

**COUNSEL CONTINGENT FEE CONTRACT IF SUBCHAPTER C, CHAPTER 2254 OF
THE TEXAS GOVERNMENT CODE IS NOT APPLICABLE**

This Agreement ("Agreement") is made on the 13th day of August, 2013, between Williamson County, Texas, hereinafter referred to as "CLIENT", and Malouf & Nockels 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 Williamson County, Texas ("the Representation"). CLIENT and COUNSEL agree that this Agreement shall apply to the Representation unless it is determined that Chapter 2254 of the Texas Government Code is applicable. In that event, the CLIENT and COUNSEL agree that Section 2254 compliant contingent fee contract between CLIENT and COUNSEL approved by the Texas Comptroller of Public Accounts shall be applicable. The claims covered by the Representation 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 Williamson 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 amount 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 Williamson County Commissioner's Court and the Williamson 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 and Jonathan Nockels. 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 Williamson County Attorney's Office and the Williamson County Commissioners Court.

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 the other parties, unless otherwise authorized in this Agreement.

1.09 The person or entity that COUNSEL represents is Williamson 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 Williamson County Attorney's Office, Civil Chief Henry Prejean and Legal Advisor to Commissioner's Court Hal Hawes or any other attorney as may be designated by Williamson 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 is 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 may be given by hand delivery, facsimile, email, or 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
214-969-7373 (Telephone)
214-969-7648 (Facsimile)
Email: sfm@smalouf.com

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

Attn: Henry Prejean, Civil Chief
Williamson County Attorney's Office
405 MLK Street, Box 7
Georgetown, Texas 78626
512-943-1104 (Telephone)
512-943-1431 (Facsimile)
Email: HPrejean@wilco.org

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 has no authority to settle or otherwise compromise the position of the CLIENT or any of its officers. The Williamson County Chief Civil Counsel and the Williamson County Commissioners Court 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 Williamson County Chief Civil Counsel and the Williamson County Commissioners Court.

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 Williamson County Chief Civil Counsel and approval of the Williamson County Commissioners Court. 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 Williamson County Chief Civil Counsel 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 Williamson County Chief Civil Counsel 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 and Lisa Blue. Any intra-counsel dispute regarding the Malouf-Blue allocation, 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.

1.25 CLIENT may terminate this Agreement at any time. In the event of termination, CLIENT will not owe any fees, expenses or costs to COUNSEL unless a Recovery pursuant to this Agreement has been obtained for CLIENT and, in such case, the only fees, expenses and costs payable to COUNSEL shall be those provided in the applicable provisions of this Agreement.

II. COUNSEL'S FEES AND EXPENSES IF SUBCHAPTER C, CHAPTER 2254 OF THE TEXAS GOVERNMENT CODE IS NOT APPLICABLE TO THIS AGREEMENT

2.01 Unless Subchapter C, Chapter 2254 of the Tex. Gov't Code is determined to be applicable to the Representation, COUNSEL'S fee shall be determined as set forth below.

2.02 For and in consideration of the services performed under this Agreement, CLIENT agrees to pay COUNSEL as fees the lesser of:

- a. twenty-five percent of CLIENT's recovery. "Recovery" includes money or any other thing of pecuniary value received by CLIENT by judgment or settlement; or
- b. the average of the percentage of a Recovery to be paid as attorney's fees in contingency fee contracts of the ten (10) most populous Texas counties being represented by COUNSEL under contingency fee contracts for the same or similar claims. If fewer than ten (10) Texas counties are being represented under contingency contracts for the same or similar claims, the percentage of Recovery to be paid as attorney's fees by CLIENT shall equal the average of the percentage of Recovery to be paid as attorney's fees in contingency fee contracts for all Texas counties represented in such action(s) on a contingency fee.

2.03 Notwithstanding anything to the contrary herein, the percentage of Recovery to be paid by CLIENT as attorney's fees shall not exceed the lowest percentage of Recovery to be paid as attorney's fees by any other Texas county that COUNSEL may represent, or twenty-five percent, whichever is less.

2.04 COUNSEL agrees to advance the expenses of litigation determined by COUNSEL to be reasonable and necessary. CLIENT agrees that it will only reimburse COUNSEL for such expenses if the percentage of Recovery to be paid as attorney's fees pursuant to the terms of this CONTRACT is 19% or less of CLIENT'S Recovery. Provided, if the percentage of Recovery to be paid as attorney's fees pursuant to the terms of this CONTRACT is less than 19%, and if CLIENT receives an award of any reasonable costs or expenses, CLIENT agrees to reimburse COUNSEL and associated firms for any reasonable costs or expenses up to the amount of such award. COUNSEL and CLIENT agree that no expenses or

costs will be due or owed to COUNSEL in the event there is no Recovery, including the event of no Recovery due to termination of this Agreement by CLIENT.

2.05 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.

2.06 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.

2.07 Unless the fee set out in this Agreement is determined to be prohibited by law, the fee to be paid under this Agreement shall come exclusively out of any Recovery (including but not limited to any attorney's fees and expenses, as well as penalties), awarded in any judgment resulting from the Representation, or received pursuant to any settlement during the Representation, and CLIENT shall be liable to COUNSEL and ASSOCIATED CO-COUNSEL for no more than the fee and expenses otherwise payable hereunder.

2.08 No fee will be due on any filing fees paid for recordation of releases, transfers, assignments, or other activities related to instruments filed of record as of the date of any settlement or final judgment to the extent that any such releases, transfers, assignments, or other activities occur after settlement or final judgment. This provision does not apply to attorney's fees on a settlement or court-ordered future timed payments for PAST damages.

2.09 CLIENT has specifically allocated and made available from currently budgeted funds the sum of \$100 to discharge any obligations that CLIENT may incur arising out of this Agreement in the event the fee is determined to be prohibited by law.

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.

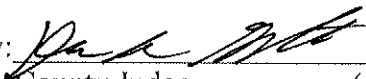
IV. OTHER PROVISIONS


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.


Williamson County, Texas

Malouf & Nockels, LLP

By:  08-13-2017
County Judge (date)
Partner

By: 
Stephen F. Malouf

APPROVED BY:

 8-13-13
Henry Prejean (date)
Chief Civil Counsel