

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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In re:	)	Chapter 11
	)	
CORUS BANKSHARES, INC. <sup>1</sup>	)	Case No. 10-26881 (PSH)
	)	
Debtor.	)	

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**NOTICE OF FILING FIRST AMENDMENT TO PLAN SUPPLEMENT**

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**PLEASE TAKE NOTICE** that on August 19, 2011, the Debtor filed with the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division at 219 S. Dearborn Street, Chicago, Illinois 60604, the *Plan Supplement in Support of the Debtor's Second Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 609] (the "Plan Supplement").

**PLEASE TAKE FURTHER NOTICE** that the Debtors hereby file this first amendment to the Plan Supplement with the following revised exhibits to the Plan Supplement:

- **Exhibit 1 - Charter of the Reorganized Debtor**
- **Exhibit 3 - List of Rejected Executory Contracts and Unexpired Leases**

**PLEASE TAKE FURTHER NOTICE** that for the convenience of the Court and parties in interest, a blackline of each exhibit against the version last filed is also attached.

**PLEASE TAKE FURTHER NOTICE** that the Debtors expressly reserve the right to alter, modify, amend, remove, augment, or supplement any document in the Plan Supplement at any time in accordance with the Plan.

Dated: September 1, 2011

Respectfully Submitted,  
/s/ Jeffrey W. Gettleman

James H.M. Sprayregen, P.C. (IL Bar No. 6190206)  
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*Counsel to the Debtor and Debtor in Possession*

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<sup>1</sup> The Debtor in this chapter 11 case, along with the last four digits of the Debtor's federal tax identification number, is: Corus Bankshares, Inc. (3592). The location of the Debtor's corporate headquarters and the service address for the Debtor is: 10 S. Riverside Plaza, Suite 1800, Chicago, IL 60606.

**EXHIBIT 1**

**Charter of the Reorganized Debtor**

## CERTIFICATE OF INCORPORATION

OF

### CORUS BANKSHARES, INC.

(FORMERLY KNOWN AS CORUS BANKSHARES, INC., A MINNESOTA CORPORATION)

#### ARTICLE ONE

The name of the Corporation is Corus Bankshares, Inc.

#### ARTICLE TWO

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, New Castle County, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

#### ARTICLE THREE

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

#### ARTICLE FOUR

**Section 1.** Authorized Shares. The total number of shares of capital stock which the Corporation has authority to issue is \_\_\_\_\_ shares of Common Stock.<sup>1</sup> The Common Stock

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<sup>1</sup> If it appears that the Corporation will not qualify for Section 382(l)(5) of the Internal Revenue Code, as amended, because too many holders of the unsecured claims against the Corporation's predecessor entity (the "Debtor") elect to receive the Cash Election Entitlement (as such term is defined in the Plan (defined in Article IV, Section 2(i)(i) hereof)), such electing holders will receive shares of a second class of common stock (the "Class B Shares"). Holders of the Class B Shares will be entitled to share only in the distributions described in Section IV.E.2 of the Plan, and will not be entitled to share with the holders of Common Stock in any distributions paid by the Corporation from time to time from other sources. Upon any liquidation, dissolution or winding up of the Corporation, holders of the Class B Shares will be entitled to share only in distributions of the type described in Section IV.E.2 of the Plan, and will not be entitled to share with the holders of Common Stock in any distributions from other sources. The Class B Shares will vote together with the Common Stock on all matters as a single class, with each share of Class B Shares having one-fifth of one vote per share. The Class B Shares will not be entitled to preemptive rights; provided, however, that the distribution to holders of Class B Shares, as provided in Section IV.E.2 of the Plan, shall be unaffected and otherwise insulated from the consequences of any issuance of Additional Shares of Common Stock, including with respect to any dilution, exercise of Preemptive Rights (as defined below), the failure to exercise such rights, or otherwise. No action shall be required to be taken by the holders of Class B Shares in order to protect such holders' rights to shares in such distributions as set forth in Section IV.E.2 of the Plan. Any redemption of the Class B Shares shall be at a price equal to the remaining payments under the Cash Election Entitlement as set forth in Section IV.E.2 of the Plan.

shall have the rights, preferences and limitations set forth in this Certificate of Incorporation (the "Certificate").

**Section 2. Common Stock.**

(a) Dividends. Except as otherwise provided by the Delaware General Corporation Law or this Certificate, the holders of Common Stock shall share ratably in all dividends and other distributions, whether in respect of liquidation or dissolution (voluntary or involuntary) or otherwise.

(b) Conversion Rights. The Common Stock shall not be convertible into, or exchangeable for, shares of any other class or classes or of any other series of the same class of the Corporation's capital stock.

(c) Preemptive Rights.

(i) Grant of Preemptive Rights. Each holder of Common Stock shall have preemptive rights to acquire its Pro Rata Share of any Common Stock any other equity securities of the Corporation, any debt, preferred stock or other obligations convertible (directly or indirectly) into equity securities of the Corporation or any options, warrants or rights therefor whether now or hereafter authorized ("Additional Shares") which the Corporation may issue from time to time. A holder's "Pro Rata Share" of any Additional Shares shall be determined on a fully diluted basis, giving effect to the conversion of all outstanding debt, preferred stock and other obligations convertible (directly or indirectly) into equity securities of the Corporation and the exercise of all outstanding options, warrants and other rights to purchase equity securities of the Corporation.

(ii) Exceptions to Preemptive Rights. Notwithstanding anything herein to the contrary, the preemptive rights of the holders of Common Stock shall not apply to:

(A) Additional Shares granted or issued to employees, officers, directors, contractors, consultants or advisers of the Corporation or any of its subsidiaries pursuant to incentive agreements, stock purchase or stock option plans, stock bonuses or awards, warrants, contracts or other compensatory arrangements that have been approved by the Board of Directors or are hereafter approved by the Board of Directors;

(B) Additional Shares issued to parties that are (i) strategic partners investing in connection with a commercial relationship with the Corporation or (ii) providing the Corporation with equipment leases, real property leases, loans, credit lines, guaranties of indebtedness, cash price reductions or similar transactions, under arrangements, in each case, that are approved by the Board of Directors;

(C) Additional Shares issued pursuant to the acquisition of another corporation or entity by the Corporation by consolidation, merger, purchase of assets, or other reorganization in which the Corporation acquires, in a single transaction or series of related transactions, all or substantially all of the assets of such other corporation or entity or fifty percent (50%) or more of the voting power of such other corporation or entity or fifty percent

(50%) or more of the equity ownership of such other entity; provided that such acquisition and transaction or series of transactions has been approved by the Board of Directors;

(D) Additional Shares issued as consideration for Corporation's purchase or acquisition of an equity ownership in connection with a joint venture or other strategic arrangement or other commercial relationship; provided that such purchase or acquisition has been approved by the Board of Directors;

(E) Additional Shares issued in connection with a public offering of the Corporation's Common Stock pursuant to an effective registration statement filed under the Securities Act of 1933, as amended ( an "IPO");

(F) Additional Shares issued or issuable upon an affirmative vote or written consent of the Board of Directors with the approval, vote or written consent of the holders of at least a majority of the outstanding shares of Common Stock;

(G) The issuance of shares of Common Stock (or other securities) upon the conversion, exercise or exchange of any securities which (i) are issued pursuant to the terms of the Plan of Reorganization, (ii) were issued pursuant to any of clauses (A) through (F) above or (iii) to which the preemptive rights of holders of Common Stock applied to the original issuance of such securities.

(iii) Procedures for Exercise of Preemptive Rights. In the event that the Corporation proposes to undertake an issuance of Additional Shares, it shall first give to each holder of Common Stock written notice of its intention to issue Additional Shares (the "Notice"), describing the type of Additional Shares proposed to be issued and the price and the general terms upon which the Corporation proposes to issue such Additional Shares. Each holder of Common Stock shall have thirty (30) days from the date of any such Notice to agree in writing to purchase up to such holder of Common Stock's Pro Rata Share of such Additional Shares for the price and upon the general terms specified in the Notice by giving written notice to the Corporation and stating therein the quantity of Additional Shares to be purchased (not to exceed such holder of Common Stock's Pro Rata Share). If any holder of Common Stock fails to so agree in writing within such thirty (30) day period to purchase such holder of Common Stock's full Pro Rata Share of an offering of Additional Shares (a "Nonpurchasing Holder"), then such Nonpurchasing Holder shall forfeit the right hereunder to purchase that part of his Pro Rata Share of such Additional Shares that such holder of Common Stock did not so agree to purchase and the Corporation shall promptly give each holder of Common Stock who has timely agreed to purchase such holder of Common Stock's full Pro Rata Share of such offering of Additional Shares (a "Purchasing Holder") written notice of the failure of any Nonpurchasing Holder to purchase such Nonpurchasing Holder's full Pro Rata Share of such offering of New Securities (the "Overallotment Notice"). Each Purchasing Holder shall have a right of overallotment such that such Purchasing Holder may agree to purchase a portion of the Nonpurchasing Holders' unpurchased Pro Rata Shares of such offering of Additional Shares on a pro rata basis according to the relative Pro Rata Shares of the Purchasing Holders, at any time within ten (10) days after the date of the Overallotment Notice.

(iv) Failure to Exercise Preemptive Rights. In the event that the holders of Common Stock fail to exercise in full the preemptive rights within such thirty (30) plus ten (10) day period, then the Corporation shall have ninety (90) days thereafter to sell the Additional Shares with respect to which the holders of Common Stock's preemptive rights hereunder were not exercised, at a price and upon terms not more favorable to the purchasers thereof than specified in the Corporation's Notice to the holders of Common Stock. In the event that the Corporation has not issued and sold the Additional Shares within such ninety (90) day period, then the Corporation shall not thereafter issue or sell any Additional Shares without again first offering such Additional Shares to the holders of Common Stock pursuant to this Section 2(c).

(v) Determinations Regarding Preemptive Rights. All determinations concerning the applicability of preemptive rights, the calculation of Pro Rata Shares, the exercise or non-exercise of a holder's preemptive rights and other similar matters shall be made by the Board of Directors in good faith, and any such determination made by the Board of Directors in good faith shall be final and binding on all holders of Common Stock.

(vi) Termination of Preemptive Rights. The preemptive rights of the holders of Common Stock pursuant to this Section 2(c) shall terminate immediately before the earlier of the closing of:

(A) an IPO;

(B) any consolidation or merger, whether in one transaction or in a series of related transactions with one or more other entities, in which the Corporation is a constituent corporation or to which the Corporation is otherwise a party if, as a result of such merger or consolidation, the shares of the capital stock of the Corporation that are outstanding immediately prior to the consummation of such merger or consolidation (other than any such shares of the Corporation's capital stock that are held by any Acquiring Stockholder (as defined below)) do not represent, or are not converted into, securities of the surviving entity of such merger or consolidation (or of a parent entity of such surviving entity if the surviving entity is owned by a parent entity) that, immediately after the consummation of such merger or consolidation, together possess at least a majority of the total voting power of all securities of such surviving entity (or a parent entity of such surviving entity, if applicable) that are outstanding immediately after the consummation of such merger or consolidation, including securities of such surviving entity (or of its parent, if applicable) that are held by any Acquiring Stockholders (each transaction described in this Section 2(c)(iv)(B), a "Combination") ; as used in this Section 2(c), an "Acquiring Stockholder" means, with respect to a Combination, any stockholder of the Corporation that (i) merges or consolidates with the Corporation in such Combination or (ii) is an Affiliate of another corporation or entity that merges or consolidates with the Corporation in such Combination or acquires the Corporation's stock in such Combination and an "Affiliate" of a specified person shall mean a person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the person specified (where, for purposes of this definition, control of a person means the power, direct or indirect, to direct or cause the direction of the management and policies of such specified person, whether by voting power, contract or otherwise); or

(C) the liquidation, dissolution or winding up of the Corporation.

(d) Voting Rights. Except as otherwise provided by the Delaware General Corporation Law or this Certificate, all of the voting power of the stockholders of the Corporation shall be vested in the holders of the Common Stock, and each holder of Common Stock shall have one vote for each share held by such holder on all matters voted upon by the stockholders of the Corporation.

(e) Registration or Transfer. The Corporation shall keep at its principal office (or such other place as the Corporation reasonably designates) a register for the registration of Common Stock. Upon the surrender of any certificate representing shares of any class of Common Stock at such place, the Corporation shall, at the request of the registered holder of such certificate, execute and deliver a new certificate or certificates in exchange therefor representing in the aggregate the number of shares of such class represented by the surrendered certificate, and the Corporation forthwith shall cancel such surrendered certificate. Each such new certificate will be registered in such name and will represent such number of shares of such class as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate. The issuance of new certificates shall be made without charge to the holders of the surrendered certificates for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such issuance.

(f) Replacement. Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder will be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing one or more shares of any class of Common Stock, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation (provided that if the holder is a financial institution or other institutional investor, its own agreement will be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Corporation shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of such class represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate.

(g) Notices. All notices referred to herein shall be in writing, shall be delivered personally or by first class mail, postage prepaid, and shall be deemed to have been given when so delivered or mailed to the Corporation at its principal executive offices and to any stockholder at such holder's address as it appears in the stock records of the Corporation (unless otherwise specified in a written notice to the Corporation by such holder).

(h) Fractional Shares. In no event will holders of fractional shares be required to accept any consideration in exchange for such shares other than consideration which all holders of Common Stock are required to accept.

(i) Transfer Restrictions and Redemption Provisions.

(i) Until the 36-month anniversary of the Effective Date of the Plan of Reorganization of Corus Bankshares, Inc. (the "Plan"), as defined in the Plan, or a later date determined by the Board of Directors (the "Restricted Period"), without the prior written consent of the Board of Directors, no shares of Common Stock may be, directly or indirectly, transferred, sold, assigned, conveyed, pledged or otherwise disposed of (for purposes of this Section 2(i),

each, a “transfer”) to any person or group who holds, or would hold after giving effect to such transfer, more than 4.9% of the total equity value of the Corporation. Each certificate representing shares of capital stock of the Corporation issued prior to expiration of the Restricted Period shall contain the legend set forth on Exhibit A hereto, evidencing the restrictions set forth in this ARTICLE FOUR. Any person or group holding more than 4.9% of the total equity value of the Corporation that proposes to transfer any shares of Common Stock of the Corporation shall provide notice of such transaction to the Board of Directors at least five (5) business days prior to effecting such transaction. The transfer restrictions in this Section 2(i)(i) shall be interpreted consistent with an intention to prevent an ownership change under Section 382 (or successor provision) of the Internal Revenue Code of 1986 (“Section 382”), and any questions of interpretation hereunder shall be resolved consistent with the purposes of Section 382. Any purported or attempted transfer required by this Section 2(i)(i) to be approved in advance by the Board of Directors shall be *void ab initio* unless approved in accordance with this Section 2(i)(i).

(ii) No shares of Common Stock may be transferred unless (x) the transferor delivers to the Company documentation reasonably satisfactory to the Company, including without limitation a investor questionnaire in a form approved by the Company completed and executed by the proposed transferee, establishing that the proposed transferee is a “Qualified Purchaser” (as defined in federal securities laws) and (y) the Board of Directors approves such transfer; provided, that the Board of Directors shall grant such approval if it determines in good faith, based on the documentation provided (and such other information as the Board may deem relevant) that the proposed transferee is a Qualified Purchaser and that such transfer will not result in the Company ceasing to be eligible for an exemption from regulation under the Investment Company Act of 1940, as amended. Any purported or attempted transfer required by this Section 2(i)(ii) to be approved in advance by the Board of Directors shall be *void ab initio* unless approved in accordance with this Section 2(i)(ii). Notwithstanding the foregoing, the Board of Directors may terminate the transfer restrictions set forth in this Section 2(i)(ii) at any time if the Board of Directors determines that such termination is in the best interests of the Company.

(iii) The Board of Directors may elect to redeem all shares of Common Stock held by any stockholder who is not a Qualified Purchaser (or who does not complete and return an investor questionnaire as to Qualified Purchaser status within 30 days of a written request from the Corporation to do so (the “Response Deadline”)). Such redemption shall take place on a date determined by the Board of Directors (but such redemption date shall be no later than 30 days after the Board’s final determination to redeem shares from a particular stockholder under this paragraph). Such redemption shall be at a price equal to fair market value as determined by the Board of Directors in good faith as of a date not more than 30 days prior to the closing date (the “Fair Market Value Price”); provided that the redemption price for any shares being redeemed from a stockholder who received such shares under the Plan shall equal the payments to be made under the Cash Election Entitlement under the Plan (the “Cash Election Price”) so long as such redemption occurs within 180 days after the effective date of the Plan. The purchase price payable in any such redemption shall be paid (i) in cash or by check on the closing date established by the Board of Directors in the case of any redemption at the Fair Market Value Price or (ii) in cash or by check on each date on which payments are made in respect of the Cash Election Entitlement under the Plan in the case of any redemption made at the Cash Election Price (provided the redemption price in respect of any payments made prior to



the redemption date in respect of the Cash Election Entitlement shall be paid to the stockholder on the closing date with simple interest at 2% per annum). Such redemption shall be effective on the closing date of the redemption regardless of whether or not the stockholder participates in the closing or delivers his or its stock certificate to the Company for cancellation.

(iv) The Board of Directors may elect to redeem all shares of Common Stock held by a particular stockholder if the Board of Directors determines in good faith, based on the advice of tax counsel or other tax advisors, that doing so is likely to be advantageous to such stockholder from a tax standpoint due to its jurisdiction of organization or residency or other reasons. Prior to making a final determination to exercise the Company's redemption right under this paragraph, the Company shall send a written notice to such stockholder (at the notice address appearing in the Company's records) advising the stockholder of the Company's intention to exercise its redemption right. In the event that the stockholder notifies the Company in writing (within 20 days after the date of the Company's notice) that such stockholder objects to the redemption of its shares, then the Company shall not exercise the redemption right. In the event that the stockholder does not respond to the Company's notice within 20 days after the date of the Company's notice (or the stockholder notifies the Company that it approves or does not object to such redemption), then the Board of Directors shall be entitled to make a final determination to exercise the redemption right. In the event that the Board of Directors makes such a final determination, then the redemption shall take place on a date determined by the Board of Directors (but such redemption date shall be no later than 30 days after the Board's final determination) and shall be at a price equal to the Fair Market Value Price. The purchase price payable in any such redemption shall be paid in cash or by check on the closing date. Such redemption shall be effective on the closing date of the redemption regardless of whether or not the stockholder participates in the closing or delivers his or its stock certificate to the Company for cancellation.

## ARTICLE FIVE

The Corporation is to have perpetual existence.

## ARTICLE SIX

Elections of directors need not be by written ballot unless the By-laws of the Corporation shall so provide.

## ARTICLE SEVEN

**Section 1.** Number of Directors. The number of directors which constitute the entire Board of Directors of the Corporation shall be designated in the By-laws of the Corporation.

**Section 2.** Classification of Directors. At each annual meeting of stockholders, directors of the Corporation shall be elected to hold office until the expiration of the term for which they are elected, and until their successors have been duly elected and qualified; except that if any such election shall be not so held, such election shall take place at a stockholders' meeting called and held in accordance with the Delaware General Corporation Law. The directors of the Corporation shall be divided into three (3) classes as nearly equal in size as is practicable, hereby designated Class I, Class II and Class III. The term of office of the initial

Class I directors shall expire at the first annual meeting of stockholders following the date of the filing of this Certificate of Incorporation (the “Filing Date”), the term of office of the initial Class II directors shall expire at the second annual meeting of stockholders following the Filing Date and the term of office of the initial Class III directors shall expire at the third annual meeting of the stockholders following the Filing Date. For the purposes hereof, the initial Class I, Class II and Class III directors shall be those individuals designated in or pursuant to the Plan. At each annual meeting after the first annual meeting of stockholders, directors to replace those of a Class whose terms expire at such annual meeting shall be elected to hold office until the third succeeding annual meeting and until their respective successors shall have been duly elected and qualified.

Subject to the rights of the holders of any particular class or series of equity securities of the Corporation, (i) newly created directorships resulting from any increase in the total number of authorized directors may be filled by the affirmative vote of not less than a majority of the directors then in office, although less than a quorum, or by a sole remaining director, at any regular or special meeting of the Board of Directors, or by the stockholders, in accordance with the By-laws, and (ii) any vacancies on the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause may be filled only by the affirmative vote of not less than a majority of the directors then in office, although less than a quorum, or by a sole remaining director, at any regular or special meeting of the Board of Directors. Any director so chosen shall hold office for a term expiring at the annual meeting of stockholders at which the term of office of the class of directors to which he or she has been elected expires. No decrease in the total number of authorized directors constituting the Board of Directors shall shorten the term of office of any incumbent director.

Subject to the rights of the holders of any particular class or series of equity securities of the Corporation, any director may be removed only for cause and only by the affirmative vote of the holders of not less than a majority of the voting power of all shares of Common Stock, voting together as a single class, at any regular or special meeting of the stockholders, subject to any requirement for a larger vote contained in any applicable law, the Corporation's Certificate of Incorporation, as amended, or the By-laws of the Corporation.

### **Section 3. Committees.**

(a) Committees. The Board of Directors may, by resolution passed by a majority of the whole board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation, which to the extent provided in such resolution (or in any by-law approved by the Board of Directors) shall have and may exercise the powers of the Board of Directors in the management and affairs of the Corporation, except as otherwise limited by law. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee.

(b) Nominating Committee. The Board of Directors shall designate a Nominating Committee which shall consist of three (3) directors of the Corporation. The Nominating Committee shall consider and nominate individuals to (i) stand for election to the Board of Directors and (ii) fill vacancies on the Board of Directors occurring for any reason. The

Nominating Committee shall submit any such individuals to the Board of Directors for consideration and approval. The Board of Directors may adopt resolutions further defining the power, authority, composition and operation of the Nominating Committee, so long as such resolutions are not inconsistent with this Section 3(b).

(c) Plan Committee. The Board of Directors shall designate a Plan Committee which shall consist of three independent directors of the Corporation, as required under Article IV.C.3 of the Plan. The Plan Committee shall oversee the administration of the Plan, including the oversight of litigation of claims by or against the Corporation. The Board of Directors may adopt resolutions further defining the power, authority, composition and operation of the Plan Committee, so long as such resolutions are not inconsistent with the Plan and with this Section 3(c).

## ARTICLE EIGHT

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter, amend or repeal the By-laws of the Corporation.

## ARTICLE NINE

### **Section 1.** Limitation of Liability.

(a) To the fullest extent permitted by the Delaware General Corporation Law as it now exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior thereto), and except as otherwise provided in the Corporation's By-laws, no director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages arising from a breach of fiduciary duty owed to the Corporation or its stockholders.

(b) Any repeal or modification of the foregoing paragraph by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

**Section 2.** Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved (including involvement as a witness) in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding"), by reason of the fact that he or she is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director or officer or in any other capacity while serving as a director or officer, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior thereto), against all expense, liability and loss (including attorneys' fees, judgments, fines, excise exercise

taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith and such indemnification shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators; provided, however, that, except as provided in Section 3 of this ARTICLE NINE with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The right to indemnification conferred in this Section 2 of this ARTICLE NINE shall be a contract right and shall include the obligation of the Corporation to pay the expenses incurred in defending any such proceeding in advance of its final disposition (an "advance of expenses"); provided, however, that, if and to the extent that the Delaware General Corporation Law requires, an advance of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Section 2 or otherwise. The Corporation may, by action of its Board of Directors, provide indemnification to employees and agents of the Corporation with the same or lesser scope and effect as the foregoing indemnification of directors and officers.

**Section 3.** Procedure for Indemnification. Any indemnification of a director or officer of the Corporation or advance of expenses under Section 2 of this ARTICLE NINE shall be made promptly, and in any event within forty-five (45) days (or, in the case of an advance of expenses, twenty (20) days), upon the written request of the director or officer. If a determination by the Corporation that the director or officer is entitled to indemnification pursuant to this ARTICLE NINE is required, and the Corporation fails to respond within sixty (60) days to a written request for indemnity, the Corporation shall be deemed to have approved the request. If the Corporation denies a written request for indemnification or advance of expenses, in whole or in part, or if payment in full pursuant to such request is not made within forty-five (45) days (or, in the case of an advance of expenses, twenty (20) days), the right to indemnification or advances as granted by this ARTICLE NINE shall be enforceable by the director or officer in any court of competent jurisdiction. Such person's costs and expenses incurred in connection with successfully establishing his or her right to indemnification, in whole or in part, in any such action shall also be indemnified by the Corporation. It shall be a defense to any such action (other than an action brought to enforce a claim for the advance of expenses where the undertaking required pursuant to Section 2 of this ARTICLE NINE, if any, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the Delaware General Corporation Law for the Corporation to indemnify the claimant for the amount claimed, but the burden of such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct,

shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct. The procedure for indemnification of other employees and agents for whom indemnification is provided pursuant to Section 2 of this ARTICLE NINE shall be the same procedure set forth in this Section 3 for directors or officers, unless otherwise set forth in the action of the Board of Directors providing indemnification for such employee or agent.

**Section 4.** Insurance. The Corporation may purchase and maintain insurance on its own behalf and on behalf of any person who is or was a director, officer, employee or agent of the Corporation or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss asserted against him or her and incurred by him or her in any such capacity, whether or not the Corporation would have the power to indemnify such person against such expenses, liability or loss under the Delaware General Corporation Law.

**Section 5.** Service for Subsidiaries. Any person serving as a director, officer, employee or agent of another corporation, partnership, limited liability company, joint venture or other enterprise, at least fifty percent (50%) of whose equity interests are owned by the Corporation (a “subsidiary” for this ARTICLE NINE) shall be conclusively presumed to be serving in such capacity at the request of the Corporation.

**Section 6.** Reliance. Persons who after the date of the adoption of this provision become or remain directors or officers of the Corporation or who, while a director or officer of the Corporation, become or remain a director, officer, employee or agent of a subsidiary, shall be conclusively presumed to have relied on the rights to indemnity, advance of expenses and other rights contained in this ARTICLE NINE in entering into or continuing such service. The rights to indemnification and to the advance of expenses conferred in this ARTICLE NINE shall apply to claims made against an indemnitee arising out of acts or omissions which occurred or occur both prior and subsequent to the adoption hereof.

**Section 7.** Non-Exclusivity of Rights. The rights to indemnification and to the advance of expenses conferred in this ARTICLE NINE shall not be exclusive of any other right which any person may have or hereafter acquire under this Certificate or under any statute, by-law, agreement, vote of stockholders or disinterested directors or otherwise.

**Section 8.** Merger or Consolidation. For purposes of this ARTICLE NINE, references to the “Corporation” shall include, in addition to the resulting Corporation, any constituent Corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent Corporation, or is or was serving at the request of such constituent Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this ARTICLE NINE with respect to the resulting or surviving Corporation as he or she would have with respect to such constituent Corporation if its separate existence had continued.

**ARTICLE TEN**

Meetings of stockholders may be held within or without the State of Delaware, as the By-laws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-laws of the Corporation.

**ARTICLE ELEVEN**

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

**ARTICLE TWELVE**

The Corporation expressly elects not to be governed by Section 203 of the General Corporation Law of the State of Delaware.

\* \* \* \* \*

**EXHIBIT A**

**Form of Legend**

“The shares of Corus Bankshares, Inc. represented by this Certificate are issued pursuant to the Plan of Reorganization of Corus Bankshares, Inc., as confirmed by the United States Bankruptcy Court for the Northern District of Illinois. The transfer of securities represented hereby is subject to restriction pursuant to ARTICLE FOUR of the Certificate of Incorporation of Corus Bankshares, Inc. Corus Bankshares, Inc. will furnish a copy of its Certificate of Incorporation to the holder of record of this Certificate without charge upon written request addressed to Corus Bankshares, Inc. at its principal place of business.”

**Blackline**



## CERTIFICATE OF INCORPORATION

OF

### CORUS BANKSHARES, INC.

(FORMERLY KNOWN AS CORUS BANKSHARES, INC., A MINNESOTA CORPORATION)

#### ARTICLE ONE

The name of the Corporation is Corus Bankshares, Inc.

#### ARTICLE TWO

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, New Castle County, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

#### ARTICLE THREE

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

#### ARTICLE FOUR

**Section 1.** Authorized Shares. The total number of shares of capital stock which the Corporation has authority to issue is \_\_\_\_\_ shares of Common Stock.<sup>1</sup> The Common Stock

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<sup>1</sup> If it appears that the Corporation will not qualify for Section 382(l)(5) of the Internal Revenue Code, as amended, because too many holders of the unsecured claims against the Corporation's predecessor entity (the "Debtor") elect to receive the Cash Election Entitlement (as such term is defined in the Plan (defined in Article IV, Section 2(i)(i) hereof)), such electing holders will receive shares of a second class of common stock (the "Class B Shares"). Holders of the Class B Shares will be entitled to share only in the distributions described in Section IV.E.2 of the Plan, and will not be entitled to share with the holders of Common Stock in any distributions paid by the Corporation from time to time from other sources. Upon any liquidation, dissolution or winding up of the Corporation, holders of the Class B Shares will be entitled to share only in distributions of the type described in Section IV.E.2 of the Plan, and will not be entitled to share with the holders of Common Stock in any distributions from other sources. The Class B Shares will vote together with the Common Stock on all matters as a single class, with each share of Class B Shares having one-fifth of one vote per share. The Class B Shares will not be entitled to preemptive rights; provided, however, that the distribution to holders of Class B Shares, as provided in Section IV.E.2 of the Plan, shall be unaffected and otherwise insulated from the consequences of any issuance of Additional Shares of Common Stock, including with respect to any dilution, exercise of Preemptive Rights (as defined below), the failure to exercise such rights, or otherwise. No action shall be required to be taken by the holders of Class B Shares in order to protect such holders' rights to shares in such distributions as set forth in Section IV.E.2 of the Plan. Any redemption of the Class B Shares shall be at a price equal to the remaining payments under the Cash Election Entitlement as set forth in Section IV.E.2 of the Plan.

shall have the rights, preferences and limitations set forth in this Certificate of Incorporation (the "Certificate").

**Section 2. Common Stock.**

(a) Dividends. Except as otherwise provided by the Delaware General Corporation Law or this Certificate, the holders of Common Stock shall share ratably in all dividends and other distributions, whether in respect of liquidation or dissolution (voluntary or involuntary) or otherwise.

(b) Conversion Rights. The Common Stock shall not be convertible into, or exchangeable for, shares of any other class or classes or of any other series of the same class of the Corporation's capital stock.

(c) Preemptive Rights.

(i) Grant of Preemptive Rights. Each holder of Common Stock~~s~~ shall have preemptive rights to acquire its Pro Rata Share of any Common Stock any other equity securities of the Corporation, any debt, preferred stock or other obligations convertible (directly or indirectly) into equity securities of the Corporation or any options, warrants or rights therefor whether now or hereafter authorized ("Additional Shares") which the Corporation may issue from time to time. A holder's "Pro Rata Share" of any Additional Shares shall be determined on a fully diluted basis, giving effect to the conversion of all outstanding debt, preferred stock and other obligations convertible (directly or indirectly) into equity securities of the Corporation and the exercise of all outstanding options, warrants and other rights to purchase equity securities of the Corporation.

(ii) Exceptions to Preemptive Rights. Notwithstanding anything herein to the contrary, the preemptive rights of the holders of Common Stock shall not apply to:

(A) Additional Shares granted or issued to employees, officers, directors, contractors, consultants or advisers of the Corporation or any of its subsidiaries pursuant to incentive agreements, stock purchase or stock option plans, stock bonuses or awards, warrants, contracts or other compensatory arrangements that have been approved by the Board of Directors or are hereafter approved by the Board of Directors;

(B) Additional Shares issued to parties that are (i) strategic partners investing in connection with a commercial relationship with the Corporation or (ii) providing the Corporation with equipment leases, real property leases, loans, credit lines, guaranties of indebtedness, cash price reductions or similar transactions, under arrangements, in each case, that are approved by the Board of Directors;

(C) Additional Shares issued pursuant to the acquisition of another corporation or entity by the Corporation by consolidation, merger, purchase of assets, or other reorganization in which the Corporation acquires, in a single transaction or series of related transactions, all or substantially all of the assets of such other corporation or entity or fifty percent (50%) or more of the voting power of such other corporation or entity or fifty percent (50%) or

more of the equity ownership of such other entity; provided that such acquisition and transaction or series of transactions has been approved by the Board of Directors;

(D) Additional Shares issued as consideration for Corporation's purchase or acquisition of an equity ownership in connection with a joint venture or other strategic arrangement or other commercial relationship; provided that such purchase or acquisition has been approved by the Board of Directors;

(E) Additional Shares issued in connection with a public offering of the Corporation's Common Stock pursuant to an effective registration statement filed under the Securities Act of 1933, as amended ( an "IPO");

(F) Additional Shares issued or issuable upon an affirmative vote or written consent of the Board of Directors with the approval, vote or written consent of the holders of at least a majority of the outstanding shares of Common Stock;

(G) The issuance of shares of Common Stock (or other securities) upon the conversion, exercise or exchange of any securities which (i) are issued pursuant to the terms of the Plan of Reorganization, (ii) were issued pursuant to any of clauses (A) through (F) above or (iii) to which the preemptive rights of holders of Common Stock applied to the original issuance of such securities.

(iii) Procedures for Exercise of Preemptive Rights. In the event that the Corporation proposes to undertake an issuance of Additional Shares, it shall first give to each holder of Common Stock written notice of its intention to issue Additional Shares (the "Notice"), describing the type of Additional Shares proposed to be issued and the price and the general terms upon which the Corporation proposes to issue such Additional Shares. Each holder of Common Stock shall have thirty (30) days from the date of any such Notice to agree in writing to purchase up to such holder of Common Stock's Pro Rata Share of such Additional Shares for the price and upon the general terms specified in the Notice by giving written notice to the Corporation and stating therein the quantity of Additional Shares to be purchased (not to exceed such holder of Common Stock's Pro Rata Share). If any holder of Common Stock fails to so agree in writing within such thirty (30) day period to purchase such holder of Common Stock's full Pro Rata Share of an offering of Additional Shares (a "Nonpurchasing Holder"), then such Nonpurchasing Holder shall forfeit the right hereunder to purchase that part of his Pro Rata Share of such Additional Shares that such holder of Common Stock did not so agree to purchase and the Corporation shall promptly give each holder of Common Stock who has timely agreed to purchase such holder of Common Stock's full Pro Rata Share of such offering of Additional Shares (a "Purchasing Holder") written notice of the failure of any Nonpurchasing Holder to purchase such Nonpurchasing Holder's full Pro Rata Share of such offering of New Securities (the "Overallotment Notice"). Each Purchasing Holder shall have a right of overallotment such that such Purchasing Holder may agree to purchase a portion of the Nonpurchasing Holders' unpurchased Pro Rata Shares of such offering of Additional Shares on a pro rata basis according to the relative Pro Rata Shares of the Purchasing Holders, at any time within ten (10) days after the date of the Overallotment Notice.

(iv) Failure to Exercise Preemptive Rights. In the event that the holders of Common Stock fail to exercise in full the preemptive rights within such thirty (30) plus ten (10) day period, then the Corporation shall have ninety (90) days thereafter to sell the Additional Shares with respect to which the holders of Common Stock's preemptive rights hereunder were not exercised, at a price and upon terms not more favorable to the purchasers thereof than specified in the Corporation's Notice to the holders of Common Stock. In the event that the Corporation has not issued and sold the Additional Shares within such ninety (90) day period, then the Corporation shall not thereafter issue or sell any Additional Shares without again first offering such Additional Shares to the holders of Common Stock pursuant to this Section 2(c).

(v) Determinations Regarding Preemptive Rights. All determinations concerning the applicability of preemptive rights, the calculation of Pro Rata Shares, the exercise or non-exercise of a holder's preemptive rights and other similar matters shall be made by the Board of Directors in good faith, and any such determination made by the Board of Directors in good faith shall be final and binding on all holders of Common Stock.

(vi) Termination of Preemptive Rights. The preemptive rights of the holders of Common Stock pursuant to this Section 2(c) shall terminate immediately before the earlier of the closing of:

(A) an IPO;

(B) any consolidation or merger, whether in one transaction or in a series of related transactions with one or more other entities, in which the Corporation is a constituent corporation or to which the Corporation is otherwise a party if, as a result of such merger or consolidation, the shares of the capital stock of the Corporation that are outstanding immediately prior to the consummation of such merger or consolidation (other than any such shares of the Corporation's capital stock that are held by any Acquiring Stockholder (as defined below)) do not represent, or are not converted into, securities of the surviving entity of such merger or consolidation (or of a parent entity of such surviving entity if the surviving entity is owned by a parent entity) that, immediately after the consummation of such merger or consolidation, together possess at least a majority of the total voting power of all securities of such surviving entity (or a parent entity of such surviving entity, if applicable) that are outstanding immediately after the consummation of such merger or consolidation, including securities of such surviving entity (or of its parent, if applicable) that are held by any Acquiring Stockholders (each transaction described in this Section 2(c)(iv)(B), a "Combination") ; as used in this Section 2(c), an "Acquiring Stockholder" means, with respect to a Combination, any stockholder of the Corporation that (i) merges or consolidates with the Corporation in such Combination or (ii) is an Affiliate of another corporation or entity that merges or consolidates with the Corporation in such Combination or acquires the Corporation's stock in such Combination and an "Affiliate" of a specified person shall mean a person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the person specified (where, for purposes of this definition, control of a person means the power, direct or indirect, to direct or cause the direction of the management and policies of such specified person, whether by voting power, contract or otherwise); or

(C) the liquidation, dissolution or winding up of the Corporation.

(d) Voting Rights. Except as otherwise provided by the Delaware General Corporation Law or this Certificate, all of the voting power of the stockholders of the Corporation shall be vested in the holders of the Common Stock, and each holder of Common Stock shall have one vote for each share held by such holder on all matters voted upon by the stockholders of the Corporation.

(e) Registration or Transfer. The Corporation shall keep at its principal office (or such other place as the Corporation reasonably designates) a register for the registration of Common Stock. Upon the surrender of any certificate representing shares of any class of Common Stock at such place, the Corporation shall, at the request of the registered holder of such certificate, execute and deliver a new certificate or certificates in exchange therefor representing in the aggregate the number of shares of such class represented by the surrendered certificate, and the Corporation forthwith shall cancel such surrendered certificate. Each such new certificate will be registered in such name and will represent such number of shares of such class as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate. The issuance of new certificates shall be made without charge to the holders of the surrendered certificates for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such issuance.

(f) Replacement. Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder will be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing one or more shares of any class of Common Stock, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation (provided that if the holder is a financial institution or other institutional investor, its own agreement will be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Corporation shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of such class represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate.

(g) Notices. All notices referred to herein shall be in writing, shall be delivered personally or by first class mail, postage prepaid, and shall be deemed to have been given when so delivered or mailed to the Corporation at its principal executive offices and to any stockholder at such holder's address as it appears in the stock records of the Corporation (unless otherwise specified in a written notice to the Corporation by such holder).

(h) Fractional Shares. In no event will holders of fractional shares be required to accept any consideration in exchange for such shares other than consideration which all holders of Common Stock are required to accept.

(i) Transfer Restrictions and Redemption Provisions.

(i) Until the 36-month anniversary of the Effective Date of the Plan of Reorganization of Corus Bankshares, Inc. (the "Plan"), as defined in the Plan, or a later date determined by the Board of Directors (the "Restricted Period"), without the prior written consent of the Board of Directors, no shares of Common Stock may be, directly or indirectly, transferred, sold, assigned, conveyed, pledged or otherwise disposed of (for purposes of this Section 2(i), each,

a “transfer”) to any person or group who holds, or would hold after giving effect to such transfer, more than 4.9% of the total equity value of the Corporation. Each certificate representing shares of capital stock of the Corporation issued prior to expiration of the Restricted Period shall contain the legend set forth on Exhibit A hereto, evidencing the restrictions set forth in this ARTICLE FOUR. Any person or group holding more than 4.9% of the total equity value of the Corporation that proposes to transfer any shares of Common Stock of the Corporation shall provide notice of such transaction to the Board of Directors at least five (5) business days prior to effecting such transaction. The transfer restrictions in this Section 2(i)(i) shall be interpreted consistent with an intention to prevent an ownership change under Section 382 (or successor provision) of the Internal Revenue Code of 1986 (“Section 382”), and any questions of interpretation hereunder shall be resolved consistent with the purposes of Section 382. Any purported or attempted transfer required by this Section 2(i)(i) to be approved in advance by the Board of Directors shall be *void ab initio* unless approved in accordance with this Section 2(i)(i).

(ii) No shares of Common Stock may be transferred unless (x) the transferor delivers to the Company documentation reasonably satisfactory to the Company, including without limitation a investor questionnaire in a form approved by the Company completed and executed by the proposed transferee, establishing that the proposed transferee is a “Qualified Purchaser” (as defined in federal securities laws) and (y) the Board of Directors approves such transfer; provided, that the Board of Directors shall grant such approval if it determines in good faith, based on the documentation provided (and such other information as the Board may deem relevant) that the proposed transferee is a Qualified Purchaser and that such transfer will not result in the Company ceasing to be eligible for an exemption from regulation under the Investment Company Act of 1940, as amended. Any purported or attempted transfer required by this Section 2(i)(ii) to be approved in advance by the Board of Directors shall be *void ab initio* unless approved in accordance with this Section 2(i)(ii). Notwithstanding the foregoing, the Board of Directors may terminate the transfer restrictions set forth in this Section 2(i)(ii) at any time if the Board of Directors determines that such termination is in the best interests of the Company.

(iii) The Board of Directors may elect to redeem all shares of Common Stock held by any stockholder who is not a Qualified Purchaser (or who does not complete and return an investor questionnaire as to Qualified Purchaser status within 30 days of a written request from the Corporation to do so (the “Response Deadline”). Such redemption shall take place on a date determined by the Board of Directors (but such redemption date shall be no later than 30 days after ~~(i) the Board’s final determination that to redeem shares from a particular stockholder is not a Qualified Purchaser or (ii) the failure of a particular stockholder to return the investor questionnaire by the Response Deadline under this paragraph~~). Such redemption shall be at a price equal to fair market value as determined by the Board of Directors in good faith as of a date not more than 30 days prior to the closing date (the “Fair Market Value Price”); provided that the redemption price for any shares being redeemed from a stockholder who received such shares under the Plan shall equal the payments to be made under the Cash Election Entitlement under the Plan (the “Cash Election Price”) so long as such redemption occurs within 180 days after the effective date of the Plan. The purchase price payable in any such redemption shall be paid (i) in cash or by check on the closing date established by the Board of Directors in the case of any redemption at the Fair Market Value Price or (ii) in cash or by check on each date on which payments are made in respect of the Cash Election Entitlement under the Plan in the case of any redemption made at the Cash Election Price (provided the redemption price in respect of any

payments made prior to the redemption date in respect of the Cash Election Entitlement shall be paid to the stockholder on the closing date with simple interest at 2% per annum). Such redemption shall be effective on the closing date of the redemption regardless of whether or not the stockholder participates in the closing or delivers his or its stock certificate to the Company for cancellation.

(iv) The Board of Directors may elect to redeem all shares of Common Stock held by a particular stockholder if the Board of Directors determines in good faith, based on the advice of tax counsel or other tax advisors, that doing so is likely to be advantageous to such stockholder from a tax standpoint due to its jurisdiction of organization or residency or other reasons. Prior to making a final determination to exercise the Company's redemption right under this paragraph, the Company shall send a written notice to such stockholder (at the notice address appearing in the Company's records) advising the stockholder of the Company's intention to exercise its redemption right. In the event that the stockholder notifies the Company in writing (within 20 days after the date of the Company's notice) that such stockholder objects to the redemption of its shares, then the Company shall not exercise the redemption right. In the event that the stockholder does not respond to the Company's notice within 20 days after the date of the Company's notice (or the stockholder notifies the Company that it approves or does not object to such redemption), then the Board of Directors shall be entitled to make a final determination to exercise the redemption right. In the event that the Board of Directors makes such a final determination, then the redemption shall take place on a date determined by the Board of Directors (but such redemption date shall be no later than 30 days after the Board's final determination) and shall be at a price equal to the Fair Market Value Price. The purchase price payable in any such redemption shall be paid in cash or by check on the closing date. Such redemption shall be effective on the closing date of the redemption regardless of whether or not the stockholder participates in the closing or delivers his or its stock certificate to the Company for cancellation.

#### ARTICLE FIVE

The Corporation is to have perpetual existence.

#### ARTICLE SIX

Elections of directors need not be by written ballot unless the By-laws of the Corporation shall so provide.

#### ARTICLE SEVEN

**Section 1.** Number of Directors. The number of directors which constitute the entire Board of Directors of the Corporation shall be designated in the By-laws of the Corporation.

**Section 2.** Classification of Directors. At each annual meeting of stockholders, directors of the Corporation shall be elected to hold office until the expiration of the term for which they are elected, and until their successors have been duly elected and qualified; except that if any such election shall be not so held, such election shall take place at a stockholders' meeting called and held in accordance with the Delaware General Corporation Law. The directors of the

Corporation shall be divided into three (3) classes as nearly equal in size as is practicable, hereby designated Class I, Class II and Class III. The term of office of the initial Class I directors shall expire at the first annual meeting of stockholders following the date of the filing of this Certificate of Incorporation (the "Filing Date"), the term of office of the initial Class II directors shall expire at the second annual meeting of stockholders following the Filing Date and the term of office of the initial Class III directors shall expire at the third annual meeting of the stockholders following the Filing Date. For the purposes hereof, the initial Class I, Class II and Class III directors shall be those individuals designated in or pursuant to the Plan. At each annual meeting after the first annual meeting of stockholders, directors to replace those of a Class whose terms expire at such annual meeting shall be elected to hold office until the third succeeding annual meeting and until their respective successors shall have been duly elected and qualified.

Subject to the rights of the holders of any particular class or series of equity securities of the Corporation, (i) newly created directorships resulting from any increase in the total number of authorized directors may be filled by the affirmative vote of not less than a majority of the directors then in office, although less than a quorum, or by a sole remaining director, at any regular or special meeting of the Board of Directors, or by the stockholders, in accordance with the By-laws, and (ii) any vacancies on the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause may be filled only by the affirmative vote of not less than a majority of the directors then in office, although less than a quorum, or by a sole remaining director, at any regular or special meeting of the Board of Directors. Any director so chosen shall hold office for a term expiring at the annual meeting of stockholders at which the term of office of the class of directors to which he or she has been elected expires. No decrease in the total number of authorized directors constituting the Board of Directors shall shorten the term of office of any incumbent director.

Subject to the rights of the holders of any particular class or series of equity securities of the Corporation, any director may be removed only for cause and only by the affirmative vote of the holders of not less than a majority of the voting power of all shares of Common Stock, voting together as a single class, at any regular or special meeting of the stockholders, subject to any requirement for a larger vote contained in any applicable law, the Corporation's Certificate of Incorporation, as amended, or the By-laws of the Corporation.

**Section 3. Committees.**

(a) Committees. The Board of Directors may, by resolution passed by a majority of the whole board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation, which to the extent provided in such resolution (or in any by-law approved by the Board of Directors) shall have and may exercise the powers of the Board of Directors in the management and affairs of the Corporation, except as otherwise limited by law. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee.

(b) Nominating Committee. The Board of Directors shall designate a Nominating Committee which shall consist of three (3) directors of the Corporation. The Nominating Committee shall consider and nominate individuals to (i) stand for election to the Board of Directors and (ii) fill vacancies on the Board of Directors occurring for any reason. The



Nominating Committee shall submit any such individuals to the Board of Directors for consideration and approval. The Board of Directors may adopt resolutions further defining the power, authority, composition and operation of the Nominating Committee, so long as such resolutions are not inconsistent with this Section 3(b).

(c) Plan Committee. The Board of Directors shall designate a Plan Committee which shall consist of three independent directors of the Corporation, as required under Article IV.C.3 of the Plan. The Plan Committee shall oversee the administration of the Plan, including the oversight of litigation of claims by or against the Corporation. The Board of Directors may adopt resolutions further defining the power, authority, composition and operation of the Plan Committee, so long as such resolutions are not inconsistent with the Plan and with this Section 3(c).

## ARTICLE EIGHT

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter, amend or repeal the By-laws of the Corporation.

## ARTICLE NINE

### **Section 1.** Limitation of Liability.

(a) To the fullest extent permitted by the Delaware General Corporation Law as it now exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior thereto), and except as otherwise provided in the Corporation's By-laws, no director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages arising from a breach of fiduciary duty owed to the Corporation or its stockholders.

(b) Any repeal or modification of the foregoing paragraph by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

**Section 2.** Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved (including involvement as a witness) in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding"), by reason of the fact that he or she is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director or officer or in any other capacity while serving as a director or officer, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior thereto), against all expense, liability and loss (including attorneys' fees, judgments, fines, excise exercise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith and such indemnification shall continue as to an indemnitee who has ceased to be a director, officer,

employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators; provided, however, that, except as provided in Section 3 of this ARTICLE NINE with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The right to indemnification conferred in this Section 2 of this ARTICLE NINE shall be a contract right and shall include the obligation of the Corporation to pay the expenses incurred in defending any such proceeding in advance of its final disposition (an "advance of expenses"); provided, however, that, if and to the extent that the Delaware General Corporation Law requires, an advance of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Section 2 or otherwise. The Corporation may, by action of its Board of Directors, provide indemnification to employees and agents of the Corporation with the same or lesser scope and effect as the foregoing indemnification of directors and officers.

**Section 3.** Procedure for Indemnification. Any indemnification of a director or officer of the Corporation or advance of expenses under Section 2 of this ARTICLE NINE shall be made promptly, and in any event within forty-five (45) days (or, in the case of an advance of expenses, twenty (20) days), upon the written request of the director or officer. If a determination by the Corporation that the director or officer is entitled to indemnification pursuant to this ARTICLE NINE is required, and the Corporation fails to respond within sixty (60) days to a written request for indemnity, the Corporation shall be deemed to have approved the request. If the Corporation denies a written request for indemnification or advance of expenses, in whole or in part, or if payment in full pursuant to such request is not made within forty-five (45) days (or, in the case of an advance of expenses, twenty (20) days), the right to indemnification or advances as granted by this ARTICLE NINE shall be enforceable by the director or officer in any court of competent jurisdiction. Such person's costs and expenses incurred in connection with successfully establishing his or her right to indemnification, in whole or in part, in any such action shall also be indemnified by the Corporation. It shall be a defense to any such action (other than an action brought to enforce a claim for the advance of expenses where the undertaking required pursuant to Section 2 of this ARTICLE NINE, if any, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the Delaware General Corporation Law for the Corporation to indemnify the claimant for the amount claimed, but the burden of such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct. The procedure for indemnification of other employees and agents for whom indemnification is provided pursuant to Section 2 of this ARTICLE NINE shall be the same procedure set forth in this Section 3 for

directors or officers, unless otherwise set forth in the action of the Board of Directors providing indemnification for such employee or agent.

**Section 4. Insurance.** The Corporation may purchase and maintain insurance on its own behalf and on behalf of any person who is or was a director, officer, employee or agent of the Corporation or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss asserted against him or her and incurred by him or her in any such capacity, whether or not the Corporation would have the power to indemnify such person against such expenses, liability or loss under the Delaware General Corporation Law.

**Section 5. Service for Subsidiaries.** Any person serving as a director, officer, employee or agent of another corporation, partnership, limited liability company, joint venture or other enterprise, at least fifty percent (50%) of whose equity interests are owned by the Corporation (a “subsidiary” for this ARTICLE NINE) shall be conclusively presumed to be serving in such capacity at the request of the Corporation.

**Section 6. Reliance.** Persons who after the date of the adoption of this provision become or remain directors or officers of the Corporation or who, while a director or officer of the Corporation, become or remain a director, officer, employee or agent of a subsidiary, shall be conclusively presumed to have relied on the rights to indemnity, advance of expenses and other rights contained in this ARTICLE NINE in entering into or continuing such service. The rights to indemnification and to the advance of expenses conferred in this ARTICLE NINE shall apply to claims made against an indemnitee arising out of acts or omissions which occurred or occur both prior and subsequent to the adoption hereof.

**Section 7. Non-Exclusivity of Rights.** The rights to indemnification and to the advance of expenses conferred in this ARTICLE NINE shall not be exclusive of any other right which any person may have or hereafter acquire under this Certificate or under any statute, by-law, agreement, vote of stockholders or disinterested directors or otherwise.

**Section 8. Merger or Consolidation.** For purposes of this ARTICLE NINE, references to the “Corporation” shall include, in addition to the resulting Corporation, any constituent Corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent Corporation, or is or was serving at the request of such constituent Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this ARTICLE NINE with respect to the resulting or surviving Corporation as he or she would have with respect to such constituent Corporation if its separate existence had continued.

## ARTICLE TEN

Meetings of stockholders may be held within or without the State of Delaware, as the By-laws may provide. The books of the Corporation may be kept (subject to any provision

contained in the statutes) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-laws of the Corporation.

**ARTICLE ELEVEN**

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

**ARTICLE TWELVE**

The Corporation expressly elects not to be governed by Section 203 of the General Corporation Law of the State of Delaware.

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**EXHIBIT A**

**Form of Legend**

“The shares of Corus Bankshares, Inc. represented by this Certificate are issued pursuant to the Plan of Reorganization of Corus Bankshares, Inc., as confirmed by the United States Bankruptcy Court for the Northern District of Illinois. The transfer of securities represented hereby is subject to restriction pursuant to ARTICLE FOUR of the Certificate of Incorporation of Corus Bankshares, Inc. Corus Bankshares, Inc. will furnish a copy of its Certificate of Incorporation to the holder of record of this Certificate without charge upon written request addressed to Corus Bankshares, Inc. at its principal place of business.”

**EXHIBIT 3**

**List of Rejected Executory Contracts and Unexpired Leases**

**Rejected Executory Contracts and Unexpired Leases**

The Debtor or Reorganized Debtor, as applicable, reserve the right, either to reject or nullify the assumption of any executory contract or unexpired lease no later than thirty (30) days after a Final Order determining the Cure or any request for adequate assurance of future performance required to assume such executory contract or unexpired lease. The treatment of executory contracts and unexpired leases, including the adjudication of any disputes arising in connection therewith or the assumption or rejection thereof, shall be governed by Article VII of the Plan.<sup>1</sup>

No.	Document
1.	Employment Contract, dated February 20, 1979, by and between A. Andrew Boemi and Madison Bank and Trust Co., for the provision of retirement income and retiree healthcare benefits
2.	Agreement dated February 2, 1990, by and between Harry L. Shapiro and River Forest Bancorp., Inc., for the provision of retirement income and retiree healthcare benefits
3.	Aetna Bank Supplement Executive Retirement Plan, dated January 1, 1989, by and between Aetna Bank and certain executives of Aetna Bank whose qualified pension benefits are limited by Section 415 of the Internal Revenue Code, for the provision of retirement income
4.	Employment Agreement, dated June 6, 1986, by and between Burton N. Noah and River Forest Bancorp., Inc., for the provisions of retirement income
5.	Consulting Agreement, dated November 24, 1987, by and between Marvin R. Strunk and Madison Bank & Trust Co., for the provision of retirement income.
6.	Indemnification Agreement, dated October 13, 2008, by and between Daniel P. Semenk and Corus Bankshares, Inc.
7.	Indemnification Agreement, dated October 13, 2008, by and between Timothy J. Stodder and Corus Bankshares, Inc.
8.	Indemnification Agreement, dated October 13, 2008, by and between Tina Dendrinis and Corus Bankshares, Inc.
9.	Indemnification Agreement, dated October 13, 2008, by and between Tim H. Taylor and Corus Bankshares, Inc.
10.	Indemnification Agreement, dated October 13, 2008, by and between Rodney D. Lubeznik and Corus Bankshares, Inc.
11.	Indemnification Agreement, dated October 13, 2008, by and between Robert J. Buford and Corus Bankshares, Inc.

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<sup>1</sup> As stated in Article VII.D of the Plan, neither the exclusion nor inclusion of any contract or lease in this Plan Supplement, nor anything contained in the Plan, shall constitute an admission by the Debtor that any such contract or lease is in fact an executory contract or unexpired lease or that the Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtor or Reorganized Debtor, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

<b>No.</b>	<b>Document</b>
12.	Indemnification Agreement, dated October 13, 2008, by and between Rochard J. Koretz and Corus Bankshares, Inc.
13.	Indemnification Agreement, dated October 13, 2008, by and between Randy P. Curtis and Corus Bankshares, Inc.
14.	Indemnification Agreement, dated October 13, 2008, by and between Peter C. Roberts and Corus Bankshares, Inc.
15.	Indemnification Agreement, dated October 13, 2008, by and between Michael G. Stein and Corus Bankshares, Inc.
16.	Indemnification Agreement, dated October 13, 2008, by and between Michael J. McClure and Corus Bankshares, Inc.
17.	Indemnification Agreement, dated October 13, 2008, by and between Michael E. Duhlberg and Corus Bankshares, Inc.
18.	Indemnification Agreement, dated October 13, 2008, by and between Kevin R. Callahan and Corus Bankshares, Inc.
19.	Indemnification Agreement, dated October 13, 2008, by and between Joel C. Solomon and Corus Bankshares, Inc.
20.	Indemnification Agreement, dated October 13, 2008, by and between Joseph C. Glickman and Corus Bankshares, Inc.
21.	Indemnification Agreement, dated October 13, 2008, by and between George Guattare and Corus Bankshares, Inc.
22.	Intra-Company Payment Policy, dated April 23, 2007, by and between Corus Bank, N.A. and Corus Bankshares, Inc. <sup>2</sup>

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<sup>2</sup> The Debtor does not believe that this agreement is an executory contract, but has included it out of an abundance of caution.



**Blackline**

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The Debtor or Reorganized Debtor, as applicable, reserve the right, either to reject or nullify the assumption of any executory contract or unexpired lease no later than thirty (30) days after a Final Order determining the Cure or any request for adequate assurance of future performance required to assume such executory contract or unexpired lease. The treatment of executory contracts and unexpired leases, including the adjudication of any disputes arising in connection therewith or the assumption or rejection thereof, shall be governed by Article VII of the Plan.<sup>1</sup>

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