

AGREEMENT TO PROVIDE AFORDABLE HOUSING SERVICES

This AGREEMENT TO PROVIDE AFFORDABLE HOUSING SERVICES (“Agreement”) is made and entered into by and between Community Housing Improvement Systems and Planning Association, Inc. (“CHISPA”) and the County of Monterey (“County”).

RECITALS

WHEREAS, CHISPA was the developer of the 175-unit Moro Cojo residential subdivision project (“Moro Cojo Project”), which is generally located off of Castroville Boulevard in the community of Castroville in the unincorporated area of the County of Monterey;

WHEREAS, in 1994, the County conditionally approved the Moro Cojo Project pursuant to Board of Supervisor’s Resolution No 94-524 (“Moro Cojo Resolution”);

WHEREAS, pursuant to this Condition 99 of the Moro Cojo Resolution and a Stipulated Settlement Agreement that resolved litigation over the Moro Cojo Project, the condition allows for and permits the resale of homes within the Moro Cojo Project to persons of very low, low or moderate income households

WHEREAS, the County’s Housing and Economic Development has received inquiries from lenders and realtors on behalf of Moro Cojo homeowners who wish to sell or refinance their homes and has requested that CHISPA administrate the affordability requirements relating to Moro Cojo Project;

WHEREAS, the County and CHISPA acknowledge that there is no express requirement in the Moro Cojo Resolution or any conditions of approval set forth therein that obligates CHISPA to administer and enforce in perpetuity the affordability covenants that have been recorded on lots within Moro Cojo and to ensure that Moro Cojo homeowners set home prices in accordance therewith;

WHEREAS, the County has determined that CHISPA has the necessary experience and skill to provide the affordable housing services set forth in the Agreement. The County and CHISPA desire to enter into this Agreement for CHISPA's provision of such services to the Moro Cojo homeowners;

WHEREAS, in exchange for a fee that CHISPA may charge the Moro Cojo homeowners, CHISPA has agreed to assist any Moro Cojo homeowner who wishes to utilize CHISPA’s services in determining home prices that comport with Condition 99 and the Stipulated Settlement Agreement for purposes of sale or refinancing of the homes.

NOW, THEREFORE, for good and valuable consideration, the County and CHISPA agree as follows:

AGREEMENT

- 1. *Definitions:* In addition to capitalized terms defined herein, the following terms shall have the following meanings when used in this Agreement:
 - a. "Affordable Moderate Income Housing Cost" shall mean a ten percent (10%) down payment and a Monthly Housing Cost not exceeding one-twelfth (1/12) of thirty-five percent (35%) of one hundred ten percent (110%) of Median Income, adjusted for Assumed Household Size; provided, however, if an Eligible

Purchaser has a gross income that exceeds one hundred ten percent (110%) of Median Income adjusted for actual household size, then the Monthly Housing Cost shall not exceed one-twelfth (1/12) of thirty-five percent (35%) of the actual gross income of such Homeowner at the time of purchase of the Home.

- b. "Assumed Household Size" shall mean the number of bedrooms in the Home plus one person.
 - c. "Eligible Purchaser" shall mean a Moderate Income Household, Low Income Household or a Very Low Income Household who has submitted a purchase and sale agreement to purchase a Home.
 - d. "Home" shall mean a single-family ownership dwelling located within the Moro Cojo Project.
 - e. "Homeowner" shall mean the owner of the Home.
 - f. "Median Income" shall mean the shall mean the median household income as determined periodically by the United States Department of Housing and Urban Development for the Salinas Metropolitan Statistical Area and updated on an annual basis.
 - g. "Moderate Income Household" shall mean a household, with an annual income which does not exceed the United States Department of Housing and Urban Development annual determination for moderate income households with incomes of one hundred twenty (120) percent of the median income, adjusted for household size.
 - h. "Monthly Housing Cost" shall include the following costs associated with ownership of a Home: (i) principal and interest payments on the mortgage loans and any loan insurance fees associated therewith; (ii) property taxes and assessments; (iii) fire and casualty insurance covering replacement value of property improvements; (iv) property maintenance and repairs; (v) a reasonable allowance for an adequate level of service for utilities, including garbage collection, sewer, water, gas, electricity, and other heating, cooking or refrigeration fuels, but not including telephone service; and (vi) homeowners association assessments, if any. Monthly Housing Cost shall be an average of estimated costs for the above items for the twelve (12) months following the purchase of a Home.
2. *Scope of Services.* CHISPA agrees to provide the following services ("Affordable Housing Services"), upon the request of a Homeowner and after payment of the fees required under paragraph 3:

- a. **Calculate Selling Price.** CHISPA shall determine the maximum selling price for the Home to ensure that the price of the Home is affordable to a Moderate Income Household for resale or refinancing purposes.
 - b. **Eligible Purchasers.** CHISPA will utilize its housing staff to collect and review financial documentation from the buyer to determine income eligibility of potential buyers (“Eligible Purchasers”). CHISPA shall prepare and compile application packets for Eligible Purchasers, and CHISPA shall submit a digital copy of the approved file to the county for their file. CHISPA’s service will not include qualifying the buyer for a mortgage.
3. *Payment of Fees for Services.* CHISPA may charge a non-refundable fee to the Homeowner and Eligible Purchasers for providing the services set forth in paragraph two (2), which CHISPA may reasonably increase annually at its sole and exclusive discretion. For the first year of CHISPA’s providing the service, the Homeowner shall pay a fee of \$500 for CHISPA to calculate the selling price or allowable refinance amount pursuant to paragraph 2(a). The Eligible Purchaser shall pay a fee of \$500 for CHISPA to collect and review financial documentation of the Eligible Purchaser to determine whether the Eligible Purchaser income qualifies to purchase a Home.
4. *Indemnity, Release and Hold Harmless for Providing Services.* In exchange for providing the services set forth in paragraph 2 of the Agreement, CHISPA may require Homeowners and Eligible Purchasers to execute the Release and Hold Harmless Agreement, attached as **Exhibit A** to this Agreement
5. *Term and Time of Performance.* The services of CHISPA are fixed for a five (5) year period that will commence upon the execution of the contract. Prior to the end of this period, County and CHISPA will meet and confer to discuss a potential extension of the term.
6. *Sole Responsibility.* CHISPA shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.
7. *No Other Agreements.* This Agreement represents the full and complete agreement of the parties regarding the subject matter of this Agreement, and except for the further documents and agreements expressly referenced in or contemplated by this Agreement or those documents and agreements, there are no other agreements, oral or written, on the subject matter of this Agreement.
8. *Notices.* All notices or communications required or permitted under this Agreement or by law shall, unless otherwise provided in this Agreement, be in writing, shall be personally delivered, sent by telecopy, sent by reputable overnight courier (such as FedEx), or sent by registered, certified, or express mail, return receipt requested, and deposited in the United States mail with the postage prepaid, addressed to the parties as set forth below. Notices given by hand, sent by telecopy, or sent by reputable overnight courier shall be

deemed given the day the notice was received. Notices mailed as provided in this section shall be deemed received on the third business day after the mailing day. Notice of change of address shall be given in a written notice

If to CHISPA: CHISPA, Inc.
c/o President/CEO
295 Main St #100,
Salinas, CA 93901

If to County: County of Monterey
County Administrative Office
Housing and Economic Development
168 W. Alisal Street, 3rd Floor
Salinas, CA 93901

9. *Notice to Residents.* Within sixty (60) calendar days of the execution of this Agreement, CHISPA shall send every homeowner in the Moro Cojo Subdivision a letter explaining the following to the homeowner:
- a. Homeowners must contact CHISPA prior to listing their home for sale to obtain the maximum resale value of the home;
 - b. CHISPA must income qualify any party the homeowner enters into a sale contract with;
 - c. All sales contracts shall include language that allows the seller to cancel the sale in the event that CHISPA determines the potential purchaser exceeds the maximum income qualification amount; and
 - d. No sales may be closed without CHISPA's income certification of the purchasing household.

If CHISPA does not send this correspondence within 60 days, the County will send the letter to all homeowners in the Moro Cojo Subdivision and bill CHISPA for the actual time and materials incurred by the County to fulfill CHISPA's obligation to notify the homeowners.

10. *Further Assurances.* The parties to this Agreement agree to perform all further and other acts reasonably necessary to effectuate the purposes and intent of this Agreement.
11. *Governing Law.* This Agreement shall be interpreted and construed in accordance with the laws of the State of California applicable to contracts made by residents of the State of California and to be performed in California.
12. *Severability.* Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, for such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

13. *Attorney Fees.* If either party to this Agreement institutes any action or proceeding in court or other dispute resolution mechanism against the other party, by reason of or alleging the failure of the other party to comply with any or all of its obligations under this Agreement, whether for declaratory or other relief, then the party that prevails in such action or proceeding shall be entitled, in addition to any other recovery or relief, to its reasonable attorney fees and expenses related to such action or proceeding. Any judgment or order entered in such action or proceeding shall contain a specific provision providing for the recovery of attorney fees and costs incurred in enforcing, perfecting, and executing such judgment.

14. *Headings.* Headings in this Agreement are for convenience of reference only and are not part of the substance of this Agreement.

15. *Counterparts.* This Agreement may be executed in one or more counterparts and by the different parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, CHISPA and County have entered into this Agreement as of the last date written below.

OWNER

Date: _____

CHISPA, Inc.

 Alfred Diaz-Infante
 President/Chief Executive Officer

COUNTY:

Date: _____

COUNTY OF MONTEREY

By: _____

Name: Chris Lopez

Its: Chair of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY

By _____

Jason Retterer, Attorney for CHISPA

By _____

Robert I. Brayer, Deputy County Counsel

EXHIBIT A
RELEASE AND HOLD HARMLESS AGREEMENT

This RELEASE AND HOLD HARMLESS AGREEMENT ("Agreement") is made and entered by and between Community Housing Improvement Systems and Planning Association, Inc ("CHISPA") and _____ (the "Indemnitor"), collectively referred to in this Agreement as the parties.

RECITALS

WHEREAS, the County of Monterey ("County") when it approved the Moro Cojo residential subdivision project ("Moro Cojo Project") imposed a condition of approval of the Moro Cojo Project that requires all residential units in the subdivision to be affordable to very low, low, or moderate income households.

WHEREAS, pursuant to an agreement with the County, CHISPA has agreed to provide certain services to the homeowners within the Moro Cojo Project in conjunction with the resale or refinancing of their homes.

WHEREAS, Indemnitor has retained CHISPA to either assist in determining the appropriate purchase price for Indemnitor's home for purposes of resale or refinancing the home or to income qualify Indemnitor to purchase a home within the Moro Cojo Project ("Affordable Housing Services").

WHEREAS, CHISPA has agreed to provide the requested services to the Indemnitor provided that Indemnitor releases and holds harmless CHISPA from any liability relating to CHISPA provision of the services.

NOW, THEREFORE, for good and valuable consideration, CHISPA and Indemnitor agree as follows:

AGREEMENT

1. *Affordable Housing Services.* In exchange for payment mutually agreed upon by CHISPA and Indemnitor, CHISPA agrees to provide Indemnitor with Affordable Housing Services.
2. *Release.* Indemnitor expressly fully releases and discharges CHISPA and/or its officers, directors, employees, members, agents, and other representatives from any and all rights, claims, demands, liabilities, obligations, losses, costs, judgments, damages, recoveries and deficiencies, including

reasonable attorney's fees and expenses, which Indemnitor and/or its agents, representatives and/or anyone under the supervision of Indemnitor and/or its (collectively, "Indemnitor") may have against CHISPA arising from CHISPA's provision of Affordable Housing Services to Indemnitor.

3. *Waiver.* This release releases all rights, claims, demands, liabilities, obligations, losses, costs, judgments, damages, recoveries and deficiencies, including reasonable attorney's fees and expenses of Indemnitor whether known or unknown, foreseen, unforeseen, patent, or latent, which Indemnitor may have against the Academy resulting from the limited access provided to Indemnitor herein, notwithstanding Section 1542 of the California Civil Code which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Indemnitor Initials: _____

CHISPA Initials: _____

4. *Acknowledgment.* This release is fully and voluntarily executed. The parties acknowledge that they fully understand the significance and consequences of this release.
5. *Hold Harmless.* Indemnitor further assumes the obligation to hold harmless and indemnify CHISPA from and against any and all claims resulting directly or indirectly from the Affordable Housing Services provided to Indemnitor for rights, claims, demands, liabilities, obligations, losses, costs, judgments, damages, recoveries and deficiencies, including reasonable attorney's fees and expenses arising out of or through injury or death to any person or persons, or damage to property, arising out of or suffered through any act or omission of Indemnitor, or anyone under the supervision of Indemnitor.
6. *Attorneys' Fees.* In the event that any party to this Agreement commences any action or proceeding against another of the parties to this Agreement by reason of any breach or claimed breach of any provision, covenant or representation in this Agreement, or commences any action or proceeding in any way connected with this Agreement, or seeks a judicial declaration of rights hereunder, the person or entity prevailing in such action or proceeding shall be entitled to recover from the other party the prevailing party's reasonable attorneys' fees, costs and expenses.
7. *Notice.* Within ten (10) days ("Notification Period") after either party receives notice of any claims, demands, liabilities, actions, obligations, losses, costs, judgments, damages, recoveries and deficiencies, including reasonable attorney's fees and expenses with respect to which indemnification is being sought hereunder, the receiving party must notify the other, in writing, of such complaint or the commencement of such action or proceeding.

8. *Defense.* Upon receiving written notice described in Paragraph 7 above, Indemnitor shall, upon providing written notice to CHISPA, assume the defense of such action or proceeding, including the employment of counsel reasonably satisfactory CHISPA and the payment of the fees and disbursements of such counsel. If Indemnitor declines or fails to assume the defense of the action or proceeding and/or to employ counsel reasonably satisfactory to CHISPA, in a timely manner, then CHISPA may employ counsel to represent or defend it in any such action or proceeding and Indemnitor shall pay the reasonable fees and disbursements of such counsel as incurred pursuant to this Agreement.

9. *Participation.* In any action or proceeding with respect to which indemnification is being sought hereunder, CHISPA shall have the right to participate in such litigation and to retain its own counsel at its own expense. The parties, as the case may be, shall at all times use reasonable efforts to keep each other reasonably apprised of the status of the defense of any action, the defense of which they are maintaining and to cooperate in good faith with each other with respect to the defense of any such action.

10. *Settlement.* Indemnitor shall not settle or compromise any claim or consent to the entry of judgment with respect to which indemnification is sought hereunder without CHISPA's prior written consent, unless such settlement, compromise or consent includes among other things, an unconditional release of CHISPA from all liability arising out of such claim.

INDEMNITOR:

By: _____

Date: _____

CHISPA:

By: _____

Date: _____