

**ATTACHMENT 1**

**Amended Stipulation**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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

**AMENDED STIPULATION BETWEEN THE DEBTOR AND THE FEDERAL DEPOSIT  
INSURANCE CORPORATION WITH RESPECT TO THE  
ESTABLISHMENT OF AN ESCROW ACCOUNT**

WHEREAS, on June 15, 2010 (the “Petition Date”), Corus Bankshares, Inc. (the “Debtor”) filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Illinois (the “Bankruptcy Court”); and

WHEREAS, on September 11, 2009, the Office of the Comptroller of Currency closed Corus Bank, N.A., (“Corus Bank”) and appointed the Federal Deposit Insurance Corporation as Receiver (“FDIC,” and together with the Debtor, the “Parties”); and

WHEREAS, the Debtor was, during the 2008 and 2009 tax years applicable to this Amended Stipulation, the holding company and corporate parent of Corus Bank; and

WHEREAS, the Debtor filed consolidated tax returns that included the tax results of Corus Bank and other subsidiaries of the Debtor for tax years 2009 and earlier, and the consolidated tax return for the 2009 year only included the results for Corus Bank through the date upon which the FDIC was appointed as Corus Bank’s receiver; and

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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.

WHEREAS, the Debtor's consolidated tax return for the 2009 year (as well as the consolidated tax return for the 2008 year) reported substantial tax losses. As a result of these losses, the 2009 and 2008 tax returns included claims for refunds for taxes paid for earlier years; and

WHEREAS, on August 31, 2010 the Debtor and the FDIC entered into a Stipulation Between the Debtor and the Federal Deposit Insurance Corporation With Respect to (i) the Establishment of an Escrow Account and (ii) the Filing of a 2009 Tax Return on Behalf of Corus Bank (the "Original Stipulation"), which was approved by the Bankruptcy Court on September 24, 2010 (Docket No. 175]; and

WHEREAS, pursuant to the Original Stipulation the FDIC did file a 2009 tax return on behalf of Corus Bank; and

WHEREAS, the Internal Revenue Service ("IRS") released to the Debtor and the FDIC the sum of \$265,950,895.99, representing the 2008 and 2009 refunds (the "Tax Refunds"), and pursuant to the Original Stipulation, on March 15, 2011 the Tax Refunds were deposited into an escrow account at Deutsche Bank Trust Company Americas ("Deutsche Bank"); and

WHEREAS, notwithstanding that the escrow account at Deutsche Bank is nominally an interest-bearing account, due to the terms of the agreement with Deutsche Bank governing the escrow account and the currently-prevailing interest rate environment, the Tax Refunds have not earned any interest since being deposited; and

WHEREAS, the Debtor and the FDIC believe that it would be in their best interest that the Tax Refunds earn interest; and

WHEREAS, the Debtor and the FDIC believe that depositing the Tax Refunds into an escrow account that will be part of the National Liquidation Fund (“NLF”) will materially increase the opportunity for the Tax Refunds to begin earning interest;

WHEREAS, the FDIC believes that all, or substantially all, of the Tax Refunds belong to Corus Bank and, thus, are property of the FDIC as Receiver; and

WHEREAS, the Debtor believes that all, or substantially all, of the Tax Refunds belong to the Debtor and, thus, are property of the bankruptcy estate of the Debtor; and

WHEREAS, the Debtor and the FDIC desire to place the Tax Refunds in an appropriate escrow account as part of the NLF, without prejudice to either party’s position; and

WHEREAS, neither the Debtor nor the FDIC intend to waive any of their respective arguments and, as such, understand that neither is admitting or recognizing that all or any part of the Tax Refunds are property of the other merely by entering into this Amended Stipulation; and

WHEREAS, the Debtor and the FDIC wish to enter into this Amended Stipulation regarding the deposit of the Tax Refunds into an escrow account as part of the NLF, which shall for all purposes material to the dispute between the Debtor and the FDIC be deemed and accounted for as a segregated account and which will permit funds to be held therein without any admission or presumption being raised as to whether such funds are property of the bankruptcy estate of the Debtor or the FDIC as Receiver, pending resolution by the Parties or a judicial determination; and

WHEREAS, the FDIC is willing to, and has full authority to, establish the NLF Account (as described herein and defined below), and the FDIC shall hold, or cause the Federal Home Loan Bank of New York to, administer and distribute the amounts deposited in accordance with, and subject to, the terms of this Amended Stipulation; now therefore,

IT IS HEREBY STIPULATED AND AGREED THAT:

1. The Debtor and the FDIC shall establish an interest-bearing segregated escrow account as part of the NLF within which the pro rata share of each entity is accounted for separately and which shall be deemed to be separate from any other accounts established, and funds owned, by the Debtor and the FDIC (the "NLF Account"). The Debtor and the FDIC agree that promptly after approval of this Amended Stipulation by the Bankruptcy Court, the Debtor and the FDIC will send the appropriate authorization to Deutsche Bank to obtain release of the Tax Refunds from the Deutsche Bank escrow account, and the Tax Refunds will be deposited into the NLF Account and shall be subject to this Amended Stipulation. Any interest earned on the NLF Account will be distributed to the party that ultimately receives the Tax Refunds. When monies are released from the NLF Account and distributed, a pro-rata share of the accumulated interest thereon shall be distributed therewith. Each of the Parties will be responsible for the payment of any taxes due on interest received herein.

2. The Debtor and the FDIC agree that no funds shall be distributed or released from the NLF Account except upon (a) an agreement between the Debtor and the FDIC to release such funds, or (b) an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction with respect to the subject matter, which has not been reversed, stayed, modified or amended, and as to which the time to appeal, petition for certiorari or move for reargument or rehearing has expired and no appeal or petition for certiorari has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or has otherwise been dismissed with prejudice ("Final Order"), approving the distribution and release of such funds. No later than two (2) business days after

receipt of an agreement or a Final Order pursuant to this paragraph, the FDIC shall make, or cause the Federal Home Loan Bank of New York to make, the requested payment of the Tax Refunds.

3. The Debtor and the FDIC further agree that no presumption or adverse inference shall arise that the Tax Refunds, in whole or in part, belong to and are the property of the FDIC as Receiver or the bankruptcy estate of the Debtor merely because of the Original Stipulation or this Amended Stipulation, or the involvement of the Debtor, the FDIC or the NLF in holding, negotiating or depositing the funds. The FDIC further agrees that, notwithstanding the deposit of the Tax Refunds into the NLF, and any resulting commingling of the Tax Refunds with other funds in the NLF, the FDIC will not use or exercise any ownership over the Tax Refunds in the NLF Account, but the use and ownership of and entitlement to the Tax Refunds shall be governed by this Amended Stipulation.

4. The NLF shall release the funds held in the NLF Account, including interest earned thereon, upon entry of a Final Order directing the same, without offset, defense, deduction, chargeback or counterclaim of any kinds, nature or description.

5. The NLF Account shall be maintained in compliance with 11 U.S.C. § 345 until all funds in the NLF Account are disbursed in accordance with this Amended Stipulation. Compliance with 11 U.S.C. § 345, however, does not constitute a waiver or concession that the Tax Refunds are property of the Debtor's bankruptcy estate.

6. For the purposes of this Amended Stipulation, notice is proper if given in writing by e-mail and overnight delivery to:

1. The Debtor:

Kirkland & Ellis LLP  
Attn: Jeffrey W. Gettleman  
300 North LaSalle  
Chicago, IL 60654  
jeffrey.gettleman@kirkland.com

2. The FDIC:

DLA Piper LLP  
Attn: Alan P. Solow  
203 North LaSalle Street  
Chicago, IL 60601  
alan.solow@dlapiper.com

3. The Official Committee of Unsecured Creditors (the "Committee"):

Kilpatrick Stockton LLP  
Attn: Todd C. Meyers  
1100 Peachtree Street, Suite 2800  
Atlanta, GA 30309-4528  
tmeyers@kilpatrickstockton.com

7. The NLF shall send monthly statements with respect to the NLF Account to the Debtor, the FDIC, and the Committee by regular mail as provided in Paragraph 5.

8. Nothing herein shall prejudice, waive or impair the right of either the FDIC as Receiver, or the Debtor, to take, commence, continue the prosecution of, or defend any action or proceeding, including, but not limited to, *Corus Bankshares, Inc. v. Federal Deposit Insurance Corporation*, Case No. 10-05654 in the United States District Court for the Northern District of Illinois seeking a declaration that the Tax Refunds belong to it and are its property pursuant to any statutory, regulatory or judicial authority, and *Corus Bankshares, Inc. v. Federal Deposit Insurance Corporation, as Receiver*, Case No. 11-00053 in the United States District Court for the Northern District of Illinois.

9. The Parties agree to cooperate to obtain Bankruptcy Court approval of this Amended Stipulation. Pending such approval by the Bankruptcy Court, this Amended Stipulation shall govern the establishment of the NLF Account, and the deposit and maintenance of the Tax Refunds.

10. The Bankruptcy Court shall have continuing jurisdiction to interpret, construe, and resolve any dispute among the Debtor and the FDIC with respect to, this Amended Stipulation.<sup>2</sup>

11. This Amended Stipulation will automatically terminate upon the transfer of all funds in the NLF Account as provided for herein.

12. This Amended Stipulation shall be binding upon the parties hereto and their heirs, executors, successors and assigns, including, without limitation, any plan administrator, trustee or liquidating trustee appointed under a confirmed chapter 11 plan.

13. This Amended Stipulation may not be altered or modified without the express written consent of the parties hereto. No course of conduct shall constitute a waiver of any of

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<sup>2</sup> This Amended Stipulation does not constitute a submission by the FDIC to the jurisdiction or authority of the Bankruptcy Court for the resolution of any regulatory matter involving the Debtor or the FDIC. Nor is this Stipulation an admission that the Bankruptcy Court is the appropriate forum for disputes between the FDIC and the Debtor other than with respect to this Amended Stipulation. The filing of this Amended Stipulation shall not constitute a waiver or consent by the FDIC of any right to assert Sovereign Immunity whether the FDIC is acting in its capacity as Receiver or otherwise. The filing of this Amended Stipulation shall not constitute a waiver or consent by the FDIC of any (a) right to seek any and all final orders in any and all non-core matters to be entered only after de novo review by the United States District Court; (b) right to seek trial by jury in any proceedings as to any and all matters so triable therein, whether or not the same be designated legal or private rights, or in any case, controversy or proceeding related thereto, whether or not the same be designated legal or private rights, or in any case, controversy or proceeding related thereto, whether or not such jury trial right is pursuant to statute or the United States Constitution; (c) right to seek to have the reference of this matter withdrawn by the United States District Court in any matter or proceeding subject to mandatory or discretionary withdrawal; or (d) other rights, claims, actions, defenses, setoffs, recoupments or other matters to which the FDIC is entitled under any agreements or at law or in equity or under the United States Constitution. Except with respect to the specific statements in this Amended Stipulation, all of the foregoing rights are expressly reserved and preserved without exception and with no purpose of conceding jurisdiction in any way by participating in this Amended Stipulation. The FDIC expressly reserves all rights at law and equity to assert the preemption of the Bankruptcy Court's jurisdiction and the exclusive jurisdiction provided under Title 12 as applicable with respect to the FDIC. The Debtor expressly reserves all defenses and arguments in opposition to any of the above.



the terms and conditions of this Amended Stipulation, unless such waiver is specified in writing, and then only to the extent specified. A waiver of any of the terms and conditions of this Amended Stipulation on one occasion shall not constitute a waiver of the other terms of this Amended Stipulation, or of such terms and conditions on any other occasion.

14. This Amended Stipulation shall be governed by and construed in accordance with the internal laws of the State of Illinois, without giving effect to the conflict of law provisions thereof.

Stipulated and Agreed as of \_\_\_\_\_, 2011.

**KIRKLAND & ELLIS LLP**

**FEDERAL DEPOSIT INSURANCE  
CORPORATION**

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James H.M. Sprayregen, P.C. (IL Bar No. 6190206)  
David R. Seligman, P.C. (IL Bar No. 6238064)  
Jeffrey W. Gettleman (IL Bar No. 0944904)  
300 North LaSalle Street  
Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200

*Counsel to the Debtor and Debtor in Possession*

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Alan P. Solow (IL Bar No. 3125199)  
DLA Piper LLP  
203 North LaSalle Street  
Chicago, IL 60601  
Telephone: (312) 368-3370  
Facsimile: (312) 630-6303

*Counsel to the FDIC*