

**MORTGAGE MODIFICATION MEDIATION PROGRAM**

**AGREEMENT TO MEDIATE**

Debtor(s): \_\_\_\_\_ Lender: \_\_\_\_\_

Mediator: \_\_\_\_\_ Mediation date & time: \_\_\_\_\_

The bankruptcy court has appointed \_\_\_\_\_ to serve as our mediator. In this Agreement, we refer to ourselves as the “Parties,” or “We.”

1. Mediation is Voluntary. We understand that mediation is a voluntary process. No one will be forced to agree to any settlement. If an agreement is reached, the mediator will summarize the key aspects in a written memorandum and the parties will prepare whatever writings are needed to formalize their agreement. We understand that participation in mediation does not guarantee that an agreement will be reached, however, parties are expected to continue the mediation process until the matter has come to some resolution. The mediator may suspend or terminate the mediation if, for example, further efforts at mediation are not likely to bring about a resolution or the mediator can no longer effectively perform a facilitative role.

2. Scope of Topics for Mediation. The mediation session may include the negotiation of a modification of the debtor’s mortgage loan, whether by new payment terms, reduction or forgiveness of principal, interest, escrow shortage, advanced costs (e.g. real estate tax advance), surrender of sale fo the mortgaged property or otherwise. Disputes concerning the amount of the mortgage creditor’s claim, application of payments, and standing of the mortgage creditor to seek foreclosure are outside the scope of mediation.

3. The Role of the Mediator. The mediator is neutral, and does not experience a gain or loss as a result of the outcome of the mediation. The mediator is impartial, and does not take sides or advocate for the interests of any individual party. The mediator has no power to decide issues, rather the mediator has an obligation to work on behalf of all parties to assist facilitate their negotiations towards a mutually satisfactory outcome. The mediator cannot give individual legal advice to any one party. The mediator accepts NO responsibility for the terms of the agreement reached.

4. The Role of the Parties. At the mediation, the mortgage creditor’s representative may attend the mediation session via telephone conference and must have knowledge of all the mortgage creditor’s loss mitigation programs with either full authority to make a final decision on the modification request or access to an underwriter will such authority. The representative will continuously attend all scheduled mediation sessions. All other parties are expected to appear in person or by video conference. All parties are directed to comply with the express terms of the Mortgage Modification Mediation Order and to engage in the mediation process in good faith.

5. Confidentiality and Priviledged Communications. All statements made by the parties, attorneys and other participants at or associated with the mediation shall be confidential and priviledged and not reported, recorded or placed into evidence, made known to the Court or construed for any purposes as an admission. No party shall be bound by any statement made or

action taken at the mediation conference unless an agreement is reached. Further, the parties may not subpoena the mediator to give testimony in related court proceedings and the parties may not subpoena the records of the mediator session. The mediator will keep confidential all statements made at the mediation, and will report to the Court only the results of the mediation.

6. Caucuses. The mediator may meet with us jointly or separately. These private sessions or “caucuses” often improve the mediator’s understanding of our viewpoints. Information gathered by the mediator through such a private session is confidential, unless the participant agrees to have it disclosed in a joint session.

7. Exclusion of Liability. The mediator is not a necessary party in any subsequent proceeding relating to the mediation. Neither the mediator nor any individual or entity working with the mediator shall be liable to any party for any action or omission in connection with any mediation conducted under this agreement. If any party attempts to or does bring such a claim, the Party agrees to indemnify the mediator and any individual or entity working with the mediator from any loss or damage, including costs and attorney’s fees, incurred in connection with such claim.

8. Mediator Services and Fees. Each party has paid a fee of \$125 to the mediator who will coordinate all scheduling and conduct at least one “in person” mediation session, and pre or post mediation teleconferences as the mediator deems necessary. The mediator will provide confidential summaries to the parties of any action plans formulated during the session and will prepare and deliver the Mediators Final Report to the Court at the conclusion of mediation. The mediator will afford all parties the opportunity to complete of survey regarding their experience in the mediation program.

**I HAVE READ AND UNDERSTAND THIS MEDIATION AGREEMENT AND, BY MY SIGNATURE, AGREE TO ABIDE BY ITS TERMS.**

\_\_\_\_\_  
Debtor Date

\_\_\_\_\_  
Debtor Date

\_\_\_\_\_  
Attorney for Debtor(s) Date

\_\_\_\_\_  
Lender Date

\_\_\_\_\_  
Attorney for Lender Date

\_\_\_\_\_  
Mediator Date

Bankruptcy Case No. \_\_\_\_\_

Attachment to Agreement to Participate in Mediation

Mediator's Disclosure of Financial Interests:

\_\_\_\_\_  
Mediator

\_\_\_\_\_  
Date