



Preliminary Disclosures to Client

- a. The amount or rate of fees specified in this agreement for the services is not fixed by California law. Fees are set or established by each Broker individually and are subject to negotiation between Principal and the Broker.
- b. The Principal is compensating the Broker for services the Principal may not be able to obtain at no charge from a housing counselor or by contacting the Lender(s) directly.
- c. California Civil Code Section 2945.1(b)(3) prohibits a Broker from claiming, demanding, charging, collecting or receiving any compensation or advance fee from a person whose residence is in foreclosure until all of the promised services have been fully performed and completed. **THIS AGREEMENT MAY NOT BE USED AND SHOULD NOT BE EXECUTED BY THE PRINCIPAL IF A NOTICE OF DEFAULT HAS BEEN RECORDED AGAINST THE SUBJECT PROPERTY LISTED BELOW.**

THE PRINCIPAL CERTIFIES BY INITIALING BELOW THAT A NOTICE OF DEFAULT HAS NOT BEEN RECORDED AGAINST THE SUBJECT PROPERTY.

_____ Initials of Principal(s)

Receipt of “Disclosure Regarding Loan Modification.” By initialing below, Principal acknowledges that before signing the Loan Modification Services Agreement set forth in this document, Principal received the “Disclosure Regarding Loan Modification” provided in bold print in at least 14-point font.

_____ Initials of Principal(s)

Loan Modification Services Agreement

The undersigned Client(s) (referred to as “Client,” whether one or more) hereby authorizes Homestart, its representatives, employees, agents, brokers, and independent contractors (“Homestart”) to compile a loan modification package (“Loan Modification Package”). Homestart will present this Loan Modification Package to the lender(s) listed in the ‘Loan Modification Application Form’ under the heading ‘Mortgage(s) Information’ (“Lender(s)”). Homestart will present the Loan Modification Package in an attempt to obtain a modification of Client’s loan terms on the property described under the ‘Subject Property’ section of this ‘Loan Modification Services Agreement’ (“Subject Property”). In furtherance of the above, Client hereby authorizes Homestart to provide the following Loan Modification Services.

1. **Loan Modification Services.** The following services (“Loan Modification Services”) shall include:

(A) Compilation of the Loan Modification Package. The Loan Modification Package may include, but is not necessarily limited to, information regarding Client’s finances, including financial statements, hardship letters, and profit and loss statements;

(B) Presentation of the Loan Modification Package to Lender(s) in an effort to obtain a possible modification, restructuring, forbearance and/or reduction of Client’s real property loans on the Subject Property. Potential modifications may include, but are not limited to, reductions of the interest rate, mortgage payment and /or balance of the loans on the Subject Property;

(C) Other communications with the Lender(s) for acceptance of loan modification options that are intended, but not guaranteed, to provide Client with a more favorable debt structure.

Upon completion of Homestart's analysis and research efforts, Homestart shall present to Client the loan modification options that Homestart has identified. Client, at Client's sole discretion, shall approve, or disapprove the pursuit of a particular Option. This Agreement shall not take effect, and Homestart will have no obligation to provide Loan Modification Services (or any other services), until (i) Client returns a fully completed and signed copy of this Agreement; (ii) Client either (a) pays the Fee as set forth below or (b) with the approval of Homestart, agrees and signs "Payment Arrangement Agreement"; and (iii) Homestart approves Client as a client.

For a more detailed description of Homestart's services, refer to Paragraph 6.

2. Disclaimer Regarding Other Services or Activities. Under no circumstances shall Homestart do any or promise to do any of the following:

- (A) Provide any "foreclosure consultant" services per California Civil Code section 2945.1;
- (B) Contact creditors aside from the Lender(s);
- (C) Provide debt, budget or financial counseling of any type;
- (D) Provide any legal or tax advice or services of any type; or
- (E) Receive or attempt to receive money for the purpose of distributing it to Client's creditors in payment of any obligation secured by a lien on the Subject Property.

3. Amount and Payment of Fees. The Client agrees to pay a total fee of \$5,000.00 to Homestart upon Homestart's completion of all of the loan modification services described in Section 6 below.

4. Subject Property and Loans.

The real property that is the subject of this Agreement is located at:

Address: _____, City: _____,
State: _____ Zip Code: _____

The loan(s) on the above property that is the subject of this Agreement is

Loan 1:

Lender Name: _____

Account Number: _____

Other Loans:

Lender Name: _____

Account Number: _____

Lender Name: _____

Account Number: _____

5. Scope of Services. Homestart is not a legal or tax firm, nor is it a financial advisor or counselor. The services provided by Homestart to Client are strictly limited to compiling and presenting the Loan Modification Package to Lender(s) and communicating with Lender(s) for acceptance of loan modification options. Homestart's communication with Lender(s) is limited to discussing the facts and circumstances of Client's loan and Homestart will not engage in discussions of law with Lender(s) or Client. Homestart will not provide Client with any legal, financial or tax advice or services, including advice as to the wisdom or desirability of exercising or not exercising any loan modification options. In the event that Homestart engages an attorney to provide Homestart with any legal services, these services are provided for the sole benefit of Homestart and not Client, and Client acknowledges that Client is not an intended beneficiary of such services. Homestart will not present Client with any advice, services or representation in or for court proceedings, tax proceedings, bankruptcy proceedings, foreclosure actions or any other proceedings or actions. Client acknowledges that he/she has been advised to retain and consult with legal, financial and/or tax counsel regarding the wisdom and desirability of exercising or not exercising any loan modification options. Client further acknowledges that he/she has been advised to seek legal, financial and tax counsel regarding Client's current legal, financial and/or tax issues (if any) and must not rely on Homestart to resolve any of these issues for Client at any time, including while Homestart is attempting to provide Loan Modification Services to Client.

6. Completion of, and the Payment for, Loan Modification Services. Homestart shall perform the following loan modification services for and on behalf of the Client:

- a. Gather and review information about the current loan(s) and terms;
- b. Gather, review and analyze information about Client's ability to repay the loan(s);
- c. Prepare and submit loan modification request and package of supporting documents to lender(s);
- d. Contact the Lender(s) to discuss/negotiate the loan modification request(s); and
- e. Successfully negotiate and/or accomplish a loan modification for the Principle. "Successful loan modification performance" by Homestart shall have occurred if the Client accepts one or more of the loan modifications set forth below:

Change adjustable interest rate to a fixed interest rate

Reduce fixed interest rate to a lower fixed interest rate

Reduce balance of the principal amount of the loan

Reduce adjustable interest rate/reduce CAPS of adjustable interest rate

Stop upward adjustment of adjustable interest rate

Arrange for the delinquent payment amounts to be added to the end of the loan

Arrange for the delinquent payment amounts to be added to a longer loan period

Arrange for the delinquent payment amounts to be accepted in an alternative payment plan

Eliminate or reduce the delinquent payment amounts

Arrange for the lender to accept a discounted pay-off or forbearance

7. Disclaimer Regarding Specific Outcome. Homestart shall use its good faith best efforts to obtain a favorable outcome on behalf of Client in connection with the Loan Modification Process and this Agreement. Notwithstanding, Client understands and expressly acknowledges that:

(A) Loan Modification Services provided by Homestart do not guarantee a specific outcome and that no particular result has been promised, predicted, assured or covenanted as a result of anything stated by Homestart by virtue of this Agreement. Client acknowledges and understands that all loan modification options are contingent upon the Lender(s)' final written approval of all terms, including price, within the original offer or subsequent counter-offer, and that loan modification options are not always approved by Lender(s).

(B) Nothing in this Agreement or Homestart's statements to Client shall be construed to be a promise or guarantee about the outcome of Client's matter;

(C) Client expressly acknowledges that Homestart has made no such promises or guarantees to Client;

(D) Comments of Homestart with regard to any possible outcome of Client's matter are merely expressions of opinion and are necessarily speculative in nature, and Client understands and acknowledges that Client relies upon any such comments at Client's sole risk, subject to Homestart's ethical obligations to Client in this regard;

(E) Homestart makes no warranty, express or implied, as to the fitness of any of the loan modification options that may be presented pursuant to this Agreement; that a lower interest rate, mortgage payment or balance will be obtained from Lender(s); that any deficiency will be waived or tax liability will not be incurred; or that Client will not be required to execute a new promissory note and/or guaranty with the Lender(s) as a result of acceptance of a Loan Modification Option; or That any adverse actions taken by Lender(s) against the Subject Property (including the subsequent initiation of foreclosure proceedings) will be postponed by the submission of the Loan Modification Package or any other services rendered by Homestart; and

(F) Client understands and expressly acknowledges that the decision to exercise or not exercise a loan modification option is not without risk. Due to unforeseen events or circumstances, a loan modification option that appears more desirable at the outset, may leave Client (and/or Client's guarantors) in a worse financial, tax, and/or legal position than anticipated.

8. Disclaimer Regarding Any "Foreclosure Consultant" Representation. Client understands and acknowledges that Homestart has not represented, advertised or solicited to Client, either directly or indirectly, that they are "foreclosure consultants" or that they will perform any services related to a property upon which a Notice of Default has been recorded, including:

(A) Stopping or postponing any foreclosure sale;

(B) Obtaining any forbearance from any beneficiary or mortgagee;

(C) Assisting Client to exercise any right of reinstatement;

(D) Obtaining any extension of the period within which Client may reinstate his or her obligation;

(E) Obtaining any waiver of an acceleration clause contained in any promissory note or contract secured by a deed of trust or mortgage on the Subject Property in foreclosure or contained in that deed of trust or mortgage;

(F) Assisting Client to obtain a loan or advance of any funds whatsoever;

(G) Avoiding or ameliorating the impairment of Client's credit resulting from the recording of a Notice of Default or the conduct of a foreclosure sale; or

(H) Assisting Client in obtaining the remaining proceeds from any foreclosure sale of the Subject Property from the beneficiary, mortgagee, trustee under a power of sale, or counsel for the beneficiary, mortgagee, or trustee.

9. Disclaimer Regarding Potential Payment to Homestart by Third Parties Including Lenders. Homestart may receive monetary consideration from a third party, including Lender(s) and other lenders generally, in connection with the rendering of Loan Modification Services. Said payment shall not serve to increase or reduce Client's fee described in the 'Fee' section of this Agreement.

10. Waiver of Liability. Subject to applicable state or federal law, Client unconditionally waives any right of action or claim against Homestart and its assigns, at law or equity, directly, indirectly or proximately believed to arise out of this Agreement. In the event the Subject Property is ultimately foreclosed upon by the Lender(s), Client shall hold harmless Homestart for the loss of the Subject Property or any deficiency, tax liability or any other incidental and consequential damages or financial losses resulting therefore, including any impairment of Client's credit rating. In the event of acceptance by the

Lender(s) of a Loan Modification Option that requires Client to pay a lump sum to secure a debt restructuring, loan modification and/or waiver of outstanding debt, and Client fails to pay all or part of said lump sum, Client shall hold Homestart harmless for any deficiency, tax liability and/or any other incidental and consequential damages or financial losses resulting therefore.

11. Disclosure of Complete and True Information. Client shall provide Homestart in a timely manner, all information requested by Homestart that is reasonably necessary to perform the Loan Modification Services. Failure by Client to do so within thirty days (30) execution hereof shall excuse Homestart from any obligation for performance under this Agreement. Client expressly represents and warrants that Client shall at all times provide Homestart with information that is accurate and true to the best of Client's knowledge and belief, including but not limited to reasons for any loan delinquency, the terms and status of loan indebtedness, and financial information regarding personal household income and expenses. Client agrees to defend, indemnify, and hold harmless Homestart against any claims, actions, lawsuits or liability of any kind whatsoever arising out of or in connection with Client's failure to provide said accurate and true information, or for any other representations or warranties of Client contained herein.

12. Responsibilities and Obligations of the Client. Client agrees not to interfere with or compromise the Loan Modification efforts of Homestart or to enter into any agreement with the Lender(s) without first notifying and consulting with Homestart. Client understands and acknowledges that failure to comply with these responsibilities could jeopardize the Loan Modification Process and constitutes a material breach of this Agreement.

Client also agrees to provide any additional information or documentation within five (5) days of Homestart's request. Client further agrees to immediately notify Homestart of any change in the Client's address.

Furthermore, the Client agrees to furnish Homestart with truthful and accurate information and any documents that will be required by Homestart and the Lender(s) to assess Client's financial status, including (without limitation) following:

Mortgage Statements-past three months

Pay stubs-past two pay periods

W2 forms, 1099 forms, and/or Tax Returns-past 2 years

Profit and Loss Statements-past 2 years (if self employed)

Bank Statements-past 2 months

Verification of any other income, Benefit Award Letters, Retirement Statements, Pension Benefit

Statements, Annuity Statements, Child Support/Alimony

Schedules of Real Estate owned, Stock and Mutual Fund Portfolio Statements

Authorization for Homestart to obtain Client information from the Lender

13. Communication Between the Parties. Homestart shall take reasonable steps to keep Client informed of significant developments, and to respond promptly to Client's inquiries and communications. Client agrees to be truthful with Homestart and keep it informed of any material information and developments which come to Client's attention, and to keep it advised of any change in Client's address or contact information. Client agrees to appear at all meetings deemed necessary and to cooperate fully with Homestart on all matters related to the Loan Modification Services.

14. Decisions by the Lender(s). Client acknowledges that any and all decisions by the Lender(s) are considered to be final. Client understands that if a Loan Modification Option is accepted by the Lender(s), Client shall be bound by any new loan terms, and that any failure to comply with these terms is solely the responsibility of the Client. Following such acceptance, Homestart and its assigns shall not be responsible for any further action, either by the Lender(s) or the Client, including but not limited to foreclosure of the Subject Property as a result of any default by Client.

15. Disclosures.

(A) **No Cash to Client.** Client acknowledges and understands that Client shall receive no cash from any transaction. Any additional funds usually due to a seller shall be paid to the Lender(s) which are affected by the transaction;

(B) **Timing.** Client acknowledges and understands that the Loan Modification Process typically takes six (6) to twelve (12) weeks, depending upon the Lender(s) but may be longer depending on individual circumstances;

(C) **Consultation with Professionals.** Client acknowledges that Homestart has advised Client to seek legal, financial and tax advice as to the desirability and wisdom of exercising or not exercising any potential loan modification option, including consulting with a tax attorney or certified public accountant to determine if there will be any financial and/or tax consequences in connection with any loan modification option;

(D) **Potential Harm to Credit Rating.** Client acknowledges and understands that a transaction may adversely affect a defaulting borrower's credit rating in the event that the Lender(s) report the outstanding loan as being settled for less than the full balance. In the event the Client is late with mortgage payments, causing the Lender(s) to begin the foreclosure process by filing a Notice of Default, but the Client pays the Lender(s) what is owed on the note before the foreclosure sale occurs, Client acknowledges and understands that these activities may appear on the borrower's credit report. Homestart shall not be responsible for any change or reduction in credit scores resulting from rendering of the Loan Modification Services;

(E) **Potential Deficiency Judgment.** Client understands that in some circumstances, Lender(s) may obtain a deficiency judgment against Client.

(F) **Potential Adverse Tax Implications.** Client understands and acknowledges that there may be adverse tax effects if a Loan Modification Option is accepted by the Lender(s).

(G) **Payment of Mortgage.** Client acknowledges and understands that Homestart has not and will not suggest or recommend in any way that Client stop making outstanding mortgage payments to Lender(s) during the Loan Modification Process. Nor does Homestart condone the failure to make such payments for any reason whatsoever. Client is solely responsible and obligated to make payments on any outstanding mortgages related to the Property. Homestart shall not be, and is not in any manner, obligated to make any payment on any mortgage related to the Subject Property.

(H) **Additional Notes and Trust Deeds.** Client understands that if there is more than one note and trust deed against the Subject Property, it is possible that the holder of such note and trust deed may be able to bring an action to recover the amount of any outstanding note. It is possible that Client may be liable for any such amount;

(I) **Receipt of "Disclosure Regarding Loan Modification."** Client has been provided and read the "Disclosure Regarding Loan Modification."

(J) **Disclosures Generally.** The disclosures in this Agreement are not intended and should in no way be construed as or relied upon as legal advice, nor as a disclosure of all of the potential consequences relating to mortgages. They are intended to highlight the complex nature of the mortgage lending system and the desirability for Client to seek legal, tax and financial advice from entities other than Homestart (as Homestart can not and will not provide such advice) as to Client's current legal, financial and tax situation and before exercising or not exercising any potential loan modification option.

16. Miscellaneous.

(A) **Binding Effect.** This Agreement shall be binding upon and will inure to the benefit of the Parties and their respective assigns and to Client's heirs, successors, survivors, and administrators;

(B) **Modification.** This Agreement can be amended or modified only by the written consent of both Parties;

(C) **Attempted Waiver.** No attempted waiver of any provisions of this Agreement shall be valid unless in writing and executed by the Parties hereto;

(D) **Severability.** If any one or more of the provisions of this Agreement will, for any reason, be found by a court to be illegal or invalid, such illegality or invalidity will not affect any other provision of this Agreement and this Agreement will be enforced as if such illegal or invalid provision had not been contained herein;

(E) **Headings.** All headings used herein are for ease of reference only and in no way shall be construed as interpreting, decreasing or enlarging the provisions of this Agreement;

(F) **Entire Agreement.** This Agreement shall be in full force and effect as of the Effective Date, and is the entire Agreement between the Parties with respect to the subject matter of this Agreement, and each Party acknowledges and agrees that no representations, warranties, inducements, promises or agreements other than those set forth herein have been made by either Party to the other. This Agreement supersedes any previously existing contracts or agreements relating to the subject matter herein between the Parties;

(G) **Applicable Law.** The validity, interpretation, construction, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the law of the State of California, except to the extent federal law preempts state law;

(H) **Interpretation.** This Agreement shall be construed in accordance with its fair meaning as prepared;

(I) **Time of the Essence.** Time is of the essence of every provision of this Agreement that specifies a time for performance;

(J) **Counterpart Execution.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument;

(K) **Facsimile Signatures.** Signatures on a facsimile copy of this Agreement shall be deemed an original for all lawfully enforceable purposes;

(L) **Agreement Received.** By virtue of the signature(s) below, Client acknowledges that he/she has read, understands and agrees to every term, covenant and condition of this Agreement and that he/she has received a true and complete copy hereof.

(M) **Termination of Agreement.** Either the Client or Homestart may terminate this agreement at any time for any reason upon written notice to the other party. At the time of termination, all earned but unpaid fees for completed services become due and payable.

(N) **Indemnification.** The Client agrees to indemnify, defend and hold Homestart harmless from all damages, liabilities, claims, obligations, disputes, litigation and/or judgments (and reasonable attorney fees and costs) which (i) arise from or are related to any incorrect material information and/or material omissions in information supplied by Client to Homestart and/or (ii) arise from or are related to any material facts that the Client knows but fails to disclose.

17. Arbitration Agreement. To the extent permitted by law, all controversies between the Parties which may arise out of or relate to any of the Loan Modification Services provided by Homestart under this Agreement, or the construction, performance or breach of this Agreement shall be settled by arbitration in San Diego County, California, under the Commercial Arbitration Rules of the American Arbitration Association. Judgment upon any award rendered by the arbitrator(s) will be final, and may be entered into any court having jurisdiction. This Arbitration Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective representatives, attorneys-in-fact, successors, assigns, and any other persons having or claiming to have a legal or beneficial interest in the Subject Property, including any court-appointed trustees and receivers. The Parties acknowledge that:

(A) Arbitration awards are generally final and binding, and that a Party's ability to have a court reverse or modify an arbitration award is strictly limited;

(B) The Parties are waiving their right to seek remedies in court, including the right to a jury trial, except to the extent such a waiver would violate applicable state or federal law;

(C) Pre-arbitration discovery is generally more limited than and potentially different in form and scope from court proceedings;

(D) The arbitration award is not required to include factual findings or legal reasoning and any Party's right to appeal or to seek modification of rulings by the arbitrators is strictly limited;

(E) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court;

(F) The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this Agreement; and

(G) ALL PARTIES EXPRESSLY WAIVE THE RIGHT TO JURY AND APPEAL OF ANY ACTION AND AWARD BY THE ARBITRATOR.

18. Confidentiality. The Parties agree that they shall not provide, nor allow to be provided, any information to the public, news media or any other individual or entity regarding their involvement in this Agreement or the involvement of any other Party in the Agreement or the identity of any Party hereto without express permission and written consent of all Parties.

19. Legal Counsel. Client acknowledges that he or she has been advised to retain and consult with legal counsel regarding this Agreement.

20. Attorney Fees. The Parties agree that in any litigation, arbitration, or other proceeding by which one party seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded its reasonable attorney fees, and costs and expenses incurred.

By signing below, I certify that I read, understood and agree to this entire Loan Modification Services Agreement and do not have any questions about its terms.

CLIENT #1

By: _____

Date: _____

Print Name: _____

CLIENT #2

By: _____

Date: _____

Print Name: _____

HOMESTART REPRESENTATIVE

By: _____

Date: _____

Print Name: _____