minn. 2011); *In re Genmar Holdings, Inc., et al.*, Bky. Case No. 09-43537, Dkt. Nos. 319 & 361 (Bankr. D. Minn. 2009); *In re Polaroid*, Bky. Case No. 08-46617, Dkt. Nos. 53 & 89 (Bankr. D. Minn. 2009); *In re Otter Tail Ag Enterprises, LLC*, Bky. Case No. 09-61250, Dkt. Nos. 134 & 137 (Bankr. D. Minn. 2009); *In re Seasonal Concepts, Inc.*, Bky. Case No. 07-43618, Dkt. Nos. 6 & 14 (Bankr. D. Minn. 2007) (approving retentions of financial advisors and other professionals under the Bankruptcy Code that included indemnity provisions as a term of the engagement).

27. The Debtor respectfully submits that the indemnification provisions contained in the Agreement, particularly when viewed in conjunction with the other terms of CMS's proposed retention and the benefits of the Agreement, are reasonable under the circumstances of this case.

DISINTERESTEDNESS

28. The Debtor has not employed CMS at any time in the past with respect to any business matters. The Debtor has reviewed the Tomaskovic Declaration and believes that CMS does not represent any non-Debtor entity in connection with this case, does not hold or represent any interest adverse to the estate, and is disinterested under § 327 of the Bankruptcy Code. The Debtor understands that CMS and/or its affiliates have performed services as financial advisor in a number of recent bank holding company cases as set forth in the Tomaskovic Declaration, but does not believe, however, that such services on matters unrelated to this case result in CMS not being disinterested in this case. The Debtor believes the representations in the Tomaskovic Declaration do not constitute conflicts, and to the extent they may be considered "connections" within the meaning of Rule 2014, they are therefore disclosed.

NO PRIOR REQUEST

29. No previous application has been made for employment of a financial advisor.

BEST INTERESTS

30. The Debtor believes that the retention of CMS to advise the Debtor and assist in this bankruptcy case is in accordance with the terms of the Agreement is in the

best interests of the Debtor, its estate and its creditors. Accordingly, the Debtor submits that this Court should authorize the retention and employment of CMS and grant the other relief requested in this Application.

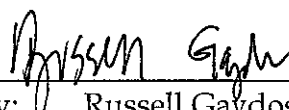
NOTICE

31. This Application has been served on the parties set forth in Local Rule 2014-1(a). In the event the United States Trustee, the Court, or other party asserts or is concerned that CMS is not disinterested, the Debtor requests that a hearing be promptly scheduled.

WHEREFORE, the Debtor respectfully requests that the Court enter an order (i) authorizing it to retain and employ CMS as its financial advisor effective as of June 16, 2014, (ii) approving the terms and conditions under which CMS will be retained and compensated by the Debtor in this case under 11 U.S.C. § 328(a), and (iii) granting such other or further relief the Court deems just and equitable.

AMERICAN BANCORPORATION

Dated: June 24, 2014

  
By: \_\_\_\_\_  
Its: Russell Gaydos  
Chief Restructuring Officer



# **EXHIBIT A**

**CONFIDENTIAL**

June 16, 2014

American Bancorporation  
1060 Dakota Drive  
Mendota Heights, MN 55120  
Attention: Russell Gaydos

Re: **FINANCIAL ADVISORY AGREEMENT**

Ladies and Gentlemen:

Carl Marks Securities LLC (“CMS”) is pleased to submit this letter agreement (this “Agreement”) confirming the terms under which CMS will serve as the financial advisor to American Bancorporation (the “Debtor”) in connection with its exploration of strategic alternatives available to the Debtor which could include a prospective reorganization of the Debtor, the Debtor’s assets, the assets of the Debtor’s direct and indirect subsidiaries, American Bank of St. Paul (the “Bank”) and AmeriNational Community Services, Inc. (“AmeriNational”; and together with the Bank, the “Subsidiaries”), including a prospective sale or merger of the Debtor and/or any portion thereof, in one or more transactions (each a “Transaction” as defined below).

The Debtor hereby engages CMS, and CMS hereby agrees to serve the Debtor, as its exclusive financial advisor (the “Engagement”). The Debtor understands and acknowledges that CMS has and will continue to have other engagements for other clients during the term of this Agreement. The Debtor is a chapter 11 debtor and debtor-in-possession in the United States Bankruptcy Court in the United States Bankruptcy Court for the District of Minnesota (the “Bankruptcy Court”), BKY Case No. 14-31882.

1. **Services to be Provided.** CMS is a registered broker-dealer that provides investment banking and financial advisory services to its clients. CMS will act as the Debtor’s financial advisor and provide strategic advice and assistance to the Debtor including:

- Based upon information available to, and provided by, the Debtor, review critical agreements and business documentation of the Debtor and its Subsidiaries, to include:
  - Credit agreements and their subsequent amendments
  - Ownership agreements
  - Financials, projections, liquidity, expense base, loan book and provisions, and its current capital structure
  - Regulatory and licensing documents
- Work with the Debtor’s legal representatives in reviewing and developing possible go

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forward strategies; and

- Present an overview of potential strategic alternatives available to the Debtor and its Subsidiaries including timelines and necessary processes to accomplish the Debtor's objectives.

CMS will also work with the Debtor and its counsel in the implementation of the selected go-forward strategy. In support of the implementation of the go-forward strategy, such tasks may include:

- Assist or participate in negotiations with the parties in interest, including, without limitation, any current or prospective creditors of, holders of equity in, or claimants against the Debtor and/or their respective representatives in connection with a Transaction; and
- Advise the Debtor on the risks and benefits of considering a Transaction with respect to its intermediate and long-term business prospects and strategic alternatives to maximize the business enterprise value of the Debtor, whether pursuant to a Plan of Reorganization or otherwise.

In connection with any sale process the Debtor pursues, CMS shall perform the following as necessary:

- a) Review the business plan of the Debtor and the Subsidiaries and other information in working with management to prepare a Confidential Information Memorandum and other related documents describing the possible sale Transaction to stimulate interest among potential acquirers or merger candidates (collectively, the "Acquirers");
- b) Formulate and implement a strategy for identifying prospective Acquirers, approaching them and ascertaining their level of interest in a Transaction;
- c) Assisting the Debtor in its determination of appropriate values to be received in a Transaction;
- d) Coordinate the sales effort, due diligence process, manage data flow between management and potential Acquirers and lead in the negotiation and structuring of the aspects and financial terms of each proposed Transaction;
- e) Submit, analyze the relative merits of, and discuss with the Debtor proposals from all

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interested parties, coordinate the negotiation process with the Debtor, participate in negotiations, and otherwise reasonably assist the Debtor in effectuating the Transaction;

- f) Making one or more presentations to the Debtor's Board of Directors and creditors for the purpose of assisting in making a reasoned and well informed decision regarding one or more proposed Transactions, providing analysis of, and advice regarding, competing bids, and responding to questions from the Board of Directors of the Debtor and creditors regarding the foregoing;
- g) With the participation and approval of the Board of Directors of the Debtor or its designated representatives, negotiate with selected potential Acquirers, assist in structuring a Transaction and bidding procedures on terms deemed acceptable to the Debtor in an effort to maximize value, manage the documentation and closing process associated with the Transaction, and facilitate discussions between the legal, accounting, tax and business transaction teams of the Debtor and its Subsidiaries and the selected Acquirers with the objective of reaching a closing on terms acceptable to the Debtor;
- h) Working with the Debtor and its advisers in providing evidentiary support for the Debtor's conclusion that the selected course of action is in the best interests of the Debtor and the bankruptcy estate;
- i) Testifying before the bankruptcy court on matters relating to a Transaction, CMS's marketing efforts and engagement; and
- j) Perform other such services as may reasonably be required and mutually agreed upon by the Debtor and CMS.

2. **Cooperation.** The Debtor acknowledges and agrees that the ability of CMS to perform the Engagement requires the full cooperation and assistance of the Debtor and its personnel. Accordingly, the Debtor covenants and agrees to furnish to CMS all information, documents and other materials reasonably requested by CMS and to make available to CMS for meetings, conference calls and otherwise all personnel designated by CMS to enable CMS to receive on a timely basis, in writing and verbally, all information requested by CMS related to the Engagement under this Agreement.

3. **Completion Fee.** The Debtor and CMS each acknowledges and agrees that the benefit to the Debtor and the bankruptcy estate of CMS's services under this Agreement is not measured by reference to the number of hours to be expended by CMS's professionals in the

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performance of such services but reflects and is solely measured by the benefit to the Debtor and the bankruptcy estate of the possible Transactions contemplated hereby and the contribution of CMS's services thereto. As such, as compensation for the financial advisory services to be rendered hereunder by CMS, the Debtor shall pay CMS a completion fee (a "Completion Fee") which will be paid in cash and earned in full and due upon the closing of each Transaction with any party during the term of this Agreement or with any Covered Party within the Residual Period or upon the effective date of a Plan of Reorganization confirmed by the Bankruptcy Court (a "Plan of Reorganization") only in such case of a Plan of Reorganization. Such Completion Fee will be in an amount equal to 4.0% of the Transaction Value of any Transaction. Notwithstanding the foregoing, the aggregate Completion Fee payable in connection with the closing of all Transactions hereunder shall not be less than \$500,000. For example, if AmeriNational and the Bank are sold under separate Transactions, then the total Completion Fee payable in connection with both the closing of the sale of the stock of the Bank owned by the Debtor and the sale of the stock of AmeriNational, in the aggregate, shall not be less than \$500,000.

4. **Out-of-Pocket Expenses.** CMS shall be entitled to reimbursement for all reasonable expenses incurred by it in the performance of its duties hereunder (the "Expenses") upon the closing of a Transaction and upon presentation of appropriate documentation therefore; provided that such Expenses shall not exceed \$50,000 in the aggregate without the prior written consent of the Debtor. The Expenses shall include, but not be limited to, transportation of any of CMS personnel, employees or associates on business related to the Engagement, cost of hotels, meals, research, etc. Such Expenses shall also include, but not be limited to, all reasonable legal fees incurred by CMS in connection with its performance of the Engagement, provided that the Debtor first consents to the retention of such counsel for such services in writing (which consent shall not be unreasonably withheld or delayed). All Expenses will be reimbursed by the Debtor upon the closing of a Transaction and after receipt of invoices therefore, which shall be submitted promptly after the end of each week in which CMS renders services.

5. **Definitions.** As used in this Agreement, the term:

**"Transaction"** shall mean any of the following, whether consummated through a court approved sale transaction under Section 363 of the Bankruptcy Code or similar mechanism, and/or pursuant to one or more Plans of Reorganization: one, or a series of multiple related transactions that produces Transaction Value whereby, directly or indirectly, control of or a material interest in the securities, assets or business of the Debtor or the Subsidiaries is acquired by, disposed of or combined with any person or entity through the sale, exchange or disposition of capital stock, debt or assets, a conversion of debt to equity, a lease of assets with or without a

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purchase option, a merger or consolidation, a tender or exchange offer, a leveraged buy-out, a minority investment, the formation of a joint venture or partnership, or any other business combination or similar transaction.

**“Transaction Value”** shall include the total aggregate amount of any and all forms of consideration on a present value basis received by the Debtor (without duplicating the calculation in the event of multiple Transactions) including, but not limited to, cash, notes, assumed liabilities, retained assets, installment payments, lease payments, consulting or agency contracts, payment for covenants not to compete, earn-outs and deferred payment amounts whether guaranteed or contingent, any additional proceeds to be forthcoming from the Transaction, and any other similar assets. The value of securities that are not freely tradable or have no established public market, or if the consideration utilized consists of property other than securities, the value of such property shall be the fair market value thereof as determined in good faith by the parties, or if the parties cannot agree then as reasonably determined by the Bankruptcy Court after notice and hearing.

6. **Information.** The Debtor will furnish CMS (and, if appropriate, will request that the acquiring entity furnish CMS) with such information as CMS believes relevant and appropriate to its services under this Agreement and agrees to cooperate fully with CMS in connection with its financial review and analysis. The Debtor recognizes and agrees that, in performing the services contemplated in this Agreement, CMS will be relying on information furnished by the Debtor as well as information available from generally recognized public sources. Such information will not be independently verified by CMS and CMS will not make an independent evaluation or appraisal of any assets or liabilities (contingent or otherwise) of the Debtor or the acquiring entity and accordingly, the Debtor agrees that such information provided by the Debtor will be complete and accurate in all material respects and not misleading and that the Debtor will promptly notify CMS if it learns of any material inaccuracy or any misleading statement in any information previously delivered to CMS.

7. **Termination.** The Engagement may be terminated by the Debtor or CMS at any time with or without cause, upon fourteen (14) days prior written notice to the other, without liability or continuing obligations to the other, except (i) as otherwise provided in this Agreement, and (ii) CMS shall be entitled to any Completion Fee in the event that, at any time prior to the expiration of twelve (12) months after receipt of written termination of this Agreement by the Debtor without cause, or by CMS as a result of material breach of this Agreement by the Debtor (“Residual Period”), any Transaction is consummated by the Debtor with a Covered Party, or the Debtor enters into an agreement that subsequently results in a Transaction with a Covered Party. Within thirty (30) days after the effective date of any

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termination or expiration, CMS shall deliver to the Debtor, a list of all parties with whom CMS has had discussions concerning the Transaction prior to receipt of the notice of termination. Each listed party shall be considered a "Covered Party."

8. **Indemnification.** Since CMS will be acting on the Debtor's behalf in connection with the Engagement hereunder, the Debtor agrees to indemnify and hold CMS and its affiliates harmless in accordance with the agreement annexed as Annex I hereto, which is incorporated herein by reference and which shall survive the termination of this Agreement.

9. **Proprietary Work Product and Confidential Debtor Information.** The Debtor acknowledges and agrees that any work product including, without limitation, any information, advice, recommendations or other content of any Reports is for the sole use of the Debtor and is not intended for distribution to, or to be relied upon by, any third parties. In addition, CMS acknowledges and agrees that as a result of the services to be provided hereunder, the persons performing such services may acquire knowledge and information of a secret and confidential nature of the Debtor and its Subsidiaries. CMS further acknowledges and agrees that this information constitutes valuable property of the Debtor and applicable Subsidiary generally not being disseminated or made known to persons or organizations outside the Debtor at all, or if made known, being done so only under specific and restrictive conditions such as to ensure that it does not become readily available to the public, and also that confidential information of others may be received by the Debtor and its Subsidiaries with restrictions on its use and disclosure. Accordingly, CMS agrees that:

- (i) CMS and any person performing any services for CMS hereunder shall not, during the Term or at any time thereafter, disclose to anyone outside the Debtor and its Subsidiaries or use in other than the Debtor's business any secret or confidential information of the Debtor or its Subsidiaries, except as authorized by the Debtor. The information that is not readily available to the public shall be considered secret and confidential for the purpose of this Agreement and shall include, but not be limited to, information relating to the Debtor, its Subsidiaries, customers, processes, products, apparatus, data, compounds, business studies, business and contracting plans, business procedures and finances;
- (ii) CMS and any person performing any services for CMS hereunder shall not, during the Term or at any time thereafter, disclose to any other person or use secret or confidential information of others, which, to the knowledge of CMS, has been disclosed to the Debtor or its Subsidiaries with restriction on the use or disclosure thereof, in violation of those restrictions;

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(iii) CMS and any person performing any services for CMS hereunder shall not, during the Term or at any time thereafter, disclose to the Debtor or its Subsidiaries or induce the Debtor or its Subsidiaries to use, without prior permission of the owner, any secret or confidential information or material of others of which CMS is or may become possessed; and

(iv) Notwithstanding the foregoing, CMS and any person performing services for CMS hereunder shall not be liable for the disclosure of information which may otherwise be deemed confidential hereunder:

- (a) if the information is in, or becomes part of, the public domain, other than by CMS's disclosure of the information;
- (b) if the information is furnished to a third party by the Debtor without restriction on the third party's right to disseminate the information;
- (c) if the information is already of record in CMS's files at the time of disclosure, or is disclosed to CMS by a third party as a matter of right;
- (d) if the information is disclosed with the Debtor's written approval;
- (e) if the information is compelled to be revealed via subpoena, civil investigative demand or other judicial or administrative process.

The provisions of this Section 9 shall survive the term of this Agreement for a period of forty-eight (48) months following the termination or expiration of this Agreement.

Unless the Debtor agrees in writing otherwise, no confidential information of the Debtor or the Subsidiaries shall be provided to a third party (including a prospective Acquirer) absent receipt of an executed confidentiality agreement from such third party acceptable to the Debtor.

10. **Governing Law; Submission to Jurisdiction.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to its conflicts of law principles. This Agreement is subject to the approval by the Bankruptcy Court and the provisions of the Bankruptcy Code relating to the payment of professionals retained by the Debtor and the bankruptcy estate.



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11. **Agreement Contingent on Bankruptcy Court Approval.** The effectiveness of this Agreement is conditional on the approval of the Bankruptcy Court. The Debtor shall apply for approval of this Agreement from the Bankruptcy Court promptly after execution of this Agreement by both parties subject to the standard of review of Section 328(a) of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and applicable local rules and orders and any other order or orders of the Bankruptcy Court regarding the payment of professional fees and expenses and not subject to any other standard of review under Section 330 of the Bankruptcy Code. In so agreeing to seek CMS's retention under Section 328(a) of the Bankruptcy Code, the Debtor acknowledges that it believes that CMS's general restructuring experience and expertise, its knowledge of the capital markets and its merger and acquisition capabilities will inure to the benefit of the Debtor, that the value to the Debtor of CMS's services derives in substantial part from that expertise and experience and that, accordingly, the structure and amount of the contingent Completion Fee is reasonable regardless of the number of hours to be expended by CMS's professionals in the performance of the services to be provided hereunder. The order of the Bankruptcy court approving the Agreement and authorizing CMS's retention in accordance with the Agreement shall be in form and substance acceptable to CMS in its sole reasonable discretion.

12. **Sole and Entire Agreement; Assignment; Waiver.** This Agreement is the sole and entire agreement between the parties pertaining to its subject matter and supersedes all prior agreements and understandings of the parties. The Debtor represents and warrants that this Agreement has been approved by all requisite corporate action and that the party executing the same on behalf of the Debtor, subject to the approval required under paragraph 11 of this Agreement, has full power and authority to do so.

This Agreement may not be assigned by either CMS or the Debtor without the written consent of the other party, which shall not be unreasonably withheld. The benefits of, and the obligations and liabilities assumed in, this Agreement shall inure to the benefit of, and be binding upon, any successors and permitted assigns.

No waiver, amendment or other modification of this letter agreement shall be effective unless in writing and signed by each party to be bound thereby.

13. **Conflicts of Interest.** Nothing contained in this Agreement or otherwise, shall diminish or impair the right of CMS to accept engagements, directly or indirectly with the Debtor's lender(s), other professionals or other third parties provided such engagements do not involve the relationship of the lenders, other professionals or other third parties to the Debtor.

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14. **Limitation on CMS Liability.** If CMS fails to perform its obligations under or is otherwise in breach of or default under this Agreement, the maximum liability of CMS in respect thereof shall be limited to an amount equal to the aggregate of all fees paid to CMS pursuant to this Agreement.

15. **Waiver of Jury Trial.** Each of the parties to this Agreement (on its own behalf and, to the extent permitted by law, on behalf of its security holders) hereby waives its right to a jury trial in any action claim, suit or proceeding with respect to CMS's engagement as financial advisor or its services hereunder.

16. **Exculpation.** CMS shall not be liable to the Debtor or its Subsidiaries for any mistakes of judgment or for any action or inaction of any officers, directors or affiliates of CMS, unless such mistakes, action or inaction arise out of, or are attributable to, the gross negligence, fraud, willful misconduct, self-dealing or bad faith of such officers, directors or affiliates of CMS.

17. **Independent Contractor Relationship.** The Debtor acknowledges and agrees that CMS is acting solely as an adviser to the Debtor, and not as an adviser to or agent of any other person related to this engagement. Any duties of CMS arising out of its engagement hereunder shall be owed solely to the Debtor. The Debtor's engagement of CMS is as an independent contractor and not in any other capacity. This Agreement does not create and shall not be construed to create a relationship of principal and agent, joint venturer, co-partners, employer and employee, master and servant or any similar relationship between CMS and the Debtor, and the parties hereto expressly deny the existence of any such relationship. The Debtor and CMS hereby agree and stipulate that this Agreement is for valuable personal services and not for brokerage.

18. **Reliance on Agreement.** Unless otherwise expressly agreed and to the extent permitted by applicable law, no one other than the Debtor is authorized to rely upon the Debtor's engagement of CMS or any statements, advice or conduct by CMS. It is understood that CMS's responsibility to the Debtor is solely contractual in nature and that CMS does not owe the Debtor, or any other party, any fiduciary duty as a result of its engagement.

19. **Scope of Engagement.** The scope of CMS's Engagement shall be limited to those matters expressly set out in this Agreement. It is understood that CMS will not be providing advice or services with respect to legal, accounting, tax or any other matters outside of the above scope of services to be provided; and that, while CMS may be generally knowledgeable in such matters, CMS is not an expert in such matters and has not been retained

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to provide advice in such matters.

20. **Publication.** The Debtor agrees that CMS, at its option and expense, has the right to place advertisements in financial and other newspapers and journals describing its services to the Debtor hereunder. If requested by CMS, the Debtor shall include a mutually acceptable reference to CMS in the press release (or other public announcement) made by the Debtor announcing any Transaction.

21. **Email Communication.** In connection with the Engagement, CMS may communicate with the Debtor or others via email transmission. As emails can be intercepted and read, disclosed, or otherwise used or communicated by a third party, or may not be delivered to each of the parties to whom they are directed and only such parties, CMS cannot guarantee or warrant the emails from CMS and other personnel will be properly delivered and read only by the addressee. CMS will take reasonable efforts to see the email transmissions are directed to the intended party; however, CMS specifically disclaims and waives any liability or responsibility whatsoever for interception and unintentional disclosure or communication of email transmissions, or for unauthorized use or failed delivery of emails transmitted by CMS in connection with the Engagement. The Debtor agrees that CMS shall have no liability to it resulting from the unauthorized use or failed delivery of emails transmitted by CMS in connection with the performance of the Engagement provided that CMS has taken reasonable efforts to only direct email transmissions to the parties to whom they are intended.

22. **Force Majeure.** Neither the Debtor nor CMS shall be liable for breach of this Agreement (other than payment obligations) caused by circumstances beyond the Debtor's or CMS's, reasonable control.

23. **Intellectual Property Rights.** CMS may use data, software, designs, utilities, tools, models, systems and other methodologies and know-how ("Materials") that CMS owns or licenses in performing the Engagement. Notwithstanding the delivery of any Reports, CMS retains all intellectual property rights in the Materials (including any improvements or knowledge developed while performing the services).

24. **Representations.** Each party represents and warrants to the other that: (a) it has all requisite power and authority to enter into this Agreement and to perform its obligations

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hereunder, (b) subject to paragraph 11 in the case of the Debtor, that this Agreement has been fully and duly authorized by all necessary action on and has been duly executed and delivered by it, and (c) subject to paragraph 11 in the case of the Debtor, constitutes a valid and binding agreement enforceable against it in accordance with its terms.

25. **Disclosure of Advice.** No advice rendered by CMS, whether formal or informal, may be disclosed, in whole or part, summarized or otherwise referred to without CMS's prior written consent or as required by law. In addition, CMS may not be otherwise referred to without its prior written consent or as required by law.

26. **Headings.** Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

If the foregoing meets with your approval, please sign this letter and the enclosed copy and return this letter to us and retain the copy for your files. We look forward to working with you in this important undertaking.

Very truly yours,

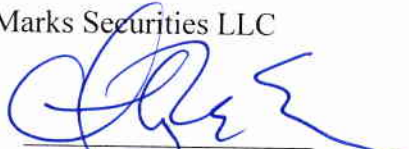
Carl Marks Securities LLC

By:

  
Eyan M. Tomaskovic  
Chief Executive Officer

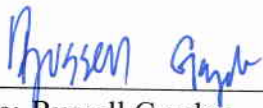
Carl Marks Securities LLC

By:

  
Christopher K. Wu  
Principal

Agreed and Accepted as of  
the Date First Written Above  
American Bancorporation

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By:   
Name: Russell Gaydos  
Title: Chief Restructuring Officer

## **Annex I**

The Debtor shall indemnify and hold harmless CMS, its affiliates, the directors, officers and employees of CMS and its affiliates, and each other person or entity, if any, controlling CMS or any of its affiliates (collectively, "Indemnified Persons"), from and against any and all actions, proceedings, losses, claims, damages, judgments, liabilities or expenses (including, without limitation, reasonable fees and costs of counsel in connection with the investigation, preparation and defense) brought by or against any person, including, without limitation, security holders of the Debtor (collectively, "Losses"), arising out of or relating to (i) the letter agreement of which this Annex I is a part (the "Agreement") and the services CMS will provide pursuant to such Agreement, (ii) the Transaction as defined in the Agreement, or any related transaction or matter, (iii) any statements or omissions made in any disclosure or other information or materials relating to the Transaction and/or CMS's services under the Agreement, and/or (iv) the action or failure to act by an Indemnified Person with the Debtor's consent or in reliance on any act, omission or statement of the Debtor; provided, however, that an Indemnified Person shall not be entitled to indemnification for his/her/its acts or omissions that are determined by a court of competent jurisdiction in a final judgment not subject to appeal to constitute willful misconduct, fraud, self-dealing, bad faith or gross negligence. The Debtor further agrees that no Indemnified Person shall have any liability to the Debtor or its owners, parents, affiliates, security holders or creditors for Losses, other than those caused directly by the willful misconduct, fraud, self-dealing, bad faith or gross negligence of such Indemnified Person.

In the event that the foregoing indemnification is for any reason not available or is insufficient to hold an Indemnified Person harmless, then the Debtor shall contribute to any Losses in such proportion as is appropriate to reflect the relative benefits received (or anticipated to be received) by the Debtor, any affiliate of the Debtor or any of their security holders, on the one hand, and by CMS, on the other hand, from the Transaction and CMS's services in connection therewith. If such allocation is judicially determined in a final judgment not subject to appeal to be unavailable, or if it is insufficient to hold an Indemnified Person harmless, then the Debtor shall contribute to any Losses in such proportion as is appropriate to reflect not only such relative benefits, but also other equitable considerations such as the relative fault of the Debtor or any such affiliate, or security holder, on the one hand, and of CMS, on the other hand. Notwithstanding anything to the contrary, in no event shall the Indemnified Persons as a whole be required to contribute an amount greater than the amount of all fees actually received by CMS from the Debtor in connection with the services under the Agreement. The relative benefits to the Debtor, any such affiliate of the Debtor, and any of their security holders, on the one hand, and CMS, on the other hand, with respect to the matter to which such indemnification relates or would have related shall be deemed to be in the same proportion as (a) the total gross proceeds (before costs and expenses) received or proposed to be received in the Transaction by the Debtor or the total value paid or proposed to be paid in the Transaction to or for the benefit of the Debtor, bears to (b) all fees paid or to be paid to CMS by the Debtor under the Agreement.

The Debtor shall reimburse each Indemnified Person for all Losses (including, without limitation, reasonable fees and disbursements of counsel) incurred by such

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Indemnified Person in connection with investigating, preparing for or defending any action (or enforcing the Agreement or any related engagement or commitment agreement), whether or not in connection with pending or threatened litigation in which any Indemnified Person is a party. The Debtor agrees that it will not settle or compromise or consent to the entry of any judgment in any pending or threatened action or proceeding in respect of which indemnification may be sought hereunder (whether or not an Indemnified Person is a party therein) unless the Debtor has given CMS reasonable prior written notice thereof and obtained an unconditional release of each Indemnified Person from all liability arising therefrom, which release shall be in form and substance reasonably satisfactory to CMS.

The reimbursement, indemnity and contribution obligations of the Debtor hereunder shall be in addition to any liability that the Debtor may otherwise have, shall inure to the benefit of any successors, assigns, heirs and representatives of each Indemnified Person, and shall apply to any modification of the Agreement.

If multiple claims are brought against any Indemnified Person in any action or proceeding and indemnification is permitted under applicable law, we agree that any judgment, arbitration award or other monetary award shall be conclusively deemed to be based on claims as to which indemnification is permitted and provided for hereunder.

Solely for the purpose of enforcing the Agreement and for the purposes set forth in the following paragraph, the Debtor and CMS hereby consent to personal jurisdiction of the Bankruptcy Court.

If, before the earlier of (a) the entry of an order confirming a Plan of Reorganization in this case (that order having become a final order no longer subject to appeal), and (b) the entry of an order closing the Debtor's Chapter 11 case, CMS believes that it is or may be entitled to the payment of amounts by the Debtor on account of the Debtor's indemnification obligations hereunder, CMS agrees that it must file an application therefore in the Bankruptcy Court, and the Debtor shall not pay any such amounts before the entry of an order by the Bankruptcy Court approving the payment.

The provisions of this Annex I shall survive any termination of the Agreement or completion of CMS's services.

# **EXHIBIT B**



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

American Bancorporation,

Bky. Case No. 14-31882 (KAC)

Debtor.

Chapter 11

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**UNSWORN DECLARATION OF EVAN TOMASKOVIC**

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I, Evan Tomaskovic, hereby state that:

1. I am a Principal and Chief Executive Officer of Carl Marks Securities LLC (“CMS”), which I joined in 2005. CMS is the proposed financial advisor and investment banker for American Bancorporation (the “Debtor”), the debtor in the above-captioned bankruptcy case. I submit this Declaration in support of the Application of Debtor to Employ and Approve Terms of Compensation of Carl Marks Securities LLC as Financial Advisor (the “Application”)<sup>1</sup> filed by the Debtor. Unless otherwise stated, I have personal knowledge of all the facts stated herein.

2. I am over eighteen (18) years of age, and I am mentally competent to make this Declaration. Except where specifically noted, the statements in this Declaration are based on either my personal knowledge, information supplied or verified by the CMS team that I supervise, my review of relevant documents, or my opinion based upon my

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning given to them in the Application.

experience and knowledge acquired during the course of my professional career. If I were called upon to testify, I could competently testify to the matters stated in this Declaration.

3. CMS has not rendered any services to the Debtor prior to the commencement of the above-referenced bankruptcy case and has accordingly received no payments from the Debtor prepetition or prior to the entry of the order for relief in this case.

4. The terms and conditions of CMS's retention by the Debtor are set forth in the Financial Advisory Agreement between CMS and the Debtor (the "Agreement"), which terms are summarized below.

5. CMS is an investment banking firm and registered broker-dealer that provides a wide array of investment banking, financial advisory services, including merger and acquisition advice, financial restructuring advice, sourcing of capital, valuations and expert testimony. CMS's professionals also provide services through Carl Marks Advisory Group LLC ("CMAG"), an affiliate of CMS. I am also a Partner of CMAG. CMAG is a respected restructuring advisory and turnaround firm, having been named one of the outstanding turnaround firms in the United States for thirteen consecutive years by Turnarounds & Workouts, a national publication focused on distressed businesses in the U.S. and Canada. CMS's professionals have significant experience in structuring and advising parties in connection with the development and implementation of strategies for securing capital and sale transactions conducted pursuant to Section 363 of the Bankruptcy Code. The professionals involved in this

engagement, through both CMS and CMAG, regularly represent community banks in a number of capitalization and restructuring matters and have also served as financial advisor to holders of TruPS or to Official Committees of Unsecured Creditors in a number of recent bank holding company bankruptcy cases, including *In re Idaho Bancorp.*, Bky. Case No. 14-00662 (Bankr. D. Idaho), *In re First Mariner Bancorp.*, Bky. Case No. 14-11952 (Bankr. D. Md.), *In re North Texas Bancshares, Inc.*, Bky. Case No. 13-12699 (Bankr. D. Del.), and *In re Rogers Bancshares, Inc.*, Bky. Case No. 13-13838 (Bankr. E.D. Ark.).

6. Pursuant to the Agreement, CMS will work with the Debtor and its legal representatives to develop and review possible strategies and alternatives available to the Debtor and its Subsidiaries to accomplish the Debtor's objectives in this case. To support the Debtor's implementation of its selected strategy, CMS will:

- a. Assist or participate in negotiations with the parties in interest, including, without limitation, any current or prospective creditors of, holders of equity in, or claimants against the Debtor and/or their respective representatives in connection with a Transaction;
- b. Assist or participate in negotiations with the parties in interest in connection with one or more transactions whereby control of or a material interest in the securities, assets or business of the Debtor is acquired by or disposed of through the sale, exchange or disposition of capital stock, debt or assets, a conversion of debt to equity, a lease of assets with or without a purchase option, a merger or consolidation, a tender or exchange offer, a leveraged buy-out, a minority investment, the formation of a joint venture or partnership, or any other business combination or similar transaction, whether consummated through a court approved sale transaction under Section 363 of the Bankruptcy Code or similar mechanism, and/or pursuant to a Plan of Reorganization;

- c. Advise the Debtor on the risks and benefits of considering a transaction with respect to its strategic alternatives to maximize value, whether pursuant to a sale, a Plan of Reorganization or otherwise;
- d. Review the business plan of the Debtor and the Subsidiaries and other information in working with management to prepare a Confidential Information Memorandum and other related documents describing a possible sale Transaction to stimulate interest among potential acquirers or merger candidates (collectively, the "Acquirers");
- e. Formulate and implement a strategy for identifying prospective Acquirers, approaching them and ascertaining their level of interest in a Transaction;
- f. Assist the Debtor in its determination of appropriate values to be received in a Transaction;
- g. Coordinate the sales effort, due diligence process, manage data flow between management and potential Acquirers and lead in the negotiation and structuring of the aspects and financial terms of each proposed Transaction;
- h. Submit, analyze the relative merits of, and discuss with the Debtor proposals from all interested parties, coordinate the negotiation process with the Debtor, participate in negotiations, and otherwise reasonably assist the Debtor in effectuating the Transaction;
- i. Make one or more presentations to the Debtor's Board of Directors and creditors for the purpose of assisting in making a reasoned and well informed decision regarding one or more proposed Transactions, and providing analysis of, and advice regarding, competing bids, and responding to questions from the Board of Directors of the Debtor and creditors regarding the foregoing;
- j. With the participation and approval of the Board of Directors of the Debtor or its designated representatives, negotiate with selected potential Acquirers, assist in structuring a Transaction and bidding procedures on terms deemed acceptable to the Debtor in an effort to maximize value, manage the documentation and closing process associated with the Transaction, and facilitate discussions between the legal, accounting, tax and business transaction teams of the Debtor and its Subsidiaries and the selected Acquirers with the objective of reaching a closing on terms acceptable to the Debtor;

- k. Work with the Debtor and its advisers in providing evidentiary support for the Debtor's conclusion that the selected course of action is in the best interests of the Debtor and the bankruptcy estate;
- l. Testify before the bankruptcy court on matters relating to a Transaction, CMS's marketing efforts and engagement; and
- m. Perform other such services as may reasonably be required and mutually agreed upon by the Debtor and CMS.

8. The compensation agreed to be paid by the Debtor to CMS for its services in the bankruptcy case will not be measured by reference to the number of hours expended by CMS's professionals in the performance of such services but will be solely measured by the benefit to the Debtor and the bankruptcy estate of possible transactions contemplated and the contribution of CMS's services thereto. As such, as compensation for the financial advisory services to be rendered by CMS, the Debtor has agreed to pay CMS a completion fee (a "Completion Fee") based upon the successful consummation of one or more Transactions for the benefit of the bankruptcy estate. The Completion Fee will be paid in cash and earned in full and due upon the closing of each Transaction with any party during the term of the Agreement or with any Covered Party within the Residual Period or, in the case of a plan, upon the effective date of a Plan of Reorganization confirmed by the Bankruptcy Court. The Completion Fee will be in an amount equal to 4.0% of the Transaction Value of any Transaction. Notwithstanding the foregoing, the aggregate Completion Fee payable by the Debtor in connection with the closing of all Transactions shall not be less than \$500,000.

9. CMS will also be entitled to reimbursement for all reasonable out-of-pocket expenses incurred by it in the performance of its duties under the Agreement (the "Expenses") upon the closing of a Transaction and upon presentation of appropriate documentation to the Debtor; provided that such Expenses shall not exceed \$50,000 in the aggregate without the prior written consent of the Debtor. The Expenses shall include, but not be limited to, transportation of any of CMS personnel, employees or associates on business related to the Engagement, cost of hotels, meals, research, etc. Such Expenses shall also include all reasonable legal fees CMS may incur in retaining its own counsel and representing CMS, to the extent necessary, in connection matters relating to its performance under the Agreement, provided that the Debtor first consents to the retention of such counsel in writing (which consent shall not be unreasonably withheld or delayed). Any legal counsel that may be retained by CMS, if any, shall not be a professional retained by the Debtor or representing the bankruptcy estate. All Expenses will be reimbursed by the Debtor upon the closing of a Transaction and after receipt of invoices therefore, which shall be submitted promptly after the end of each week in which CMS renders services.

10. It is not the general practice of investment banking firms to keep detailed time records similar to those customarily kept by attorneys and other professionals who are compensated on an hourly basis. CMS's investment banking and general restructuring expertise, knowledge of the capital markets, and mergers and acquisitions capabilities will inure to the benefit of the Debtor and the bankruptcy estate regardless of the number of hours expended. Because the structure and amount

of CMS's compensation in this case is as a contingent Completion Fee in a fixed amount, CMS requests that it not be required to maintain detailed time records in connection with services it renders in this case or be required to submit detailed time records in support of its interim and final fee applications. Instead, CMS proposes that its professionals maintain summary time records, in one-hour increments, indicating a general description of the work performed and the professionals performing the services on behalf of the Debtor, exclusive of any requirement to keep time records on a project category basis. Further, CMS will maintain detailed records of any actual and necessary costs and expense incurred in connection with the services

11. Financial advisors rely heavily on information provided by debtors in making contacts with potential investors, acquirers and other parties to a potential transaction. It is customary both in Chapter 11 and outside Chapter 11, for this reason, that financial advisors receive indemnification from the entities for whom they work. Annex I of the Agreement includes provisions relating to indemnification that the Debtor believes are customary in scope. The indemnity provisions make it clear that no indemnification is available for losses that result from CMS's willful misconduct, fraud, bad faith, self-dealing or gross negligence. Indemnification is a standard term of the market for investment bankers and financial advisors. CMS believes that the indemnification provisions contained in the Agreement are comparable to those generally obtained by financial advisory and investment banking firms of similar stature to CMS and for comparable engagements, both in and out of court. CMS believes that the indemnification provisions contained in the post-petition contract

with the Debtor, particularly when viewed in conjunction with the other terms of CMS's proposed retention and the benefits of the Agreement, are reasonable under the circumstances of this case.

12. CMS has not shared or agreed to share with any other person, other than with members of the firm, any compensation paid or to be paid.

13. Neither CMS nor any professional of CMS is or has ever been an officer, director, equity security holder or an insider of the Debtor.

14. CMS has performed a conflict check with the list of the Debtor, its officers, directors, security holders and all of its creditors furnished by the Debtor. CMS will promptly supplement this Declaration in the future when and if other creditors or connections become known.

15. Based on the above-referenced conflicts check, and to the best of my knowledge, neither I nor CMS or CMAG have represented or had any connection with the Debtor, its subsidiaries or its creditors, or any other party in interest, their attorneys or accountants, the United States Trustee, or any other person employed in the office of the United States Trustee within the meaning of Bankruptcy Rule 2014, except as stated below:

a. Alesco Preferred Funding XV, Ltd. and Alesco Preferred Funding XVI, Ltd and ATP Management LLC. Alesco Preferred Funding XV, Ltd. ("Alesco XV") and Alesco Preferred Funding XVI, Ltd. ("Alesco XVI") are holders of TruPS and judgments against the Debtor in the amounts of approximately \$27,380,355 and \$13,728,561 respectively and are petitioning creditors in this case. ATP Management LLC ("ATP") is Collateral Manager for Alesco XV and Alesco XVI. Alesco XV holds TruPS claims in the Rogers Bancshares, Inc. bankruptcy case and, through its Collateral Manager ATP, on behalf of Rogers Statutory Trust II, serves on the official committee of unsecured



creditors. CMAG serves as financial advisor to the committee in the Rogers Bancshares, Inc. bankruptcy case. *In re Rogers Bancshares, Inc.*, Bky. Case No. 13-13838 (Bankr. E.D. Ark.). Alesco XVI holds TruPS claims in the Idaho Bancorp bankruptcy case and, through its Collateral Manager, ATP, retained CMAG as its financial advisor in connection with the Idaho Bancorp bankruptcy case. *In re Idaho Bancorp*, Bky. Case No. 14-00662 (Bankr. D. Idaho). Alesco XVI also holds TruPS claims in the North Texas Bancshares, Inc. bankruptcy case and although not a member of the official committee of unsecured creditors, Alesco XVI, through its Collateral Manager ATP, participated in the North Texas Bancshares, Inc. bankruptcy case. CMAG served as financial advisor to the committee in the North Texas Bancshares bankruptcy case. *In re North Texas Bancshares, Inc.*, Bky. Case No. 13-12699 (Bankr. D. Del.). CMAG's representation in the Idaho Bancorp bankruptcy case was on matters unrelated to the Debtor and the scope of work has been fulfilled. CMAG's representations in the Rogers Bancshares, Inc. and North Texas Bancshares, Inc. bankruptcy cases, in each instance, have been and will continue to be on matters unrelated to the Debtor. The sale of bank assets in the Rogers Bancshares, Inc. and North Texas Bancshares, Inc. bankruptcy cases have closed and CMAG's work has been substantially completed in each case. In addition, CMAG completed valuations of five banks on behalf of ATP from publicly available information in 2013, one of which was American Bank of St. Paul. This valuation engagement concluded in 2013.

b. Cohen & Company Financial Management, LLC ("Cohen"). Cohen serves as Collateral Manager to Alesco Preferred Funding II, Ltd. ("Alesco II") holder of TruPS in this case in the amount of approximately \$8,908,504. Cohen also serves as Collateral Manager for Alesco Preferred Funding VII ("Alesco VII") and Alesco Preferred Funding VIII ("Alesco VIII"), holders of TruPS claims in the Rogers Bancshares, Inc. bankruptcy case in which CMAG serves as financial advisor to the official committee of unsecured creditors. Alesco VII and Alesco VIII, through its Collateral Manager Cohen, serves on the official committee of unsecured creditors in the Rogers Bancshares, Inc. bankruptcy case. *In re Rogers Bancshares, Inc.*, Bky. Case No. 13-13838 (Bankr. E.D. Ark.). Cohen serves as Collateral Manager for Alesco Preferred Funding I, Ltd. ("Alesco I"), holder of TruPS claims in the First Mariner Bancorp bankruptcy case. Alesco I, through its Collateral Manager Cohen, serves on the official committee of unsecured creditors in the First Mariner Bancorp bankruptcy case. CMAG serves as financial advisor to the committee in the First Mariner Bancorp bankruptcy case. *In re First Mariner Bancorp*, Bky. Case No. 14-11952 (Bankr. M.D.). CMAG's representations in the Rogers Bancshares, Inc. and the First Mariner Bancorp bankruptcy cases, in each instance, have been and will continue to be on matters unrelated to the Debtor. The sale of bank assets in the Rogers Bancshares, Inc. and First Mariner Bancorp bankruptcy cases have closed and CMAG's work has been substantially completed in those cases.

c. Hunton & Williams. Hunton & Williams serves as counsel to the official committee of unsecured creditors in the Rogers Bancshares, Inc. bankruptcy case in which CMAG serves as financial advisor to the committee. *In re Rogers Bancshares, Inc.*, Bky. Case No. 13-13838 (Bankr. E.D. Ark.). Hunton & Williams serves as counsel to Alesco XVI, through its Collateral Manager, ATP, in the Idaho Bancorp bankruptcy case in which CMAG served as financial advisor to Alesco XVI, through its Collateral Manager, ATP. *In re Idaho Bancorp.*, Bky. Case No. 14-00662 (Bankr. D. Idaho). Hunton & Williams serves as counsel to Alesco XVI, through its Collateral Manager, ATP, in the North Texas Bancshares bankruptcy case, Inc. in which CMAG serves as financial advisor to the committee. *In re North Texas Bancshares, Inc.*, Bky. Case No. 13-12699 (Bankr. D. Del.). CMAG's representation in the Idaho Bancorp bankruptcy case was on matters unrelated to the Debtor and the scope of work has been fulfilled. CMAG's representations in the Rogers Bancshares, Inc. and North Texas Bancshares, Inc. bankruptcy cases, in each instance, have been and will continue to be on matters unrelated to the Debtor. The sale of bank assets in the Rogers Bancshares, Inc. and North Texas Bancshares, Inc. bankruptcy cases have closed and CMAG's work has been substantially completed in each case.

d. Lindquist & Vennum LLP. Lindquist & Vennum served as counsel to Choice Ethanol Holdings, LLC ("Choice") and CMAG served as financial advisor to Choice in connection with a sale transaction that closed in 2013. In addition, Lindquist & Vennum served as counsel to an unsecured creditor in *In re Otter Tail Ag Enterprises, LLC*, Bky. Case No. 09-61250 (Bankr. D. Minn.), a bankruptcy case in which CMAG served as financial advisor to the debtor.

e. U.S. Bank National Association ("U.S. Bank"). U.S. Bank has acted and may currently be acting as an indenture trustee and agent for holders of certain TruPS that have loaned funds or invested capital with the Debtor. To CMS's knowledge, U.S. Bank has no direct financial interest in the obligations represented by the indentures or the TruPS. U.S. Bank also served in its capacity as agent and indenture trustee on the official committee of unsecured creditors on behalf of Rogers Bancshares Statutory Trust I in the Rogers Bancshares, Inc. bankruptcy case in which CMAG serves as financial advisor to the committee. *In re Rogers Bancshares, Inc.*, Bky. Case No. 13-13838 (Bankr. E.D. Ark.). U.S. Bank also serves as agent and indenture trustee and on the official committee of unsecured creditors in the North Texas Bancshares bankruptcy case in which CMAG serves as financial advisor to the committee. *In re North Texas Bancshares, Inc.*, Bky. Case No. 13-12699 (Bankr. D. Del.). CMS does represent and will not represent U.S. Bank on any matters related to the Debtor. The sale of bank assets in the Rogers Bancshares, Inc. and North Texas Bancshares bankruptcy cases have closed and CMAG's work has been substantially completed in those cases.

f. Wilmington Trust Co. ("Wilmington Trust"). Wilmington Trust has acted and may currently be acting as an indenture trustee and agent for holders of certain TruPS that have loaned funds or invested capital with the Debtor. To CMS's knowledge, Wilmington Trust has no direct financial interest in the obligations represented by the indentures or the TruPS. CMS has done work with Wilmington Trust on various matters unrelated to the Debtor. CMS does not represent and will not represent Wilmington Trust on any matters related to the Debtor.

g. CMS and CMAG regularly advise and represent community banks in a number of capitalization and restructuring matters. CMS does not represent and will not represent any of these entities on any matters related to the debtor

h. CMS and CMAG are frequently involved in Chapter 11 cases nationally as financial advisor to debtors, creditors and committees.


These past, present and future relationships do not constitute conflicts, but may be "connections" within the meaning of Rule 2014, and are therefore disclosed. The Debtor has been advised of these "connections" and has waived any conflict arising out of the same.

17. There may be other persons within the scope of Bankruptcy Rule 2014 that, unknown to me, CMS has represented in particular matters in the past. We agree not to represent such persons who are creditors or other parties in interest in these cases while representing the Debtor, without further disclosure, and we agree to disclose any connections that we may discover subsequent to the execution of this declaration.

18. Based on my knowledge and information concerning CMS's connections with the Debtor, which are disclosed above, I believe that CMS does not hold or represent any interest adverse to the estate, and that CMS is a "disinterested person," within the meaning of 11 U.S.C. § 327(a).

19. I declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: June 18, 2014

  
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Evan Tomaskovic

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

American Bancorporation,

Bky. Case No. 14-31882 (KAC)

Debtor.

Chapter 11

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**ORDER AUTHORIZING THE EMPLOYMENT OF  
CARL MARKS SECURITIES LLC AS FINANCIAL ADVISOR**

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This matter is before the Court on the Application of American Bancorporation, the debtor in the above-entitled case, to employ Carl Marks Securities LLC as its financial advisor. It appears necessary for the debtor to employ a financial advisor, that the financial advisor selected does not hold or represent an interest adverse to the estate, and that it is disinterested within the meaning of 11 U.S.C. § 327(a). Therefore, IT IS ORDERED:

1. The Application is granted.
2. The debtor is authorized to retain and employ Carl Marks Securities LLC as financial advisor to the Debtor in the above-referenced case effective as of June 16, 2014 pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rule 2014.
3. The terms and conditions of the Carl Marks Securities LLC Financial Advisory Agreement are approved and Carl Marks Securities LLC shall be compensated for its services, and reimbursed for any reasonable expenses, in

accordance with Section 328(a) of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, any other applicable orders of this Court and the terms of the Financial Advisory Agreement, except with respect to the foregoing as limited or modified herein, and not subject to any other standard of review under Section 330 of the Bankruptcy Code.

4. Carl Marks Securities LLC and its professionals shall be excused from (i) maintaining detailed time records in accordance with Bankruptcy Rule 2016(a), Local Rule 2016-1 and U.S. Trustee Guidelines, (ii) the requirement to provide time records in tenth-hour increments as a condition of receiving the compensation required under the Financial Advisory Agreement, (iii) the requirement to provide or conform to any schedule of hourly rates for its professionals, and (iv) any other general orders or procedures established in this district related to the compensation of professionals. Instead, CMS shall maintain summary time records, in one-hour increments, indicating a general description of the work performed and the professionals performing the services on behalf of the Debtor, provided, however, CMS's professionals and its personnel shall not be required to keep time records on a project category basis. In addition, CMS shall maintain detailed records of any actual and necessary costs and expenses incurred in connection with the services. CMS shall present all such records in an interim or final application filed with the Court, which may be filed in conjunction with or as soon as practicable following a hearing by the Court on the approval of a transaction contemplated by the Financial Advisory Agreement.

5. Carl Marks Securities LLC is authorized to and shall apply to this Court for allowance of its fees and reimbursement of its expenses under 11 U.S.C. § 330 and

331 before being paid any fees or reimbursed any expenses or receiving payment in connection with any indemnification obligation contemplated by the Financial Advisory Agreement and shall be compensated for its services, and reimbursed for any reasonable expenses, in accordance with Section 328(a) of the Bankruptcy Code and not subject to any other standard of review under Section 330 of the Bankruptcy Code.

6. The Court shall retain jurisdiction with respect to all matters relating to the interpretation and implementation of this Order.

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

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Katherine A. Constantine,  
United States Bankruptcy Judge