

COUNSEL CONTINGENT FEE CONTRACT

This Agreement is subject to review and approval of the Texas Comptroller of Public Accounts.

This Agreement ("Agreement") is made on the _____ day of July, 2013, between Fort Bend County, Texas, hereinafter referred to as "CLIENT", and Malouf & Nockels LLP, Hilliard Munoz Gonzales, LLP, and Watts Guerra LLP hereinafter referred to as "COUNSEL." In consideration of the mutual promises herein contained, the parties hereto agree as follows:

I. PURPOSE OF REPRESENTATION

1.01 CLIENT has found a substantial need to employ COUNSEL to assist CLIENT'S attorneys in the prosecution of a lawsuit arising under the laws of the State of Texas against Mortgage Electronic Registration Systems, Inc., MERSCORP, Inc., Bank of America, National Association, and those acting in concert with them (collectively, "Defendants") in claims arising out of Defendants' recordation or failure to record instruments related to promissory notes and/or mortgage obligations on real estate located in Fort Bend County, Texas ("the Representation"). The claims include, but are not limited to:

- a. recording, causing to be recorded, or approving the recording of instruments which falsely state that Mortgage Electronic Registration Systems, Inc. ("MERS") has a lien upon or interest in real property which MERS does not have; and
- b. releasing, transferring, assigning, or taking other action relating to an instrument that is filed, registered, or recorded in the office of the county clerk without filing, registering, or recording another instrument relating to the action in the same manner as the original instrument was required to be filed, registered, or recorded.

1.02 CLIENT hereby retains and employs COUNSEL. The Fort Bend County Commissioners' Court has, by its approval of this Agreement, found that CLIENT has a substantial need for these legal services which cannot be adequately performed by the attorneys of CLIENT or other government attorneys, nor, because of the nature of the matter for which services will be obtained, can they be reasonably obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter. The estimated monetary value that may be recovered from the litigation exceeds \$100,000.00.

1.03 CLIENT hereby authorizes and directs COUNSEL, subject to the supervision, direction and control of the Fort Bend County Attorney's Office, to handle the Representation and to take all actions necessary to prosecute and assist in the prosecution of the ongoing case or any new or additional case(s) on behalf of CLIENT against Defendants. In the Representation, COUNSEL may seek necessary and appropriate injunctive relief, damages, civil penalties, and attorney's fees, and such other pecuniary recovery as may be provided for by the laws of the State of Texas and/or any relevant local, state and/or federal statutory and/or common law.

1.04 CLIENT has already authorized the filing of a suit or suits against Defendants and it has determined pursuant to Tex. Loc. Gov't Code § 262.024(a)(4) that this Agreement is for *professional services*, requiring work that is predominantly mental or intellectual, rather than physical or manual, requiring special knowledge or attainment and a high order of learning, skill, and academic intelligence and the services of COUNSEL are being retained pursuant to all applicable law.

1.05 The term of this Agreement shall end after the conclusion of the Representation unless either party extends or terminates this Agreement in accordance with its provisions.

1.06 The primary attorneys handling this representation employed by COUNSEL will be Stephen F. Malouf of Malouf & Nockels LLP; Robert Hilliard of Hilliard Munoz Gonzales, LLP; and Mikal Watts of Watts Guerra LLP. COUNSEL and approved ASSOCIATED CO-COUNSEL (as set out below) agree to perform necessary legal work with reference to the Representation, and will work specifically under the supervision, direction, and control of the Fort Bend County Attorney's Office.

1.07 To enable COUNSEL to provide effective representation, CLIENT agrees to do the following: (1) disclose to COUNSEL, fully and accurately and on a timely basis, all facts and documents within CLIENT'S knowledge that are or might be material, or that COUNSEL may request, (2) keep COUNSEL apprised on a timely basis of all developments relating to the Representation that are or might be material, (3) attend meetings, conferences, and other proceedings when it is reasonable to do so, and (4) otherwise cooperate fully with COUNSEL.

1.08 Neither party shall assign, in whole or in part, any duty or obligation of performance under this Agreement without the express written permission of every other party, unless otherwise authorized in this Agreement.

1.09 The person or entity that COUNSEL represents is Fort Bend County, Texas and COUNSEL'S attorney-client relationship does not include any related persons or entities. If any potential conflict arises with respect to the Representation, COUNSEL will make full disclosure of the possible effects of such Representation on the professional judgment of each individual associated with COUNSEL working on Representation. Such disclosure shall be made to Fort Bend County Attorney's Office, County Attorney Roy L. Cordes, Jr. and **Civil Litigation** First Assistant County Attorney Randall Morse or any other attorney as may be designated by Fort Bend County from time to time.

1.10 It is understood and agreed that COUNSEL'S engagement is limited to the Representation. COUNSEL is not being retained as general counsel, and COUNSEL'S acceptance of this Agreement does not imply any undertaking to provide legal services other than those set forth in this Agreement.

1.11 Any expressions on COUNSEL'S part concerning the outcome of the Representation, or any other legal matters, are based on COUNSEL'S professional judgment and are not guarantees. Such expressions, even when described as opinions, are necessarily limited by COUNSEL'S knowledge of the facts and are based on COUNSEL'S views of the state of the law at the time they are expressed. COUNSEL has made no promises or guarantees to CLIENT

about the outcome of the Representation, and nothing in these terms of engagement shall be construed as such a promise or guarantee.

1.12 After completion of the Representation, changes may occur in the applicable laws or regulations that could affect CLIENT'S future rights and liabilities in regard to the Representation. Unless COUNSEL is actually engaged after the completion of the Representation to provide additional advice on such issues, COUNSEL has no continuing obligation to give advice with respect to any future legal developments that may pertain to the Representation other than the continuing obligations set out in this Agreement.

1.13 At the conclusion of the Representation, COUNSEL will return to CLIENT any documents that COUNSEL are specifically requested to return. As to any documents so returned, COUNSEL may elect to keep a copy of the documents in COUNSEL'S stored files. CLIENT owns all final work product generated from the Representation.

1.14 Any notice required or permitted to be given by CLIENT to COUNSEL hereunder shall be given by certified United States Mail, postage prepaid, return receipt requested, addressed to:

Attn: Stephen F. Malouf
MALOUF & NOCKELS LLP
3811 Turtle Creek Blvd., Suite 800
Dallas, Texas 75219

Attn: Robert Hilliard
HILLIARD MUNOZ GONZALES LLP
719 S. Shoreline, Ste. 500
Corpus Christi, Texas 78401

Attn: Mikal Watts
WATTS GUERRA LLP
4 Dominion Drive, Bldg. 3, Suite 100
San Antonio, Texas 78257

1.15 Any notice required or permitted to be given by COUNSEL to CLIENT hereunder shall be given by certified United States Mail, postage prepaid, return receipt requested, addressed to:

Attn: Roy L. Cordes, Jr., County Attorney
Fort Bend County Attorney's Office
301 Jackson St., Suite 728
Richmond, Texas 77469

1.16 Such notices shall be considered given and complete upon successful transmission or upon deposit in the United States Mail.

1.17 COUNSEL affirmatively consents to the disclosure of its email addresses that are provided to CLIENT or the County Attorney's Office. This consent is intended to comply with the requirements of the Texas Public Information Act, Tex. Gov't Code Ann. § 552.137, *et seq.*,

as amended, and shall survive termination of this Agreement. This consent shall apply to email addresses provided by COUNSEL and agents acting on COUNSEL'S behalf and shall apply to any email address provided in any form for any reason whether related to this Agreement or otherwise.

1.18 It is expressly understood that COUNSEL have no authority to settle or otherwise compromise the position of the CLIENT or any of its officers. The Fort Bend County Attorney retains all authority to settle the case.

1.19 Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of CLIENT.

1.20 COUNSEL shall provide CLIENT's attorney with reports on the status of the Representation as requested by CLIENT. No settlement of any claim, suit, or proceeding shall be entered into without the approval of the Fort Bend County Attorney.

1.21 It is further agreed that COUNSEL shall not associate other firms to appear as co-counsel ("ASSOCIATED CO-COUNSEL") with COUNSEL without the prior written consent of the Fort Bend County Attorney. COUNSEL's intent to associate ASSOCIATED CO-COUNSEL shall be in writing, shall set forth the reasons that COUNSEL wishes to associate ASSOCIATED CO-COUNSEL, and shall be in compliance with Section 1.04(f) of the Texas Disciplinary Rules of Professional Responsibility ("TDRPR"). Any counsel approved by the Fort Bend County Attorney pursuant hereto shall be considered a contracting party to and bound by the terms and conditions of this Agreement and shall confirm their agreement to be so bound in writing provided to the Fort Bend County Attorney prior to their association.

1.22 In compliance with section 1.04(f)(2) of the TDRPR, COUNSEL hereby discloses that any attorney's fees paid by CLIENT shall be allocated amongst COUNSEL and ASSOCIATED CO-COUNSEL based upon the proportion of services performed, using as a basis for such determination the estimated hours spent by attorneys and paralegals in each firm; any exceptional contribution(s) made; the extent to which a firm has advanced expenses; and the relative responsibilities assumed by each firm.

1.23 Allocation of such attorney's fees amongst COUNSEL and ASSOCIATED CO-COUNSEL shall be determined by Stephen F. Malouf, Robert Hilliard, and Mikal Watts by majority vote. Any intra-COUNSEL or ASSOCIATED COUNSEL dispute regarding the allocation of attorney's fees shall be submitted to binding arbitration at JAMS with a single arbitrator to be selected under JAMS rules and with the hearing limited to one day. No actions and/or disputes between or amongst COUNSEL and ASSOCIATED CO-COUNSEL will affect CLIENT'S Recovery (as defined below), nor will it give rise to any liability on the part of CLIENT. Those firms which are approved as ASSOCIATED CO-COUNSEL as of the date of this Agreement are:

<p>THE LAW OFFICE OF BRENT M. ROSENTHAL, PC One Lincoln Center 5400 LBJ Freeway, Suite 1260 Dallas, Texas 75240 214-871-6602 (Telephone) 214-817-6640 (Facsimile)</p>	<p>BARON & BLUE Lisa Blue SBN 02510500 3811 Turtle Creek Blvd., Suite 800 Dallas, Texas 75219 214-969-7373 (Telephone) 214-969-7648 (Facsimile)</p>
<p>THE LAW OFFICES OF TERRI MOORE Terri Moore SBN 14377780 1407 Texas St., Suite 102 Ft Worth, Texas 76102 817-877-4700 (Telephone)</p>	<p>KAESKE LAW FIRM Mike Kaeske SBN 00794061 1301 W. 25th St., Suite 406 Austin, TX 78705 512-366-7300 (Telephone) 512-366-7767 (Facsimile)</p>
<p>Mark White SBN 21318000 72 E. Briar Oaks Dr. Houston, Texas 77056 713-906-6848 (Telephone)</p>	<p>Barbara Radnofsky SBN 16457000 303 Timber Terrace Rd. Houston Texas 77024 713- 858-8509 (Telephone)</p>
<p>FLEMING & ASSOCIATES, P.C. Michael P. Fleming SBN 07130600 440 Louisiana, Suite 1920 Houston, Texas 77002 713-221-6800 (Telephone) 713-221-6806 (Facsimile)</p>	<p>HILL & HILL, P.C. J. Marcus Hill SBN 09638150 1770 St. James, Ste. 115 Houston, Texas 77056 713-688-6318 (Telephone) 713-688-2817 (Facsimile)</p>

1.24 Should COUNSEL or ASSOCIATED CO-COUNSEL conclude at any time that continued representation of CLIENT is not feasible, CLIENT expressly agrees that either or all of COUNSEL or ASSOCIATED CO-COUNSEL may withdraw from representation of CLIENT and, subject to applicable law and the TDRPR, shall thereafter have no further duties to CLIENT.

II. COUNSEL'S FEES AND EXPENSES IF SUBCHAPTER C, CHAPTER 2254 OF THE TEXAS GOVERNMENT CODE IS APPLICABLE TO THIS AGREEMENT

2.01 This Agreement is effective only after review and approval by the Comptroller for the State of Texas.

2.02 In consideration of the legal services to be provided to CLIENT by COUNSEL pursuant hereto, CLIENT hereby assigns and grants unto COUNSEL attorney's fees equal to the lesser of:

- a. twenty-five percent of CLIENT's recovery. "Recovery" includes money or any other thing of pecuniary value received by CLIENT. Provided, no fee will be due on any filing fees received by CLIENT for recording an instrument except to the extent that such instrument reflects a transaction that occurred before settlement or final judgment; or
- b. four times the Base Fee, as defined herein.

2.03 COUNSEL agrees to advance the expenses of litigation determined by COUNSEL to be reasonable and necessary. CLIENT agrees that it will reimburse COUNSEL for such expenses subject to the limitations set forth in this Section II. COUNSEL and CLIENT agree that no expenses will be due or owed to COUNSEL in the event there is no Recovery.

2.04 Reimbursable expenses shall include, but are not limited to, photograph, video and document imaging expenses and reproduction thereof, mileage at the rate allowed by the Internal Revenue Service, travel, reasonable travel expenses, long distance telephone charges, fax and electronic mail expense and postage.

2.05 Reimbursable expenses will also include any and all expenses or costs paid to or for persons, entities or businesses outside the firm which are related to the representation, including but not limited to, experts and their staffs; jury consultants; specialized legal counsel for bankruptcy proceedings initiated by defendants; subrogation resolution services; interpreters; investigators; court reporters; videographers; and document imaging companies and personnel.

2.06 **Tex Gov't Code § 2254.104(a):** COUNSEL, ASSOCIATED CO-COUNSEL (as defined herein), and any other attorney or paralegal subcontracted by them shall keep current and complete written time and expense records that describe in detail the time and money spent each day in performing this Counsel Contingent Fee Contract.

2.07 **Tex Gov't Code § 2254.104(b):** COUNSEL, ASSOCIATED CO-COUNSEL, and any other attorney or paralegal subcontracted by them shall permit CLIENT, the attorney general, the state auditor, or other official as appropriate each to inspect or obtain copies of the written time and expense records required herein at any time on request.

2.08 **Tex Gov't Code § 2254.104(a):** On conclusion of this matter, COUNSEL shall provide CLIENT with a complete written statement that describes the outcome of the matter, states the value of any Recovery, shows COUNSEL's computation of the amount of the contingent fee, and contains the final complete time and expense records required above.

2.09 **Tex Gov't Code § 2254.104(d):** All time and expense records kept in accordance with Section 3.05 are public information subject to required disclosure under Chapter 552.103 of the Texas Government Code. Information contained in the time and expense records may be withheld from a member of the public under Section 552.103 of the Texas Government Code only if, in addition to meeting the requirements of Section 552.103 of the Texas Government

Code, the chief legal officer or employee of CLIENT determines that withholding the information is necessary to protect County's strategy or position in pending or reasonably anticipated litigation. If any information is withheld in accordance with this Section, CLIENT shall segregate said information from information that is subject to required public disclosure.

2.10 **Tex Gov't Code § 2254.105(1):** Any contingency fee due hereunder is to be computed by multiplying CLIENT's Recovery times twenty-five percent, subject to the limitations on the amount of such fee as provided in Chapter 2254, Subchapter C of the Texas Government Code.

2.11 **Tex Gov't Code § 2254.105(2):** The contingent fee is twenty-five percent regardless of whether the matter is settled, tried, or tried and appealed.

2.12 **Tex Gov't Code § 2254.105(3):** The pecuniary value of the Recovery for purposes of the contingent fee computation hereunder is considered to be money or any other thing of pecuniary value received by CLIENT.

2.13 **Tex Gov't Code § 2254.105(4):** Any subcontracted legal or support services performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm is an expense subject to reimbursement only in accordance with Chapter 2254, Subchapter C of the Texas Government Code.

2.14 **Tex Gov't Code § 2254.105(5):** The entire amount of the contingent fee and reimbursement of expenses payable pursuant to this Section II will be paid and limited in accordance with any provision(s) Chapter 2254, Subchapter C of the Texas Government Code, including §§ 2254.106-2254.107, otherwise applicable to this Agreement.

2.15 **Tex Gov't Code § 2254.106(a):** The reasonable hourly rate for work performed by an attorney, law clerk, or paralegal who will perform legal or support services under the contract based on the reasonable and customary rate in the relevant locality for the type of work performed and on the relevant experience, demonstrated ability, and standard hourly billing rate, if any, of the person performing the work shall be:

- a. Stephen F. Malouf - \$1000;
- b. Robert Hilliard - \$1000;
- c. Mikal Watts - \$1000;
- d. for any other attorneys employed or subcontracted by COUNSEL or any ASSOCIATED CO-COUNSEL:
 - i. for attorneys with 15+ years of litigation experience - \$900;
 - ii. for attorneys with 10 to 15 years of litigation experience - \$600;
 - iii. for attorneys with 5 to 10 years of litigation experience - \$450; and

- iv. for attorneys with 1 to 5 years of litigation experience - \$350.
- e. for law clerks employed or subcontracted by COUNSEL or any ASSOCIATED CO-COUNSEL - \$150;
- f. for paralegals employed or subcontracted by COUNSEL or any ASSOCIATED CO-COUNSEL - \$200.

2.16 **Tex Gov't Code § 2254.106(b):** As used herein, the "Base Fee" shall be calculated as follows: For each attorney, law clerk, or paralegal who is a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm, multiply the number of hours the attorney, law clerk, or paralegal works in providing legal or support services under the contract times the reasonable hourly rate for the work performed by that attorney, law clerk, or paralegal. Add the resulting amounts to obtain the Base Fee. The computation of the Base Fee does not include hours or costs attributable to work performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm.

2.17 **Tex Gov't Code § 2254.106(c):** Based upon the expected difficulties in performing this Employment Contract, the amount of expenses expected to be risked by COUNSEL, the expected risk of no Recovery, and the expected long delay in Recovery, a reasonable multiplier any fee payable by CLIENT is four.

2.18 **Tex Gov't Code § 2254.106(d):** In no event shall the contingent fee payable hereunder exceed the lesser of twenty-five percent or the amount computed under §2254.106(a),(b) and (c), Tex Gov't Code.

2.19 **Tex Gov't Code § 2254.106(f):** The requirements of Tex. Gov't Code § 2254.106 shall be applicable to each individual Recovery that actually exceeds \$100,000.

2.20 **Tex Gov't Code § 2254.107(b):** Reimbursement of subcontracted work under Tex. Gov't Code § 2254.107 shall meet the Tex Gov't Code § 2254.106(a) requirements without regard to the expected or actual monetary value of Recovery under this Agreement.

III. OTHER REPRESENTATION BY COUNSEL

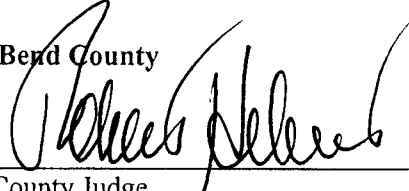
3.01 CLIENT understands and agrees that COUNSEL may represent multiple clients and agrees that in representing multiple clients many of the expenses incurred are common case expenses, which are costs and expenses incurred for the benefit of multiple clients, including expert witness fees, depositions of defendants, experts, and non-party witnesses, settlement conferences, trial expenses, filing fees, and other expenses that are incurred for purposes of influencing the outcome of multiple clients' claims. CLIENT understands and agrees the expenses it is required to reimburse, if there is a Recovery, include not only expenses for CLIENT's own claims, but also the common case expenses. Such expenses shall be reimbursed to COUNSEL in the same ratio as the ratio of CLIENT's Recovery to the Recovery of all other counties represented by COUNSEL.

IV. OTHER PROVISIONS

4.01 If any provision of this Agreement is held in whole or in part to be unenforceable, void, or voidable for any reason then such provision will be modified to reflect the parties' intention and to make the provision enforceable. It is the parties' intention that the suit against Defendants shall continue regardless of whether any single part of this Agreement is unenforceable, void or voidable. In the event that one or more provision of this Agreement is held unenforceable, all remaining provisions of this Agreement that have not been determined by a court as being unenforceable, void, or voidable shall remain in full force and effect.

4.02 The term of this Agreement begins upon date it is executed by the parties and approved by the Comptroller, and continues until the Representation is concluded. This Agreement shall be of no force or effect until approved in writing by the Chief Civil Counsel.a

Fort Bend County

By:  _____
County Judge (Date)

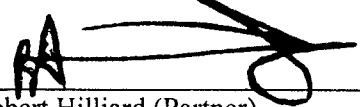
Malouf & Nockels LLP

Stephen F.

By: **Malouf** _____
Stephen F. Malouf (Partner) (Date)

Digitally signed by Stephen F. Malouf
DN: cn=Stephen F. Malouf, o=Malouf
& Nockels, LLP, ou,
email=maloufs@smalouf.com, c=US
Date: 2013.08.15 22:56:25 -05'00'

Hilliard Munoz Gonzales, LLP

By:  _____ **8/16/13**
Robert Hilliard (Partner) (Date)

Watts Guerra LLP

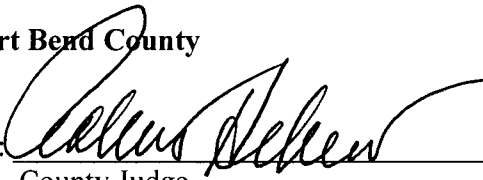
By: _____
Mikal Watts (Partner) (Date)

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Fort Bend County

By:  8-29-2013
County Judge (Date)

Malouf & Nockels LLP

Stephen F.
By: **Malouf** Digitally signed by Stephen F. Malouf
DN: cn=Stephen F. Malouf, o=Malouf
& Nockels, LLP, ou,
email=maloufs@smalouf.com, c=US
Date: 2013.08.15 22:56:25 -05'00'
Stephen F. Malouf (Partner) (Date)

Hilliard Munoz Gonzales, LLP

By: _____
Robert Hilliard (Partner) (Date)

Watts Guerra LLP

By:  8/16/13
Mikal Watts (Partner) (Date)

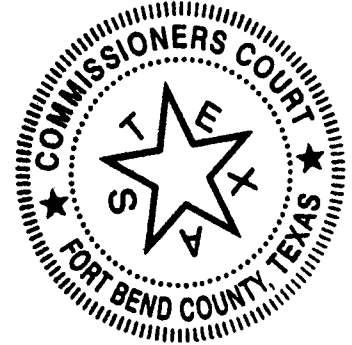
APPROVED BY:

Roy L. Cordes, Jr.
Roy L. Cordes, Jr.
Fort Bend County Attorney

Date: 8/28/2013

ATTEST:

Dianne Wilson
Dianne Wilson, County Clerk



APPROVED BY: OFFICE OF THE TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

By: _____
Deputy Comptroller or designee

Date: _____