

## Hardest Hit Fund Modification Enabling Program Agreement

This Hardest Hit Fund Modification Enabling Program (“MEP”) Agreement (“Agreement”) is made effective this 19<sup>th</sup> day July, 2016, by and between Florida Housing Finance Corporation (“Eligible Entity”) and Housing and Education Alliance (“MEP Program Manager”) specifically with regard to its obligations pursuant to Section 20 herein, and hereby confirms the parties’ mutual agreement relating to the Eligible Entity’s Hardest Hit Fund (“HHF”) award from time to time on behalf of borrowers of eligible and approved loans under the Eligible Entity’s Modification Enabling Program.

### RECITALS

WHEREAS, in order to, *inter alia*, allow for procedural ease and programmatic efficiency in connection with the administration of the MEP with respect to eligible loans, and to provide the Eligible Entity with a single point of contact in connection therewith, the MEP Program Manager hereby is the designated responsible party for all MEP obligations contained in this Agreement.

WHEREAS, the MEP Program Manager and the Eligible Entity wish to evidence their agreement (i) regarding the application and determination of eligibility of borrowers under the MEP, and (ii) to make HHF funds available under the MEP (“MEP HHF Funds”).

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### AGREEMENT

NOW, THEREFORE, it is agreed:

1. MEP Program Manager represents and warrants the following:
  - a) That it has the right and authority to control the loss mitigation and approval process with respect to eligible loans to be submitted for MEP assistance under the terms of the Agreement;
  - b) MEP Program Manager will review loans for eligibility under MEP and, if determined eligible will submit for MEP assistance under the terms of this Agreement;
  - c) That the MEP Program Manager has reviewed and understands the eligibility requirements of the HHF program as established by the U.S. Department of Treasury and the additional requirements established by the Eligible Entity; and
  - d) That the MEP Program Manager is authorized to market the MEP to qualified borrowers
2. MEP Program Manager is responsible for the selection and initial qualification of borrowers to receive MEP assistance. The Eligible Entity will not be involved in or responsible in any manner in connection with the selection and/or initial qualification of such borrowers. The Eligible Entity will confirm the qualification of such borrowers initially determined to be qualified by MEP Program Manager pursuant to the terms of this Agreement.
3. The MEP will be conducted in accordance with the program descriptions and requirements detailed in the MEP Term Sheet dated May 3, 2016, and the MEP Procedure Manual dated July 1, 2016 which may be amended from time to time.

4. The MEP Program Manager is responsible for obtaining a written authorization from each borrower to share information (“Authorization”).
5. MEP Program Manager will notify Eligible Entity, via the Counselor Direct system, at the following stages:
  - a) When the MEP Program Manager has initially qualified a borrower for MEP, a Preliminary MEP Funding Request shall be submitted containing the following documents:
    - (i) Program Approval (may be preliminary)
    - (ii) Completed MEP Determination Workbook
    - (iii) All documents listed and required on the MEP Checklist

The Eligible Entity will review and approve the Preliminary MEP assistance amount at this stage and send to servicer for approval.

Upon receipt the Common Data File V Record from the mortgage loan servicer, the Eligible Entity shall make available the MEP Subordinate Mortgage and Note.

6. Upon initial notification described in Paragraph 5(a) the MEP Program Manager will assist the servicer in halting any foreclosure proceedings, deed-in-lieu transfers or short sales that are underway.
7. The MEP Program will conduct a simultaneous closing of the Modified First Mortgage Agreement and the MEP Subordinate Mortgage and Note. The MEP Program Manager will convey to the Eligible Entity, a copy of the Modified First Mortgage Agreement and the original MEP Subordinate Mortgage and Note. This will be accomplished prior to the funding of the MEP HHF funds by the Eligible Entity.
8. Upon the receipt of documents conveyed above the Eligible Entity shall, within seven business days, fund the MEP assistance.
9. To ensure appropriate quality control oversight, the MEP Program Manager is required to upload into Counselor Direct all documentation detailed in the MEP Checklist (Attachment 5).
10. As described in the MEP Term Sheet, borrowers may access and receive funding from Eligible Entity’s HHF Programs other than the MEP (collectively, “Other HHF Programs”) if they are not able to qualify immediately for MEP assistance. Under no circumstance shall the total amount of HHF assistance available to any Eligible Borrower under (i) the MEP, (ii) Other HHF Programs, or (iii) a combination of the MEP and Other HHF Programs, exceed \$92,000.
11. The initial term of this contract shall be for one year from the Effective Date.
12. Compensation of the MEP Program Manager
  - a) The MEP Program Manager shall not be permitted to charge the applicant for any services rendered under this contract. All compensation will be supplied under the terms of this contract in the amounts set forth below:
    - i. Determined eligible for MEP by the MEP Program Manager and confirmed by the Eligible Entity - \$500
    - ii. MEP loan closings - \$100

iii. Determined eligible for MEP by the MEP Program Manager and confirmed to be ineligible by the Eligible Entity - \$0

13. MEP Program Manager and the Eligible Entity hereby agree to provide notice to, and seek the consent and approval of, one another through the following designated points of contact, unless otherwise specified in writing:

a) MEP Program Manager hereby designates the following individual to receive notices and to provide consent and approval under this Agreement:

Sylvia Alvarez  
Executive Director  
Housing and Education Alliance  
9215 N. Florida Avenue, Suite 101  
Tampa, FL 33612  
Phone: (813) 932-4663  
Fax: (813) 932-4660  
[salvarez@heausa.org](mailto:salvarez@heausa.org)

b) Eligible Entity hereby designates the following individuals to receive correspondence under this Agreement as follows:

(i) All written approvals and consent required pursuant to this Agreement shall be obtained from the contract administrator as follows:

Contracts Manager  
Florida Housing Finance Corporation  
227 North Bronough St., Suite 5000  
Tallahassee, Florida 32301-1329  
Phone: (850) 488-4197  
Fax: (850) 414-6548  
[Contracts.Manager@floridahousing.org](mailto:Contracts.Manager@floridahousing.org)

(ii) All notices required to be given to Eligible Entity pursuant to this Agreement shall be given to the contract manager as follows:

David Westcott  
Director of Homeownership Programs  
Florida Housing Finance Corporation  
227 North Bronough St., Suite 5000  
Tallahassee, Florida 32301-1329  
Phone: (850) 488-4197  
Fax: (850) 414-6548  
[David.Westcott@floridahousing.org](mailto:David.Westcott@floridahousing.org)

14. The Eligible Entity and MEP Program Manager agree to the following miscellaneous provisions. Each individual signing to this Agreement represents, in their capacity as an officer of the party on behalf of which they are signing, that they possess the authority to execute and bind their respective companies to the terms and conditions of this Agreement. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute one and the same

agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective representatives, successors and permitted assigns and such third parties as expressly stated herein. If the terms of this Agreement conflict with the terms of any other agreements among the parties on the subject matter hereof, the terms of this Agreement shall control. This Agreement and the rights and obligations of the parties hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of Florida. If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances, other than those to which it is held invalid, shall not be affected thereby and shall be enforced to the fullest extent permitted by law, provided that the invalidity of such provision does not materially affect the benefits accruing to any party hereunder.

15. The Eligible Entity may terminate the contract, without cause, at any time upon ten (10) days written notice delivered by courier service or electronic mail to the MEP Program Manager at the address set forth in Section 12 herein. The MEP Program Manager may terminate this Contract, without cause, at any time upon ninety (90) days written notice delivered by courier service or electronic mail to the Eligible Entity at the physical or electronic address, as applicable, set forth in Section 12, herein. The MEP Program Manager shall be responsible for all costs arising from the resignation of the MEP Program Manager.
16. The MEP Program Manager understands and agrees to cooperate with any audits conducted in accordance with the provisions set forth in Section 20.055(5), Fla. Stat.
17. No funds compensation or other resources received in connection with this Contract may be used directly or indirectly to influence legislation or any other official action by the Florida or Federal Legislature or any state or Federal agency. The MEP Program Manager further acknowledges that it has not retained the services of any lobbyist or consultant to assist in the procurement and negotiation of this Contract.
18. The MEP Program Manager agrees to pay, defend, protect, indemnify, save and hold harmless the Eligible Entity and each affiliate, member, officer, director, official, employee and agent of the Eligible Entity (collectively, the "Indemnified Parties"), against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys' and paralegal fees), causes of action (whether in contract, tort or otherwise), suits, claims, demands and judgments of any kind, character and nature (collectively referred to herein as the "Liabilities") caused by or directly or indirectly arising from or in any way relating to (i) Eligible Entity's advancing of HHF funds under the MEP, (ii) the action or inaction of the Servicer of Record in the servicing of the loans within the Loan Pool and receipt and application of MEP HHF Funds pursuant to this Agreement, or (iii) any fraud or misrepresentations or omissions made by the MEP Program Manager; provided, however that the foregoing indemnity of an Indemnified Party pursuant to this Section shall not apply to any loss to the extent such damages are caused by the negligence or willful misconduct or default of such Indemnified Party.
19. The MEP Program Manager agrees to provide the services in accordance with the terms and conditions hereinafter set forth, unless otherwise stated in this Contract. The MEP Program Manager understands and agrees that all services under this Contract are to be performed solely by the MEP Program Manager, unless prior written approval and consent is received from Florida Housing for any subcontract or assignment of services.
20. The MEP Program Manager shall maintain all documents and information received or generated in connection with any Applicant in a manner which safeguards the privacy of the Applicant's Personally Identifiable Information ("PII"). Paper documentation must be kept in secured file cabinets. Scanned

or electronically stored documents must be safeguarded in a fashion that securely maintains Applicant privacy. As used in this subparagraph (a) and elsewhere in this Contract, "Personally Identifiable Information" or "PII" means information that can be used to uniquely identify, contact, or locate a single person or can be used with other sources to uniquely identify a single individual. PII includes Applicant names, addresses, telephone numbers, e-mail addresses, Uniform Resource Locator (URL) information regarding social networking accounts or any other Internet media, photographs or other visual depictions, audio recordings, and any other information that could be used by any means to identify, contact or locate an Applicant.

21. The MEP Program Manager must retain the files for a minimum of five years from the outcome date or longer if there is an audit, investigation or litigation in progress. Additional time may also be required if other assistance programs are used with longer retention periods. It is the MEP Program Manager's responsibility to determine the proper retention period. At the time of disposal, paper files may be shredded, incinerated or buried in a public landfill, in accordance with State records retention laws and rules. For electronic records containing PII or other information that is confidential or exempt from disclosure, appropriate destruction methods include physical destruction of storage media such as by shredding, crushing, or incineration; high-level overwriting that renders the data unrecoverable; or degaussing/demagnetizing of any digital storage media or device.
22. Files Subject to Florida's Public Records Law: Any file, report, record, document, paper, letter, or other material received, generated, maintained or sent by the MEP Program Manager in connection with this Contract is subject to the provisions of Section 119.01-19, Fla. Stat., as may be amended from time to time (Florida's Public Records Law). The MEP Program Manager represents and acknowledges that it has read and understands Florida's Public Records Law and agrees to comply with Florida's Public Records Law.

Pursuant to Section 119.0701(2), Fla. Stat., the MEP Program Manager is required "to comply with public records laws, specifically to:

- a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.
- b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency."

Notwithstanding anything contained herein to the contrary, the provisions and requirements of this paragraph shall only apply if and when the MEP Program Manager is acting on behalf of Florida Housing.

**If the Contractor has questions regarding the application of Chapter 119, Florida Statutes, to the Contractor's duty to provide public records relating to this contract, contact the Corporation Clerk at:**

**Corporation Clerk  
227 N. Bronough Street, Suite 5000  
Tallahassee, Florida 32301-1329  
Phone: 850.488.4197  
E-mail: Corporation.Clerk@floridahousing.org**

23. Chapter 119: Conflicts of Interest

The MEP Program Manager and its employees are expected to anticipate, and avoid, conflicts of interest in carrying out their duties and responsibilities under this Contract. For purposes of this paragraph, the term "HHF Employee" means any employee of the MEP Program Manager, including the MEP Program Manager, if an individual. To that end, an HHF Employee may not handle, process or otherwise participate in the handling, processing or decision making with respect to an application for assistance under the MEP Program made by an Applicant that is a Relative, Friend or Business Associate of the HHF Employee. "Relative," for purposes of this paragraph, with respect to the HHF Employee, means an individual who is related to the HHF Employee as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister. "Friend," for purposes of this paragraph, with respect to the HHF Employee, means an individual, with whom the HHF Employee enjoys a close personal relationship. "Business Associate," for purposes of this paragraph, with respect to the HHF Employee, means an individual, with whom the HHF Employee has a business or financial relationship. Should the MEP Program Manager or the HHF Employee encounter any such situation, Florida Housing must be notified immediately by phone and in writing directed to the Florida Housing program contact at the address set forth in subparagraph 12(b)(ii) of this Contract and no further action may be taken on the Applicant file(s) in question except as may be directed or authorized by Florida Housing.

- a) Pursuant to Section 420.512(5), Fla. Stat.: "Service providers shall comply with the following standards of conduct as a condition of eligibility to be considered or retained to provide services. For purposes of paragraphs (a), (b), and (c) only, the term 'service provider' means and is limited to a law firm, an investment bank, or a credit underwriter, and the agents, officers, principals, and professional employees of the service provider.
  - (i) A service provider may not make contributions in any amounts, directly or indirectly, for or on behalf of candidates for Governor, nor shall any service provider make a contribution in excess of \$100 to any candidate for a member of the State Board of Administration other than the Governor in Florida while the service provider is included in an applicant pool from which service providers are selected to provide services to the corporation, while the service provider provides services to the corporation, and for the longer of a period of 2 years thereafter or for a period through the next general election for Governor.
  - (ii) The service provider shall not participate in fundraising activities for or on behalf of candidates for Governor in Florida while the service provider is included in an applicant pool

from which service providers are selected to provide services to the corporation, while the service provider provides services to the corporation, and for the longer of a period of 2 years thereafter or for a period through the next general election for Governor.

- (iii) Service providers shall provide to the corporation a statement that the service provider has not contributed to candidates for Governor or contributed in excess of the amounts allowed by this section for a member of the State Board of Administration or engaged in fundraising activities for or on behalf of candidates for Governor in Florida since the effective date of this section or during the 24 months preceding the service provider's application to provide services to the corporation, whichever period is shorter.
  - (iv) The service provider may not engage in prohibited business solicitation communications with officers, members, or covered employees of the corporation.
  - (v) If a service provider is in doubt as to whether its activities, or the activities of its principals, agents, or employees, violate the provisions of this section, it may request a declaratory statement in accordance with the applicable rule and s. 120.565, Fla. Stat.
  - (vi) If the corporation determines that a service provider has failed to meet the provisions of this section, it shall consider the magnitude of the violation and whether there has been a pattern of violations in determining whether to terminate or decline to enter into contracts with the service provider."
- b) Section 420.503(31), Fla. Stat., states: 'Prohibited business solicitation communication' means a private written or verbal communication between a member, officer, or covered employee of the corporation and a service provider regarding the merits of the service provider and whether the corporation should retain the services of the service provider. The term does not include:
- (i) A verbal communication made on the record during a public meeting;
  - (ii) A written communication provided to each member and officer of the corporation and made part of the record at a public meeting;
  - (iii) A written proposal or statement of qualifications submitted to the corporation in response to a corporation advertisement seeking proposals or statements of qualifications as part of a competitive selection process.
  - (iv) A verbal or written communication related to the contractual responsibilities of a service provider who was selected to provide services or who was included in a pool of service providers eligible to provide services as a result of a competitive selection process, so long as the communication does not relate to solicitation of business.
  - (v) A verbal or written communication related to a proposed method of financing or proposed projects, so long as the communication does not relate to solicitation of business."
- c) By executing this contract, the MEP Program Manager certifies that it shall comply with, and is currently in compliance with, Section 420.512(5), Fla. Stat., as amended.
- d) The MEP Program Manager will certify that the staff and volunteers who will provide services under the Contract have no conflict(s) of interest due to relationships with servicers, real estate

agencies, mortgage lenders, homeowners or household members, family members and/or other persons or entities that may stand to benefit from particular outcomes.

- e) In addition to the conflict of interest rules imposed by the Florida Statutes, and the conflicts of interest as described in subparagraph (a) above, should the MEP Program Manager become aware of any actual, apparent, or potential conflict of interest or should any such actual, apparent, or potential conflict of interest come into being subsequent to the effective date of this Contract and prior to the conclusion of the Contract, the MEP Program Manager will provide immediate notification to Florida Housing, by phone and in writing through first class certified mail, return receipt requested (Notice of Conflict of Interest), to the Florida Housing program contact at the address set forth in subparagraph 12(b)(ii) of this Contract, within ten (10) working days. If the MEP Program Manager is found to be in non-compliance with this provision, without prior written consent from Florida Housing's Executive Director, any compensation received in connection with this Contract shall be subject to forfeiture to Florida Housing.

SIGNATURE PAGE ON FOLLOWING PAGE



IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed by its duly authorized officer or agent as of the day and year first above written.

  
\_\_\_\_\_  
**Eligible Entity**  
**Stephen P. Auger**  
**Executive Director**  
**Florida Housing Finance Corporation**

  
\_\_\_\_\_  
**Program Manager**  
*Sylvia A. ALVAREZ*