

**LOSS MITIGATION/MORTGAGE MODIFICATION
AND MEDIATION PROGRAM**

All loss mitigation/mortgage modification (“LM/MM”) occurring during a bankruptcy case must be approved by the Court¹ using the following procedures to be effective.² While nothing herein requires a mortgage creditor to agree to LM/MM, the procedures set forth below are intended to facilitate LM/MM discussions which may be otherwise required under applicable non-bankruptcy law or generally offered by the mortgage creditor (“Mortgage Creditor”).³

I. LM/MM via the Portal (Preferred Method)

a. LM/MM Portal. The Portal is a secure web platform operated by Default Mitigation Management LLC (“DMM”), available at <https://www.dclmwp.com>.⁴ The Portal is preferred because it allows Court oversight and reduces disputes by enabling parties interested in LM/MM to more quickly communicate and exchange all necessary documentation in a secure and transparent online environment while preserving the record of communication and documents exchanged and establishing deadlines for completion of the review.

b. LM/MM Portal Procedures.

(1) Debtor(s) are encouraged to participate in LM/MM via the Portal with the assistance Debtor(s)’ Counsel.⁵ Debtors who seek to represent themselves *pro se* for purposes of pursuing LM/MM assume all risks.⁶ At the beginning of the Debtor(s)’ bankruptcy case and/or before initiating the LM/MM process, Debtor(s)’ Counsel should determine whether

¹ **References herein to the Court shall mean Judge Waites only.**

² The deadlines and requirements set forth herein are not intended to supersede or extend any deadlines or requirements set forth by applicable non-bankruptcy law, including but not limited to regulations promulgated by the Consumer Financial Protection Bureau (“CFPB”).

³ **Other than the requirement that the Court approve the final LM/MM by Order, these procedures are not applicable to debtor accepted Streamlined Modifications, which by definition are offers from mortgage lenders or servicers without the need for the Debtor(s) to submit any documentation or financial information to obtain approval.** Streamlined Modifications include but are not limited to FNMA Streamlined Modifications, FHLMC Streamlined Modifications, Streamlined HAMP modifications, and other similar federally sponsored programs/initiatives. A Streamlined Modification may be approved by the Court through the submission of a proposed *Consent Order Approving Mortgage Modification* using the form attached as Exhibit R.

⁴ DMM is identified as the Portal provider due to its experience and reasonable cost (\$40 for each Debtor(s)’ Prepared Package and \$40 for the portal submission by the Debtor(s)). Registration for portal use can be completed online at <https://www.dclmwp.com> or by contacting DMM at 1-800-481-1013. The Court may, upon application and review, approve other service providers, in which event such providers will be listed on the Court’s website.

⁵ Counsel filing the Debtor(s)’ case shall be presumed to be counsel for LM/MM efforts unless special counsel with expertise in LM/MM is employed by the Debtor(s) with notice to the Court using the *Limited Notice of Appearance, Request for Notice, and Disclosure of Compensation* form attached as **Exhibit M**. The *Limited Notice of Appearance, Request for Notice and Disclosure of Compensation* should be filed using the CM/ECF event, *Limited Notice of Appearance for LM/MM & Request for Notice*. In the event that the no-look fee for LM/MM purposes is to be paid to separate counsel from the attorney representing the Debtor(s) in the filing and administration of the bankruptcy case, the attorneys’ fees to each shall be paid in equal amounts in each distribution from the Trustee, unless otherwise agreed by counsel.

⁶ For an additional fee, DMM may offer document preparation and LM/MM facilitation services for debtors who are otherwise unrepresented in using the Portal.

- the Mortgage Creditor provides applicable LM/MM programs that may benefit the Debtor(s) and whether LM/MM is feasible, and review LM/MM requirements with the Debtor(s).
- (2) If the Debtor(s) intend to seek LM/MM during first 12 months of the case, the Debtor(s) must include the appropriate nonstandard plan language (set forth below in Paragraph e (1) or (2)) in the Plan.
 - (3) If the Debtor(s) do not intend to seek LM/MM at the time of filing of the Plan, but wish to reserve their rights to later pursue LM/MM after confirmation of the Plan, the Debtor(s) must include nonstandard reservation of rights language in the Plan (see Paragraph e (3)).⁷ Failure to include such language may preclude subsequent court approval of any LM/MM agreement.
 - (4) As an initial matter, Debtor(s)' Counsel should contact the applicable Mortgage Creditor to determine whether it will consent or provide a statement of no objection to engage in LM/MM discussions via the Portal.
 - i. If the Mortgage Creditor agrees, Debtor(s)' Counsel may immediately submit a proposed ***Order Requiring Loss Mitigation/Mortgage Modification ("LM/MM Order")***, using the form attached as Exhibit K.
 - ii. If unable to obtain the agreement of the Mortgage Creditor, Debtor(s)' Counsel may file a ***Notice and Motion for Loss Mitigation/Mortgage Modification*** and proposed ***Order Requiring Loss Mitigation/Mortgage Modification ("LM/MM Order")***,⁸ using the forms attached as Exhibits J and K, and serve on the applicable Mortgage Creditor, co-borrowers or obligors on the loan, and their counsel, if known.
 - a. The affected Mortgage Creditor, co-borrowers, and other obligors shall have 14 days from the date of service of the Motion to object to the Motion. Any objection must state specific reasons verified as accurate by counsel for the objecting party. Upon timely objection, a hearing shall be held on the date identified in the Notice and all applicable parties and counsel shall attend. In the absence of an objection, the Court may grant, without a hearing, the Motion and enter the ***LM/MM Order***.
 - (5) Upon entry of the ***LM/MM Order***, Debtor(s)' Counsel shall immediately register on the Portal. **Once the *LM/MM Order* is issued, all communication between the parties regarding LM/MM shall be through the Portal and the parties must comply with the deadlines and requirements set forth in the *LM/MM Order*.**
 - (6) Within 7 days after entry of the ***LM/MM Order*** or within any other applicable deadline set by non-bankruptcy law (including CFPB requirements), if shorter, the Mortgage Creditor shall advise its counsel of entry of the ***LM/MM Order***, register to use the Portal (if not previously

⁷ The LM/MM process should be commenced before discharge of the Debtor(s) and in time to allow completion of the procedures before the case is closed.

⁸ The ***Notice and Motion for Loss Mitigation/Mortgage Modification*** and proposed ***LM/MM Order*** should be filed using the *Loss Mitigation/Mediation* CM/ECF event.

⁹ In order to ensure timely responses to inquiries from the Court, the Mortgage Creditor's designated counsel shall be deemed to be the attorney who files the most recent pleading in the case on behalf of the Mortgage Creditor.

registered), assign to the Portal the Mortgage Creditor's designated counsel, and ensure that the Portal provider has been provided with any and all application forms and documentation requirements necessary for consideration of all available types of LM/MM. Debtor(s)' Counsel shall report, by correspondence filed on the Court's docket, any failure to timely register to use the Portal.

- i. **Loan Transfer during LM/MM Process.** The Mortgage Creditor, via counsel, is ordered to inform the Court, the Debtor(s), Debtor(s)' Counsel, the Trustee, and any participating co-borrower or obligor if the applicable loan is sold or securitized to another company during the LM/MM process within 7 days of the transfer. The transferee or new servicer of the loan shall be advised of these requirements by the original Mortgage Creditor and shall be bound by all prior orders, agreements, forms, and documentation. The transferee or servicer shall register for the Portal within 7 days and the Mortgage Creditor shall transfer the Portal account to the transferee so that the transferee may review all previously submitted transmissions and continue with the process.
- (7) Within 14 days after entry of the **LM/MM Order**, unless exempted,¹⁰ the Court's approved online document preparation program (the "Document Preparation Program") must be used to complete the standard LM/MM forms (the "Debtor(s)' Prepared Package") and upload the Debtor(s)' Prepared Package to the Portal. Use of the Document Preparation Program, provided at www.documods.com,¹¹ is required to expedite the exchange of information between the Debtor(s) and the Mortgage Creditor and ensure greater accuracy in the preparation of the required documentation.
- (8) Within 7 days after submission of the Debtor(s)' Prepared Package and any other necessary documentation on the Portal, the Mortgage Creditor shall:
- i. Acknowledge receipt of the information on the Portal;
 - ii. Provide on the Portal all contact information of the representative in charge of the Debtor(s)' account; and
 - iii. Notify Debtor(s)' Counsel of any additional or updated information required to process the application.
- (9) Unless a shorter time is set by applicable law, rules or regulations (such as the CFPB), the Mortgage Creditor shall have a total of 90 days from entry of the **LM/MM Order** ("Loss Mitigation Period") to conclude its consideration and provide a final response to the Loss Mitigation request by advising on all means of Loss Mitigation, including mortgage modification, or verify a denial by filing a **Mortgage Loan Modification Report**, using the form attached as Exhibit L.¹² **Any denial shall state specific reasons for the denial.**

¹⁰ Debtor(s)' Counsel who are experienced with LM/MM and with the use of the Portal may request by motion, stating grounds with specificity, to be exempted from using the Document Preparation Program. **Pro se Debtors must use the Document Preparation Program.**

¹¹ Enter **sbkdocs40** for the \$40.00 rate. DMM also offers a DocuPrep program through which it directly assists the Debtor(s) in completing the Debtor(s)' Prepared Package (for a fee charge of approximately \$200.00).

¹² The **Mortgage Loan Modification Report** should be filed using the CM/ECF event of the same name.

- i. Upon the failure to reach an agreement regarding LM/MM within the 90-day Loss Mitigation Period, any party may request an extension of the Loss Mitigation Period by motion, which states specific grounds for the extension.
- (10) Upon acceptance of the Debtor in a Trial Period Plan and before the first trial period payment is due, Debtor(s)' Counsel shall submit a proposed ***Order Approving Trial Period Plan*** using the form attached as Exhibit N for consideration and approval by the Court.¹³ If a copy of the trial period agreement is attached to the proposed order, **any private information must be redacted** according to Federal Rule of Bankruptcy Procedure 9037.
- (11) Any final agreement for LM/MM shall be submitted for approval by the Court by way of ***Consent Order Approving Loss Mitigation/Mortgage Modification***, using the form attached as Exhibit O.¹⁴ If a copy of the LM/MM agreement is attached to the proposed order, **any private information must be redacted** according to Federal Rule of Bankruptcy Procedure 9037.
 - i. If the modification to the mortgage involves an extension of new funds or credit, a motion to incur debt or obtain credit should also be filed and properly noticed to all creditors and parties in interest.
 - ii. Dismissal of the bankruptcy case, relief from the automatic stay as to the affected property, or reaffirmation of the debt shall not be a prerequisite of an agreement for loss mitigation, including modification of mortgage loan, unless allowed by the Court after consideration at a hearing.
- (12) Absent entry of a ***Consent Order Approving Loss Mitigation/Mortgage Modification***, a final report, using the form attached as Exhibit L, must be submitted within thirty (30) days of the expiration of the Loss Mitigation efforts.
- (13) In order to ensure the timely completion of LM/MM and unless a final report concluding LM/MM has been filed, the Court will set a status hearing on the LM/MM efforts ("Status Hearing") within 120 days from the entry of the ***LM/MM Order***. The Debtor(s), Debtor(s)' Counsel, the representative of the Mortgage Creditor with the most knowledge regarding the LM/MM efforts made in the case and counsel for the affected Mortgage Creditor shall appear in person at the Status Hearing. In the event the LM/MM process is completed, approved or denied prior to that time, parties via counsel may file a report to that effect and a calendar removal request.
- (14) No later than 60 days after entry of the ***Consent Order Approving Loss Mitigation/Mortgage Modification***, the Mortgage Creditor shall deliver all documents necessary to complete the permanent modification to Debtor(s)' Counsel and the parties shall execute all necessary documents to finalize the modification. Upon the Mortgage Creditor's failure to timely deliver the necessary documents, the Debtor(s) may file a Motion to Compel and seek attorney's fees incurred as a result of unreasonable delay.

¹³ The proposed ***Order Approving Trial Period Plan*** should be filed using the CM/ECF event, *Proposed Order Approving Trial Period Plan*.

¹⁴ The proposed ***Consent Order Approving Loss Mitigation/Mortgage Modification*** should be filed using the CM/ECF event, *Proposed Consent Order Approving LM/MM*.

- c. **Good Faith Requirement.** All parties are required to act in good faith throughout the LM/MM process. Debtor(s)' Counsel and counsel for the Mortgage Creditor shall immediately report to the Court the other party's failure to timely comply with any of the LM/MM procedures or deadlines or failure to otherwise act in good faith by filing correspondence on the Court's docket.
- d. **LM/MM Mediation.** At any time after the *LM/MM Order* is entered, any party may request or the Court, *sua sponte*, may direct the appointment of a mediator to facilitate LM/MM discussions and resolve disputes between the parties.¹⁵ If approved, the Court will select a mediator and issue an *Order Appointing Mediator*.¹⁶
- (1) Within 3 days after the entry of the *Order Appointing Mediator*, the mediator shall register to the Portal at no cost. Once registered, Debtor(s)' Counsel shall assign the mediator to the account on the Portal so that the mediator may review the file and have access to the account on the Portal. Each mediation session shall be conducted via telephone conference call on a date set by the mediator and last no longer than one hour. Debtor(s)' Counsel shall publish the phone number for the conference call on the Portal no later than 3 days before the scheduled mediation. Any party may request an expedited hearing before the Court on issues not resolved by mediation.
- (2) Costs for a mediator shall not, without Court order, exceed \$500.00 for two one-hour sessions, and shall be equally divided and paid within 10 days of the *Order Appointing Mediator* and in advance of the session by the parties unless otherwise ordered.¹⁷
- e. **Chapter 13 Plan Language.** The following nonstandard language has been approved for inclusion in the Chapter 13 plan to indicate the Debtor(s) intention to pursue LM/MM, subject to objection by affected parties.

- (1) Option One (The Debtor(s) are capable of making regular contract payments or adequate protection payments)

The Debtor(s) shall seek loss mitigation or consensual mortgage modification of the mortgage loan secured by the following property via the Portal process set forth in Chamber's Guidelines:

[Real Property Description]

Beginning on [date], the Debtor(s) will pay either regular contract payments or adequate protection payments in the amount of \$_____ directly to [Mortgage Creditor]. The Debtor(s) will also be responsible for payment of any arrearage directly to [Mortgage

¹⁵ A request for mediation made more than 60 days after entry of an order granting relief from stay on the subject property or made after denial of an appeal must allege specific grounds that demonstrate a lack of good faith, change in circumstances, or other cause. The request for mediation should be filed using the CM/ECF event, *Request for Appointment of Mediator*.

¹⁶ If the selected mediator is unable to serve, the parties may contact Chambers to request the appointment of a new mediator.

¹⁷ In the event of a settlement of issues before mediation takes place, the mediator may nevertheless be entitled to fees for time spent in preparation for mediation at the hourly rate of \$250/hour, but such fee request shall not exceed \$500.00 without Court order.

Creditor] if not relieved through a loss mitigation or loan modification process. No payment will be made by the Trustee on this secured claim.

(2) Option Two (The Debtor(s) are unable to make present payments)

The Debtor(s) are unable to resume payments to [Mortgage Creditor] at this time, and therefore, the Debtor(s)' plan relies upon loss mitigation or a consensual mortgage loan modification of the mortgage loan secured by the following property:

[Real Property Description]

If the mortgage loan modification is approved, the Debtor(s) shall directly pay [Mortgage Creditor]'s allowed mortgage claim, including any prepetition and post petition amounts. No payment will be made by the Trustee on this secured claim.

In the event that (1) the request for mortgage loan modification (and any necessary documentation) is not submitted or is denied (after appeal) or (2) the Debtor(s) fail to timely make any required Trial Period Plan Payments, the Mortgage Creditor may, after 14 days' written notice to the Debtor(s), Debtor(s)' Counsel, and the Trustee, submit an affidavit and proposed order seeking relief from the stay. However, the Mortgage Creditor may not obtain relief until its final consideration of loss mitigation or mortgage modification is concluded and reported to the Debtor(s) and Debtor(s)' Counsel.

(3) Option Three (Reservation of Rights Language)

The Debtor(s) reserve the right to seek loss mitigation or modification of the mortgage loan using the Loss Mitigation/Mortgage Modification Portal procedures described in Chambers Guidelines during the bankruptcy case, which may be effective upon subsequent approval by order of the Court

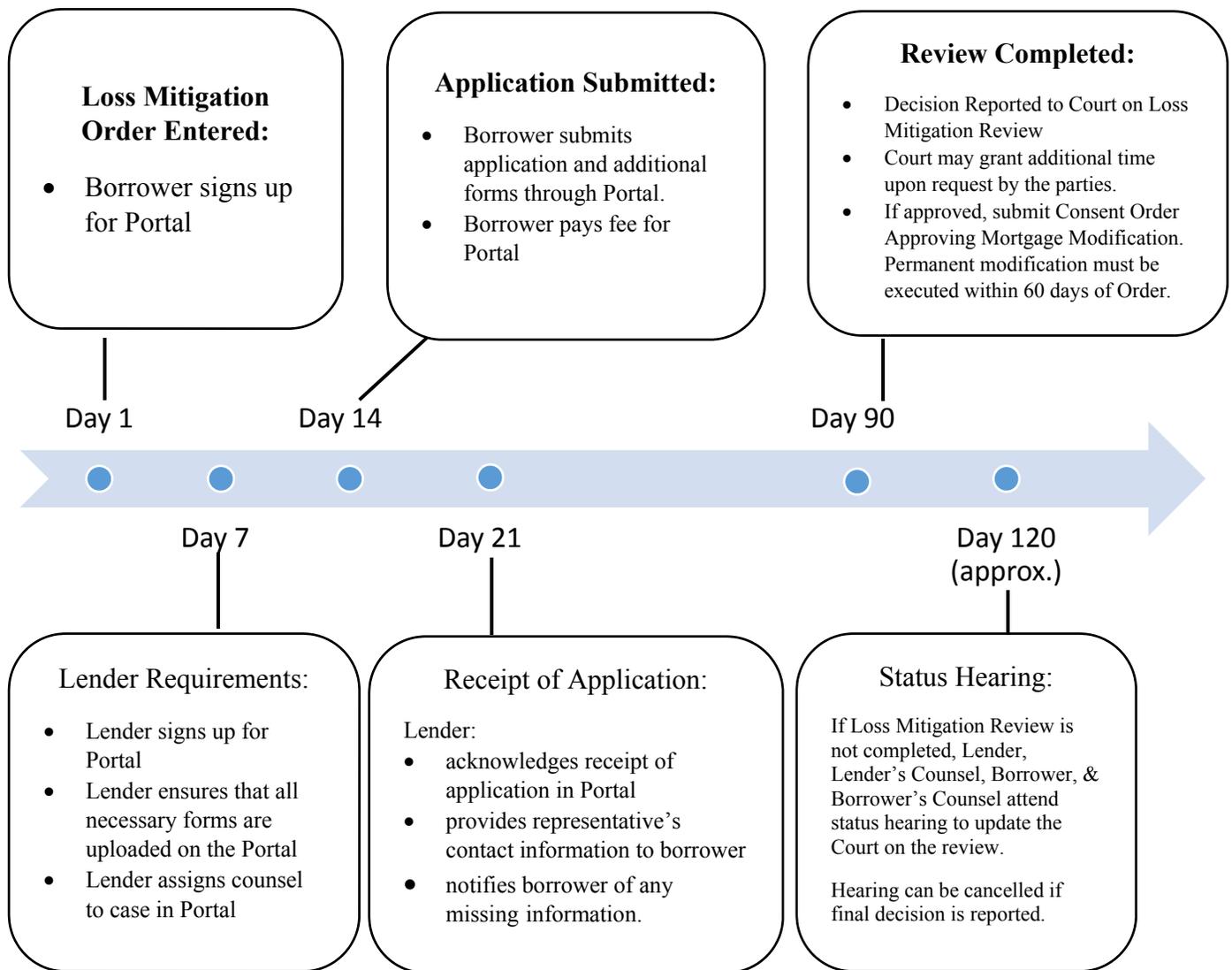
f. Attorney's Fees for LM/MM via the Portal. Counsel assisting the Debtor(s) with LM/MM via the Portal shall be permitted to charge an attorney's fee for LM/MM related services. In Chapter 13 cases, a **\$1500** no-look fee shall be allowed (in addition to the no-look fee established under the Guidelines for compensation for professionals), which may be paid directly by the Debtor from post petition income or exempt assets or through the confirmed Plan, with **\$1000** of that fee allowed to be distributed in the initial distribution by the Trustee. The manner of payment of the no-look fee for loss mitigation/mortgage modification must be addressed in the **LM/MM Order**. See Exhibit K. The fee provides additional compensation for all services through the completion of the LM/MM process and includes:

- a. Filing of the **Notice and Motion for Loss Mitigation/Mortgage Modification** and proposed **LM/MM Order**;
- b. Assembling and submitting Debtor(s)' Prepared Package;
- c. Filing of other required pleadings and preparation of proposed orders, as applicable;
- d. Communicating with the Mortgage Creditor, co-borrower or obligor, and the Mediator, if appointed;
- e. Filing of the proposed **Order Approving Trial Period Plan**, if applicable; **Consent Order Approving Loss Mitigation/Mortgage Modification**, or a **Mortgage Loan Modification Report**; and
- f. Appearing at hearings relating to LM/MM.

\$1000 of the no-look fee shall be deemed earned and payable after the filing of an Attorney Fee Disclosure Statement and upon completion of the submission of all documents necessary for consideration of loss mitigation/mortgage modification. The remaining portion of the no-look fee shall be deemed earned and payable upon submission of a proposed **Order Approving Trial Period Plan, Consent Order Approving Loss Mitigation/Mortgage Modification, or Mortgage Loan Modification Report**. Additional fees for LM/MM efforts may be allowed in the event of extraordinary circumstances or if LM/MM mediation is ordered upon motion specifying cause and further order.

As an alternative to the no-look fee, an application seeking additional compensation may also be submitted for expedited consideration.

Timeline for Loss Mitigation Review:



These deadlines are supplemental to and do not supersede the deadlines required in other legal mandates, including the National Mortgage Settlement and the CFPB.

II. Non-Portal LM/MM

- a. Duty to Report Non-Portal LM/MM Efforts for Approval.** Non-Portal LM/MM efforts must be reported to the Court via the filing of correspondence by Debtor(s)' Counsel, counsel for the Mortgage Creditor or the parties *pro se* or by submission of an order seeking approval.¹⁸ Failure to timely notify the Court of such efforts may result in adverse rulings.
- b. Approval of Non-Portal Trial Period Plan.** Upon acceptance of the Debtor in a Trial Period Plan and before the first trial period payment is due, Debtor(s)' Counsel shall submit a ***Consent Order Approving Trial Period Plan (Non-Portal)*** using the form attached as Exhibit P. If a copy of the trial period agreement is attached to the proposed order, **any private information must be redacted** according to Federal Rule of Bankruptcy Procedure 9037.
- c. Approval of Non-Portal Final Agreement for Loss Mitigation/Mortgage Modification.** Any final agreement for LM/MM shall be submitted for approval by the Court by way of a proposed ***Consent Order Approving Loss Mitigation/Mortgage Modification (Non-Portal)***, using the form attached as Exhibit Q. If a copy of the LM/MM agreement is attached to the proposed order, **any private information must be redacted** according to Federal Rule of Bankruptcy Procedure 9037.
- i. If the modification to the mortgage involves an extension of new funds or credit, a motion to incur debt or obtain credit should also be filed and properly noticed to all creditors and parties in interest.
 - ii. Dismissal of the bankruptcy case or reaffirmation of the debt not be a prerequisite of an agreement for loss mitigation, including modification of mortgage loan, unless ordered by the Court after consideration at a hearing.
 - iii. Any confirmed plan which does not provide for LM/MM or otherwise provide that all mortgage payments shall be made directly by Debtor(s) to the Mortgage Creditor must be amended prior to the approval of the final agreement for LM/MM.
 - iv. Upon approval of the final agreement for LM/MM, the Court will grant relief from the automatic stay for the benefit of the Mortgage Creditor upon submission of a proposed order from the Mortgage Creditor via counsel. Unless otherwise ordered, the automatic stay shall remain effective as to all other lienholders.
- d. Attorney's Fees for Non-Portal LM/MM.** No additional no-look attorney's fee is authorized for Non-Portal LM/MM efforts. Debtor(s)' Counsel may seek attorney's fees in an amount of up to \$300 for efforts to obtain Court approval by filing an application for supplemental fees in accordance with SC LBR 2016-1.
- e. Pursuing LM/MM without Assistance of Counsel.** Debtors who elect to represent themselves *pro se* for purposes of pursuing LM/MM assume all risks, and if unsuccessful, a further opportunity to seek LM/MM during the bankruptcy case will not be approved.

¹⁸ Unrepresented Mortgage Creditors may submit correspondence to chambers by e-mail to jwaites_prose@scb.uscourts.gov, with copy provided to Debtor(s)' Counsel and the Trustee.

EXHIBIT J

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

[Debtor Name],

Debtor(s).

C/A No. _____

Chapter _____

**NOTICE AND MOTION FOR
LOSS MITIGATION/MORTGAGE
MODIFICATION PURSUANT TO
JUDGE WAITES' CHAMBERS
GUIDELINES**

To: _____ ("Mortgage Creditor") and Parties in Interest

The Debtor(s), through counsel, hereby move the Court for an Order Requiring Loss Mitigation/Mortgage Modification with respect to the following property:

[Identify the Property]

[Last Four Digits of Loan Number]

[Mortgage Creditor's Name and Address]

The Debtor(s) request an order directing the parties to participate in the Loss Mitigation/Mortgage Modification via the Portal as set forth in Judge Waites' Chambers Guidelines, available at <http://www.scb.circ4.dcn/ChambersJW.htm>.

Prior to filing this Motion, Debtor(s)' Counsel has determined that:

The Mortgage Creditor is registered with the Portal. Debtor(s)' Counsel will upload to the Portal Debtor(s)' Prepared Package together with any additional forms or documents which the Mortgage Creditor may post on the Portal within 14 days after entry of the Order.

The Mortgage Creditor is not registered. The Debtor(s) request that the Court require Mortgage Creditor to register with the Portal within 7 days after entry of the Order. Debtor(s)' Counsel will upload to the Portal Debtor(s)' Prepared Package together with any additional forms or documents which the Mortgage Creditor may post on the Portal within 14 days after entry of the Order.

The Debtor(s) have or have not previously sought loss mitigation/mortgage modification through any procedure/process during this bankruptcy case or within the previous two years. List dates and results: _____

If a previous attempt at loss mitigation/mortgage modification was made or is ongoing, the change of circumstances which makes this attempt more likely to succeed is as follows:

TAKE FURTHER NOTICE that any response, return and/or objection to this Motion should be filed with the Court no later than 14 days from service of the Motion and a copy simultaneously served on all parties in interest.

TAKE FURTHER NOTICE that no hearing will be held on this Motion, except as required by the Judge, unless a response, return and/or objection is timely filed and served, in which case, the Court will conduct a hearing on _____, ____ at ____ a.m./p.m. at _____, _____, South Carolina. No further notice of this hearing will be given.

Attorney Name & Fed. ID #

Address

Email

NOTE REGARDING THIS FORM: If the Debtor(s) propose a moratorium of plan payments as a means of allowing payment of the no-look fee attributable to loss mitigation/mortgage modification services, if the debtor(s) seek to pay Debtor(s)' Counsel a \$2,000 initial distribution through the Chapter 13 plan, or if the debtor(s) propose to delay the resumption of regular mortgage payments, notice of such proposal shall be provided in this Notice and Motion for Loss Mitigation/Mortgage Modification and notice served on the affected mortgage creditor and the Chapter 13 Trustee.

EXHIBIT K

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

[Debtor Name],

Debtor(s).

C/A No. _____

Chapter ____

**ORDER REQUIRING
LOSS MITIGATION/MORTGAGE
MODIFICATION**

A Motion for Loss Mitigation/Mortgage Modification was filed by [Debtor Name] (“Debtor(s)”) on [Date] _____, 20__ and the parties have had notice and an opportunity to object. It appearing that no objections were filed or that any objections filed have been withdrawn or otherwise ruled upon or that the applicable parties now consent, it is hereby

ORDERED that the Debtor(s), acting through counsel, and _____ (“Mortgage Creditor”) [and additional parties, if any] are directed to participate in the Loss Mitigation/Mortgage Modification Portal Program; it is further

ORDERED that the Debtor(s), Debtor(s)’ counsel, the Mortgage Creditor and its counsel, and any participating co-borrower or obligor shall comply with the Loss Mitigation/Mortgage Modification Procedures set forth in Judge Waites’ Chambers Guidelines (available at www.scb.uscourts.gov/ChambersJW.htm) and engage in the Loss Mitigation/Mortgage Modification (“LM/MM”) process in good faith, and that failure to do so may result in the scheduling of a hearing to consider sanctions or other relief; and it is further

ORDERED that the Debtor(s), Debtor(s)’ Counsel, and the Mortgage Creditor and its counsel shall observe the following deadlines:

- (1) Upon entry of this Order, Debtor(s)’ Counsel shall immediately register on the Portal.¹ Once registered, all communication between the parties regarding the loss mitigation review shall be sent through the Portal. Communication and negotiation by the Debtor shall be through Debtor(s)’ Counsel unless otherwise allowed by the Court.
- (2) Within 7 days after entry of this Order, the Mortgage Creditor shall advise its counsel of entry of the Order, register to use the Portal (if not previously registered), assign to the Portal the Mortgage Creditor’s designated counsel, and ensure that the Portal provider has been provided with any and all application forms and documentation requirements necessary for consideration of all available types of LM/MM. Debtor(s)’ Counsel shall report, by correspondence filed on the Court’s docket, any failure to timely register to use the Portal.

¹ The Portal is available at <https://www.dclmwp.com>.

- (3) Within 14 days after entry of this Order, Debtor(s)' Counsel shall upload the standard LM/MM forms (the "Debtor(s)' Prepared Package") to the Portal. Unless exempted by the Court, the Court's approved online document preparation program (the "Document Preparation Program"), provided at www.documods.com, must be used to complete the Debtor(s)' Prepared Package.
- (4) Within 7 days after submission of the Debtor(s)' Prepared Package and any additional documentation on the Portal, the Mortgage Creditor shall:
 - i. Acknowledge receipt of the information on the Portal;
 - ii. Provide on the Portal all contact information of the representative in charge of the Debtor(s)' account; and
 - iii. Notify Debtor(s)' Counsel of any additional or updated information required to process the application.
- (5) **Unless a shorter time is set by applicable law, rules or regulations**, the Mortgage Creditor shall have a total of 90 days from entry of this Order ("Loss Mitigation Period") to conclude its consideration and provide a final response to the Loss Mitigation request by advising on all means of Loss Mitigation, including mortgage modification, or verify a denial by filing a Mortgage Loan Modification Report. Any denial shall state specific reasons for the denial. Upon the failure to reach a final disposition regarding LM/MM within the 90-day Loss Mitigation Period, any party may request by motion that the Loss Mitigation Period be extended.
- (6) Upon acceptance of the Debtor(s) in any Trial Period Plan and before the first trial period payment is due, Debtor(s)' Counsel shall submit a proposed Order Approving Trial Period Plan for consideration and approval by the Court.
- (7) **Other requirements set forth in Chambers Guidelines, which may include additional required steps and deadlines, are incorporated herein and shall be effective. Failure to adhere to the Order and Chambers Guidelines may subject parties and counsel to sanctions or other relief.**

It is further **ORDERED** that the parties must submit and seek Court approval of any final agreement providing for any loss mitigation/mortgage modification using forms and procedures outlined in Judge Waites' Chambers Guidelines referenced above. Dismissal of the bankruptcy case, relief from the automatic stay as to the affected property, or reaffirmation of the debt shall not be a condition of loss mitigation, including modification of mortgage loan, unless allowed by the Court after consideration at a hearing; and it is further

ORDERED that, absent entry of a Consent Order Approving Loss Mitigation/Mortgage Modification, a final report must be submitted within thirty (30) days of the expiration of the Loss Mitigation efforts; and it is further

ORDERED that the Mortgage Creditor, via counsel, is ordered to inform the Court, the Debtor(s), Debtor(s)' Counsel, the Trustee, and any participating co-borrower or obligor if the applicable loan is sold or securitized to another company during the LM/MM process within 7 days of the transfer.

The transferee or new servicer of the loan shall be advised of these requirements by the original Mortgage Creditor and shall be bound by all prior orders, agreements, forms, and documentation. The transferee or servicer shall register for the Portal within 7 days and the Mortgage Creditor shall transfer the Portal account to the transferee so that the transferee may review all previously submitted transmissions and continue with the process.

ORDERED that Debtor(s)' Counsel, in consideration for assisting the Debtor(s) with the LM/MM process and in addition to any other fees charged in connection with the case, shall be permitted to charge an additional attorney's fee of \$1,500. Said fee shall be paid in a manner described below and reflected in a fee disclosure [**select applicable provision and include only that provision in the order**]:

- The Debtor(s) shall pay \$1,500 directly to Debtor(s)' Counsel outside of the bankruptcy in accordance with a separate fee or retainer agreement. If Debtor(s) fail to make such payment, Debtor(s)' Counsel is authorized to file a request for supplemental fees to seek payment through the Chapter 13 Plan;
- Debtor has or shall pay a partial payment of \$___ directly to Debtor(s)' Counsel outside of the bankruptcy, leaving a balance of \$_____ to be paid from the Chapter 13 Plan. Debtor(s)' Counsel shall either (a) in the event that a plan has previously been confirmed, file a supplemental fee application under the expedited fee procedure in which case the Trustee shall apply any monthly distributions that would previously have been allocated for mortgage arrearage toward the attorney's fees,² or (b) in the event that the loan modification process has or will begin prior to confirmation of Debtor(s)' plan, increase the fees that are being paid through the plan by said remaining balance, with an increased initial disbursement of up to \$2,000 rather than the normal initial disbursement of \$1,000;³
- The entire fee of \$1,500 shall be paid to Debtor(s)' Counsel from the Chapter 13 Plan. Debtor(s)' Counsel shall either (a) in the event that a plan has previously been confirmed, file a supplemental fee application under the expedited fee procedure in which case the Trustee shall apply any monthly distributions that would previously have been allocated for mortgage arrearage toward the attorney's fees, or (b) in the event that the LM/MM process has or will begin prior to confirmation of Debtor(s)' plan, increase the fees that are being paid through the plan by said remaining balance, with an increased initial disbursement of up to \$2,000 rather than the normal initial disbursement of \$1,000;⁴

² The Trustee will only be required to pay attorney's fees out of the payments allocated to the Mortgage Creditor at the time the Trustee ceases to make such payments to the Mortgage Creditor, which would normally be at the time of entry of the final order for loss mitigation/mortgage modification or at the time of relief from the automatic stay.

³ The increased initial disbursement of anything more than \$1,000 shall only apply in cases in which the plan payment is \$750 per month or higher. The Debtor(s) must provide notice that this relief is sought in Motion for Loss Mitigation/Mortgage Modification or by separate motion served upon the affected Mortgage Creditor. An order providing this manner of payment must include the consent of the Chapter 13 Trustee.

⁴ The Trustee will only be required to pay attorney's fees out of the mortgage arrearage allocation at the time the Trustee ceases to make such payments to the Mortgage Creditor, which would normally be at the time of entry of the final order for loss mitigation/mortgage modification or at the time of relief from the automatic stay. Debtor(s) must provide notice that this relief is sought in Motion for Loss Mitigation/Mortgage Modification or by separate motion served upon the affected Mortgage Creditor. An order providing this manner of payment must include the consent of the Chapter 13 Trustee.

- In a Chapter 13 plan, Debtor shall be granted a moratorium of plan payments of ___ months (not to exceed 3), beginning with the date of this Order, during which time the Debtor(s) shall directly pay Debtor(s)' Counsel all funds received by the Trustee during the moratorium period. In the event the Trustee receives funds during the period, he/she shall forward those funds to Debtor(s)' Counsel as well. The Debtor(s) shall resume regular plan payments at the end of the moratorium period.⁵
- In a Chapter 13 plan, the Debtor(s) shall propose resuming regular monthly mortgage payments to be paid directly by the Debtor(s) beginning in the month of _____, 20___, during which time Debtor(s) shall pay installments of \$_____ per month directly to Debtor(s)' Counsel beginning on _____, 20__.
- Other: (to be completed by Debtor(s)' counsel and subject to Court approval)

IT IS FURTHER ORDERED that should the Debtor(s) at any time fail to meet a payment obligation as described above, regardless of whether it is a direct payment to the attorney or a plan payment to the Trustee, Debtor(s)' counsel shall report that failure to the Court by correspondence and is under no obligation to continue to assist the Debtor(s) with the mortgage modification or loss mitigation process.

AND IT IS SO ORDERED.

⁵ Debtor(s) must provide notice that this relief is sought in Motion for Loss Mitigation/Mortgage Modification or by separate motion served upon the affected Mortgage Creditor. An order providing this manner of payment must include the consent of the Chapter 13 Trustee.

EXHIBIT L

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

[Debtor Name],

Debtor(s).

C/A No. _____

Chapter ____

**MORTGAGE LOAN
MODIFICATION/LOSS MITIGATION
REPORT**

Following efforts to negotiate loss mitigation/mortgage modification of the below described loan, the parties report that loss mitigation/mortgage modification was denied or has failed for the following reasons:¹

Name of Mortgage Creditor: _____

Property Address: _____

Dated: Signature: _____

¹ Indicate if a Trial Period Plan was previously approved but was not successfully completed.

EXHIBIT M

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

[Debtor Name],

Debtor(s).

C/A No. _____

Chapter ____

**LIMITED NOTICE OF APPEARANCE,
REQUEST FOR NOTICE, AND
DISCLOSURE OF COMPENSATION**

The undersigned attorney files this Limited Notice of Appearance on behalf of [Debtor(s)' Name] ("Debtor(s)") in this case for the sole purpose of seeking Loss Mitigation/Mortgage Modification for the Debtor(s). The undersigned further states that s/he will receive \$ _____ compensation for this limited appearance to be paid through the Chapter 13 Trustee's distribution or through direct payment by Debtor(s) from post petition income or exempt assets. An attorney fee disclosure statement shall be filed upon the earning of the fee according to Chambers Guidelines.

Attorney Name & Fed. ID #
Address
Email

CERTIFICATE OF SERVICE

The above signing attorney certifies that on [date of service], a copy of the foregoing Limited Notice of Appearance, Request for Notice, and Disclosure of Compensation was served on the Debtor(s), the Chapter 13 Trustee and any affected creditor by first class U.S. Mail at the following addresses:

EXHIBIT N

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

[Debtor Name],

Debtor(s).

C/A No. _____

Chapter ____

**ORDER GRANTING APPROVAL OF
TRIAL PERIOD PLAN
(PORTAL)**

This matter comes before the Court upon the Debtor(s)' Request to Approve Trial Period Plan with _____ ("the Mortgage Creditor"), and this Court having considered the matter
ORDERS AS FOLLOWS:

- a. The request is granted.
- b. The Trial Period Plan with the Mortgage Creditor is hereby approved and the parties are ordered to comply with the terms of the Trial Period Plan:
 - The Trial Period Plan is described in the attachments hereto (**with private information redacted**) or
 - The terms are as follows:
 - i. The Trial Period Plan Payments are in the amount of \$_____, representing principal, interest, taxes and insurance beginning _____, 20____.
 - ii. The payments will be sent to: [insert address]

Debtor(s)' counsel shall timely submit for Court approval any final loss mitigation or mortgage modification agreement after the Trial Period Plan Payments are made.

AND IT IS SO ORDERED.

APPROVAL REQUESTED BY:

Attorney Name & Fed. ID #
Address
Email

EXHIBIT O

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

[Debtor Name],

Debtor(s).

C/A No. _____

Chapter ____

**CONSENT ORDER APPROVING LOSS
MITIGATION/MORTGAGE
MODIFICATION¹
(PORTAL)**

This matter comes before the Court upon the request of [Debtor(s)' Name(s)] ("Debtor(s)") and [Creditor Name] ("Mortgage Creditor") for approval of the parties' agreement for loss mitigation/mortgage modification ("LM/MM"). Mortgage Creditor has an existing loan secured by the Debtor(s)' real property. Using the Portal procedure set forth in the undersigned's Chamber's Guidelines, the parties have reached an agreement for LM/MM, which will have the following benefits to the Debtor(s):

- Reduction of the Debtor(s)' mortgage payments from the current amount of \$ _____ per month to approximately \$ _____ per month.
- Interest rate reduced from _____% to _____% [Fixed or Variable]
- Arrearage in the amount of \$ _____ forgiven or postponed.
- Other – Describe below:

Regarding LM/MM, the parties represent and agree that:

1. There will be no extension of additional funds beyond what is already owed;
2. Payments to other lien holders under the plan will not be affected;
3. That the LM/MM has no detrimental effect on other creditors and is in the best interest of Debtor(s) and the estate;
4. That payments to Creditor for arrearage are/are not being made by the Trustee, and will/will not be made upon the effective date of the LM/MM agreement; any overage paid by the Trustee will be refunded to the Trustee within 60 days;
5. Stay relief has not been granted to any secured creditor on the property as a prerequisite of the agreement for loss mitigation;
6. The trial period has been successfully completed [if applicable]; and

¹ Mortgage Creditor's consent may be demonstrated by attachment of document evidencing Mortgage Creditor's offer.

7. The documents finalizing the LM/MM shall be executed by the parties within 60 days from the entry of this Order.

Debtor(s) certify that the costs of DMM have been previously paid by Debtor(s) (or other source) and the attorney's fees specifically attributable to services required for participation in LM/MM have been previously paid by Debtor or will be paid through the Trustee's distributions.

Now, therefore, upon the agreement of Debtor and Mortgage Creditor and with the consent of the Trustee, as indicated by the signatures below,

IT IS HEREBY ORDERED that the LM/MM is hereby approved.

AND IT IS SO ORDERED.

WE SO MOVE AND CONSENT:

/s/ Attorney for Mortgage Creditor
Attorney for Mortgage Creditor
District Court I.D. _____

/s/ Attorney for Debtor
Attorney for Debtor
District Court I.D. _____

Chapter 13 Trustee

EXHIBIT P

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

[Debtor Name],

Debtor(s).

C/A No. _____

Chapter ____

**CONSENT ORDER APPROVING
TRIAL PERIOD PLAN
(NON-PORTAL)**

This case came before the Court upon the Debtor(s)' Motion to Approve Non-Portal Trial Period Plan with _____ ("Mortgage Creditor"), and this Court having considered the matter **ORDERS AS FOLLOWS:**

- a. The Motion is granted.
- b. The Trial Period Plan with Mortgage Creditor is hereby approved and the parties are ordered to comply with the terms of the Trial Period Plan:
 - The Trial Period Plan is described in the attachments hereto (with private information redacted) **or**
 - The terms are as follows:
 - iii. The Trial Period Plan Payments are in the amount of \$ _____, representing principal, interest, taxes and insurance beginning _____, 20 ____.
 - iv. The payments will be sent to: [insert address]

Debtor(s)' counsel shall timely submit for Court approval any final loss mitigation or mortgage modification agreement after the Trial Period Plan Payments are made and file an amended plan if the confirmed plan does not provide for Loss Mitigation/Mortgage Modification or provide that all payments shall be made directly to the Mortgage Creditor.

AND IT IS SO ORDERED.

WE SO MOVE AND CONSENT:

/s/ Attorney for Mortgage Creditor
Attorney for Mortgage Creditor
District Court I.D. _____

/s/ Attorney for Debtor
Attorney for Debtor
District Court I.D. _____

Chapter 13 Trustee

EXHIBIT Q

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

[Debtor Name],

Debtor(s).

C/A No. _____

Chapter ____

**CONSENT ORDER APPROVING LOSS
MITIGATION/MORTGAGE
MODIFICATION¹
(NON-PORTAL)**

This matter comes before the Court upon the request of [Debtor(s)' Name(s)] ("Debtor(s)") and [Creditor Name] ("Mortgage Creditor") for approval of the parties' agreement for loss mitigation/mortgage modification ("LM/MM"). Mortgage Creditor has an existing loan secured by the Debtor(s)' real property. The parties have reached an agreement for LM/MM without using the Portal, which will have the following material benefits to the Debtor(s):

- Reduction of the Debtor(s)' mortgage payments from the current amount of \$_____ per month to approximately \$_____ per month.
- Interest rate reduced from ____% to ____% [Fixed or Variable]
- Arrearage in the amount of \$_____ forgiven or postponed.
- Other – Describe below:

Regarding LM/MM, the parties represent and agree that:

1. There will be no extension of additional funds beyond what is already owed;
2. Payments to other lien holders under the plan will not be affected;
3. That the LM/MM has no detrimental effect on other creditors and is in the best interest of Debtor(s) and the estate;
4. That payments to Mortgage Creditor for arrearage are/are not being made by the Trustee, and will/will not be made upon the effective date of the LM/MM agreement; any overage paid will be refunded to the Trustee within 60 days;
5. The Debtor(s) have amended the plan, if necessary, to provide for mortgage payments to be made directly to Mortgage Creditor.
6. Relief from the automatic stay shall be granted for the benefit of Mortgage Creditor upon submission of a proposed order by Mortgage Creditor via counsel. Unless otherwise ordered, the automatic stay shall remain effective as to all other lienholders; and

¹ Mortgage Creditor's Consent may be demonstrated by attachment of document evidencing Mortgage Creditor's offer.

7. The documents finalizing the LM/MM shall be executed by the parties within 60 days from the entry of this Order.

Now, therefore, with the consents of Debtor(s), Mortgage Creditor, and the Trustee, as indicated by the signatures below,

IT IS HEREBY ORDERED that LM/MM is hereby approved.

AND IT IS SO ORDERED.

WE CONSENT:

/s/ Attorney for Mortgage Creditor
Attorney for Mortgage Creditor
District Court I.D. _____

/s/ Attorney for Debtor
Attorney for Debtor
District Court I.D. _____

Chapter 13 Trustee

EXHIBIT R

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

[Debtor Name],

Debtor(s).

C/A No. _____

Chapter ____

**CONSENT ORDER APPROVING LOSS
MITIGATION/MORTGAGE
MODIFICATION¹
(STREAMLINED MODIFICATION)**

This matter comes before the Court upon the request of [Debtor(s)' Name(s)] ("Debtor(s)") and [Creditor Name] ("Mortgage Creditor") for approval of the parties' agreement for a streamlined loss mitigation mortgage modification ["Streamlined LM/MM"]. Mortgage Creditor has an existing loan secured by the Debtor(s)' real property. The parties have reached an agreement for Streamlined LM/MM, which will have the following benefits to the Debtor(s):

- Reduction of the Debtor(s)' mortgage payments from the current amount of \$ _____ per month to approximately \$ _____ per month.
- Interest rate reduced from _____% to _____% [Fixed or Variable]
- Arrearage in the amount of \$ _____ forgiven or postponed.
- Other – Describe below:

Regarding the Streamlined LM/MM, the parties represent and agree that:

1. There will be no extension of additional funds beyond what is already owed;
2. Payments to other lien holders under the plan will not be affected;
3. That the Streamlined LM/MM has no detrimental effect on other creditors and is in the best interest of Debtor(s) and the estate;
4. That payments to Mortgage Creditor for arrearage are/are not being made by the Trustee, and will/will not be made upon the effective date of the Streamlined LM/MM agreement; any overage paid will be refunded to the Trustee within 60 days;
5. The Debtor(s) have amended the plan, if necessary, to provide for mortgage payments to be made directly to Mortgage Creditor;
6. Stay relief has not been granted to any secured creditor on the property as part of the Streamlined LM/MM agreement;

¹ Mortgage Creditor's Consent may be demonstrated by attachment of document evidencing Mortgage Creditor's offer.

7. The trial period has been successfully completed [if applicable]; and
8. The documents finalizing the Streamlined LM/MM shall be executed by the parties within 60 days from the entry of this Order.

Now, therefore, upon the agreement of Debtor and Mortgage Creditor and with the consent of the Trustee, as indicated by the signatures below,

IT IS HEREBY ORDERED that the Streamlined LM/MM is hereby approved.

AND IT IS SO ORDERED.

WE SO MOVE AND CONSENT:

/s/ Attorney for Mortgage Creditor _____
Attorney for Mortgage Creditor
District Court I.D. _____

/s/ Attorney for Debtor _____
Attorney for Debtor
District Court I.D. _____

Chapter 13 Trustee