



# Sample Purchase Agreement: California

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## *Contract of Sale — Multi-Family Residential Premises*

between

Salvation Army (“Seller”)

and

Satellite Housing, Inc. (“Purchaser”)

dated May 21, 2003

**Premises:**

Street Address: 1535 University Avenue

City or Town: Berkeley

State: California







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**6. Closing Costs:**

Closing costs are to be paid as follows:

- A. **Escrow Fees:**  Purchaser 50%/Seller 50%
- B. **CLTA Owners Title Policy:**  Purchaser
- C. **County Transfer Tax:**  Seller
- D. **City Transfer Tax:**  Purchaser 50%/Seller 50%

Any additional escrow costs or fees shall be paid according to the custom and practice of the county in which the Property is located. In the event Seller or Purchaser completes a tax-deferred exchange and additional closing costs and transfer taxes are incurred, the beneficiary of the exchange shall pay all additional costs arising out of the tax-deferred exchange.

**7. Conditions To Purchaser's Performance:**

All duties of Purchaser to purchase the Property shall be expressly conditioned upon the satisfaction of each of the conditions set forth below on or before the date set forth with regard to each condition. PURCHASER SHALL NOTIFY SELLER, IN WRITING, OF PURCHASER'S REMOVAL OR WAIVER OF EACH CONDITION SET FORTH BELOW AT PURCHASER'S SOLE AND ABSOLUTE DISCRETION WITHIN THE SPECIFIED TIME PERIOD OR THIS CONTRACT SHALL BE TERMINATED AND ALL DEPOSITS, WITH INTEREST IF ANY, SHALL BE RETURNED TO PURCHASER WITHOUT PENALTY.

**A. Loan Contingency—New Financing:**

It is understood that the purchase price for the property the subject of this agreement is to be obtained from governmental and other funding agencies. Purchaser will forthwith make application for the securing of the amount of the purchase price and make a good faith effort to obtain the funding necessary for the purchase. In the event that Purchaser cannot obtain the full funding within 120 days, and applications are pending with the funding sources, Purchaser shall have the right to extend the closing for an additional ten (10) months or until any of the funding applications have been denied. In the event that funding is not secured by Satellite within the additional 10-month period, either party may terminate this agreement, and Purchaser shall be entitled to a full return of all deposits and/or other payments made under this agreement.

**B. Purchaser's Inspections:**

**(1) Approval of the Board of Directors:**

Within 30 days from the Contract Date, Buyer obtaining approval of this Agreement by at least fifty-one percent (51%) of its Board of Directors.

**(2) Feasibility Period:**

Within 90 days from the Contract Date, Purchaser's determination that the Property, its income and development potential, its market position, its uses and other economic aspects are acceptable to Purchaser, in Purchaser's sole discretion.

**(3) Physical Inspections:**

Within 90 days from the Contract Date, Purchaser's approval of inspections by Purchaser and professionals employed by Purchaser of the Property and all improvements thereon, including, but not limited to, roof, plumbing, soils tests, electrical, sprinkler, water, sewer, engineering studies, heating and air conditioning system or systems, and structural integrity of the improvements, including structural pest control reports, toxic/hazardous substance inspections, and to measure the square footage of the Property, including land and any improvements. Seller, by execution of this Agreement, hereby grants Purchaser and Purchaser's authorized representatives and experts the right to enter upon and inspect and make reasonable tests upon the Property at reasonable times and upon notice to Seller, and Purchaser shall hold Seller harmless from any damage or injury to persons or property by reason of the entry upon the Property by Purchaser, its agents and its experts. Purchaser shall order and pay all costs with respect to such inspections.

Purchaser's approval of any inspection of the Property, however, shall not alter or diminish any Seller's



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representations or warranties to the extent made under this Agreement, and Seller acknowledges and agrees that Purchaser is nonetheless relying on Seller's representations and warranties made herein, except to the extent reliance on such representation or warranty is specifically waived, in whole or in part, in writing, by the Purchaser.

**(4) Inspection of Documents, Books and Records:**

Within 90 days from the Contract Date, Purchaser's inspection and approval of the following documents or copies thereof: All surveys, soils tests, engineering studies, or any other test results or reports in Seller's possession or under Seller's control, any leases and/or tenant agreements, current rent roll, maintenance contracts, and any amendments thereto, covering the Property, and books and income/expense records covering the Property for the year(s) 2001, 2002 and for the current year to and including the Contract Date. Seller warrants and represents that the books and records are those kept and maintained by Seller in the ordinary and normal course of business and used by Seller in the computation of its federal income tax returns. Seller shall deliver all of the documents described in this section to Purchaser within 10 days of the contract date.

**(5) Title Approval:**

Purchaser shall have thirty (30) days from the receipt of the Preliminary Title within which to notify Seller, in writing, of Purchaser's disapproval of any exception shown in the Title Report or the legal description. If Purchaser does not give written notice of such disapproval within such period, the Title Report shall be deemed approved. If Purchaser disapproves of any exception in writing as described above, Seller shall have 10 working days from the date of Seller's receipt of written notice of the disapproval to give written notice to Purchaser that Seller shall remove the disapproved exception(s) prior to Escrow Closing. Seller's failure to deliver the notice shall mean Seller will not remove the exception. If Seller elects not to remove any disapproved exception, Purchaser shall have five working days either (i) to terminate this Agreement or (ii) to waive its disapproval of such exception and agree to purchase the Property subject to the disapproved exception. If Purchaser fails to so notify Seller, in writing, within five working days of its election pursuant to this paragraph, Purchaser shall be deemed to have elected to terminate this Agreement. In the event of a termination hereunder, the parties shall have no obligations hereunder and Purchaser's deposit shall be returned to Purchaser. Any exception, which Purchaser has approved hereunder, either by Purchaser's approval, Purchaser's failure to disapprove such exception, or by Purchaser's waiver of disapproval, shall be deemed a "Permitted Exception."

**C. Pest Control Report:**

Within 90 days from the Contract Date, Purchaser's approval of a report issued by a licensed structural pest control operator. Purchaser shall order and pay for the cost of the inspection and the report.

If the structural pest control operator's report discloses any actual (i.e., Section I) infestation of or damage to the Property caused by wood destroying pests or organisms, Seller shall give a cash credit to Purchaser at close of escrow for the amount of the repairs up to a maximum limit of \$0.00. If the operator's report also indicates that preventive (i.e., Section II) work is recommended, Purchaser shall have the option of having such work done at Purchaser's expense after close of escrow, but Seller shall have no obligation to pay any costs of such work.

**D. Review of Personal Property**

Within 90 days from the Contract Date, lessee, at the discretion of lessor, remove Purchaser's review and approval of an inventory of all items which are "personal property" and which may be removed by any lessee upon termination of its lease, or which the lessor may require. Said inventory, signed by Seller and by the tenant, shall designate (i) those items which the tenant may remove on termination of the lease, and (ii) those items which lessor (Seller) may require the tenant to remove, at the tenant's cost, upon termination of the lease.

**E. Entitlements and Governmental Permits**

Within 90 days from the Contract Date, Purchaser obtaining, subject to those conditions acceptable to Purchaser in Purchaser's sole and absolute discretion, all necessary governmental approvals and permits (collectively the "Permits"), in a form satisfactory to Purchaser in Purchaser's sole and absolute discretion for Purchaser's intended use of the Property as an affordable housing development. Seller, at not cost to Seller, agrees to cooperate with Purchaser for the purpose of obtaining the Permits, which cooperation shall include execution of all applications, at Purchaser's sole expense, shall initiate and pursue proceedings to obtain permits.

**F. Confirmation of Zoning:**

Within 90 days from the Contract Date, Purchaser obtaining from the local authorities confirmation that the



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Property is finally and validly zoned to permit high density residential with retail and commercial, subject only to conditions acceptable to Purchaser in Purchaser's sole and absolute discretion.

G. Warranties and Building Guarantees:

Within 90 days from the Contract Date, Purchaser's approval of all warranties and building guarantees pertaining to the Property and tenant improvements, if any, which Seller shall assign, in writing, to Purchaser at close of escrow.

8. Right to Extend Time for Removal of Conditions:

Providing Purchaser is not in default, Purchaser shall have the right to extend the time for removal of the conditions specified in Paragraph 7 for an additional period of 30 days if, prior to the expiration of the time for performance, Purchaser notifies Seller, in writing, of Purchaser's intent to extend. In consideration for such extension(s), Purchaser shall provide to Seller an additional deposit of \$10,000. Said sum shall be non-refundable except in the event of a default by Seller, but shall applied against the purchase price at closing.

9. Conditions To Seller's Performance:

All duties of Seller to sell the Property shall be expressly conditioned upon the satisfaction of each of the conditions set forth below on or before the date set forth with regard to each condition. SELLER SHALL NOTIFY PURCHASER, IN WRITING, OF SELLER'S REMOVAL OR WAIVER OF EACH CONDITION SET FORTH BELOW WITHIN THE SPECIFIED TIME PERIOD OR THIS CONTRACT SHALL BE TERMINATED AND ALL DEPOSITS, WITH INTEREST IF ANY, SHALL BE RETURNED TO PURCHASER WITHOUT PENALTY.

A. Approval of Board of Directors:

Within 10 days from the Contract Date, Seller's obtaining approval of this Agreement by at least fifty-one percent (51%) of its Board of Directors.

10. Liquidated Damages

IF PURCHASER IS IN DEFAULT IN THE PERFORMANCE OF ANY PROVISIONS OF THIS AGREEMENT. BY PLACING THEIR INITIALS AT THE END OF THIS SENTENCE, PURCHASER AND SELLER AGREE THAT THE INITIAL DEPOSIT DESCRIBED IN THIS AGREEMENT SHALL BE DELIVERED TO SELLER AS LIQUIDATED DAMAGES, WHICH SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT.

Purchaser

Seller

RETENTION OF THE DEPOSIT BY SELLER AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT INSTEAD IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE. BECAUSE OF THE SPECIAL NATURE OF THE NEGOTIATIONS, WHICH PRECEDED ACCEPTANCE BY SELLER OF PURCHASER'S OFFER TO ACQUIRE THE PROPERTY, THE PARTIES ACKNOWLEDGE THAT THE ACTUAL DAMAGE, WHICH PURCHASER'S DEFAULT WOULD CAUSE TO SELLER, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO ESTABLISH. IN ADDITION, PURCHASER DESIRES TO HAVE A LIMITATION ON ITS POTENTIAL LIABILITY TO SELLER IN THE EVENT THAT PURCHASER DEFAULTS IN ITS OBLIGATION TO TIMELY PERFORM ANY OF THE TERMS, COVENANTS AND CONDITIONS OF THIS AGREEMENT. THEREFORE, IN ORDER TO INDUCE SELLER TO WAIVE ALL OTHER MONETARY REMEDIES IT MAY HAVE IN THE EVENT OF BREACH BY PURCHASER OF ITS OBLIGATIONS HEREUNDER, PURCHASER AND SELLER, BY INITIALING IN THE SPACE PROVIDED ABOVE, HAVE AGREED TO LIQUIDATED DAMAGES AS SET FORTH HEREIN, WITH THE AMOUNT OF THE PAYMENT TO SELLER AND THE TIMING OF SUCH PAYMENT HAVING BEEN THE SUBJECT OF CONSIDERABLE NEGOTIATIONS BETWEEN THE PARTIES.

Purchaser

Seller

11. Binding Agreement:

This Agreement, to the extent assignable, is binding upon the heirs, executors, administrators, successors and assigns of the Purchaser and Seller, and shall survive recordation of the Grant Deed and close of escrow.



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**12. Assignment By Purchaser:**

Purchaser may assign its rights hereunder without the prior written consent of Seller.

**13. Representation Of Authority To Execute:**

Each person executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to so bind, and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee is the owner of the Property and has full right and authority to enter into this Agreement and perform all of its obligations hereunder. To the extent that the signatories to this Agreement shall comprise of a group of individuals, the individuals represent that they are all the owners of the Property and agree that the obligations and liabilities of such individuals under this Agreement shall be joint and several.

**14. Flood Control Act:**

Seller discloses that the property may be located in a "flood zone," as set forth on H.U.D. "Special Flood Zone Area Maps." As a condition to obtaining financing on most properties located in "flood zones," some banks, savings and loan associations and insurance lenders require that H.U.D. flood insurance be carried where such properties are security for the loan. This requirement is mandated by the H.U.D. National Flood Insurance Program and became effective March 1, 1975. Purchaser acknowledges that Purchaser has not received or relied upon any representations from either Seller or Broker(s) regarding the legal effect, interpretation or economic consequences of the National Flood Insurance Program and related legislation.

**15. Special Studies Zone Act:**

Seller discloses that the property may be situated in a Special Study Zone as designated under the Alquist-Priolo Special Studies Zone Act, Sections 2621-2630, inclusive, of the California Public Resources Code, or otherwise in an area of the high geologic hazard ("Geologic Zone"). If the Property is in a Geologic Zone, the construction or development on the Property of any structure for human occupancy may be subject to the findings of a geologic report prepared by a geologist registered in the State of California.

**16. Americans With Disabilities Act:**

The Americans With Disabilities Act (ADA) requires both the owner of real estate and the tenant of real estate to comply with its provisions.

In part, the Act requires owners and tenants of public accommodations to remove physical barriers to access and provide auxiliary aids or services for persons with hearing, vision or speech impairment. The ADA does not specify responsibility for compliance as between lessor and lessee or as between seller and buyer. Compliance and the allocation of responsibility for cost for compliance must be negotiated between the parties.

Cornish & Carey Commercial makes no representation or warranty with respect to compliance or noncompliance of the Property or any contemplated use of the Property. We recommend that you consult your attorney to determine if this Act applies to you and, if so, the requirements that must be met. The applicability of the Act is a legal issue, and we cannot give you legal advice on such matters.

**17. Legal Action:**

If either party or Broker files any action or brings any proceeding against the other arising out of this Agreement, or is made a party to any action or proceeding brought by the escrow holder, then the prevailing party shall be entitled to recover as an element of its cost of suit, and not as damages, reasonable attorneys' fees to be fixed by the court. California law shall govern this Agreement.

**18. Arbitration Of Disputes:**

Any dispute or claim in law or equity arising out of this agreement, or any transaction resulting from this agreement, shall be decided by neutral binding arbitration in accordance with the California Code of Civil Procedure, Part III, Title 9. Judgment upon any argument rendered may be entered in a court having jurisdiction thereof. The parties shall have the right to discovery pursuant to California Code of Civil Procedure, Section 1283.5. If the parties cannot agree on the selection of an arbitrator, the Presiding Judge of the Superior Court having jurisdiction to enforce the award shall select the arbitrator. The losing party shall pay the arbitrator's fee.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR



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AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

Purchaser

Seller

**19. Broker Dual Agency:**

Purchaser and Seller hereby acknowledge Cornish & Carey Commercial ("Broker") represents both parties herein, and Purchaser and Seller consent thereto.

Except as expressly provided below, a dual agent was and is obligated to disclose to Seller and Purchaser all material facts or confidential information that could affect Seller's or Purchaser's decision to enter into the transaction. The parties agree that Broker has not and will not, without the express permission of Seller, disclose to Purchaser that Seller is willing to sell the Property at a price that is less than the listing price, and, conversely, Broker has not and will not, without the express permission of Purchaser, disclose to Seller that Purchaser will pay a price that is greater than the price offered.

**20. Toxic Contamination Disclosure:**

Seller and Purchaser acknowledge that they have been advised that numerous federal, state and/or local laws, ordinances and regulations ("Laws") affect the existence and removal, storage, disposal, leakage of and contamination by materials designated as hazardous or toxic ("Toxics"). Many materials, some utilized in everyday business activities and property maintenance, are designated as hazardous or toxic.

Some of the Laws require that Toxics be removed or cleaned up by landowners, future landowners or former landowners without regard to whether the party required to pay for the "clean up" caused the contamination, owned the property at the time the contamination occurred or even knew about the contamination. Some items, such as asbestos or PCBs, which were legal when installed, now are classified as Toxics, and are subject to removal requirements. Third parties in certain circumstances may file civil lawsuits for damages resulting from Toxics.

Cornish & Carey Commercial has recommended, and hereby recommends, that each of the parties have competent professional environmental specialists review the Property and make recommended tests so that a reasonably informed assessment of these matters can be made by each of the parties. Purchaser and Seller acknowledge that neither Cornish & Carey Commercial nor its agents or salespersons have been retained to investigate or to arrange for investigation by others, and have not made any recommendations or representations with regard to the presence or absence of Toxics on, in or beneath the Property. Purchaser and Seller agree that they will rely only on persons who are experts in this field and will obtain such expert advice so each of them will be as fully informed as possible with regard to Toxics in entering into this Agreement.

**21. F.I.R.P.T.A.:**

Seller shall deliver to Purchaser at the close of escrow an affidavit executed by Seller under penalty of perjury stating Seller's United States taxpayer identification number, that Seller is not a foreign person, and all other information required in accordance with Internal Revenue Code Section 1445(b)(2).

**22. Maintenance Of The Property:**

Seller shall be responsible for normal and customary maintenance of the Property in its present condition, subject to normal wear and tear, and shall pay any and all expenses of any kind incurred in the normal and customary maintenance and operation of the Property until close of escrow; provided Seller shall have no obligation to replace any item or to incur any capital expenditures in such maintenance.

**23. Damage Or Destruction:**

Notwithstanding the foregoing, if a material portion of the Property is damaged or destroyed prior to the close of escrow, Purchaser may elect to continue this Agreement in full force and effect without modification and to purchase the Property in its damaged condition, in which event Seller shall assign to Purchaser at close of escrow all insurance proceeds due as a result of such damage and destruction, whether or not such insurance proceeds are adequate to repair such damage and destruction. A destruction shall be considered material if the cost of repair or replacement without deduction for depreciation exceeds 10% of the purchase price, provided that if applicable building codes or other laws or regulations require work exceeding the repair or replacement of the actual damage, the cost shall be considered to include all the work. Unless Purchaser notifies Seller in writing within 10 working days from the date Purchaser is notified in writing of the cost of repair and amount of insurance





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proceeds to continue this Agreement, this Agreement shall terminate and Purchaser shall receive back its deposit, together with any interest earned on the deposit.

**24. Consult Your Attorney And Tax Consultant:**

Purchaser and Seller have prepared this document for submission to their attorneys and tax consultants for approval from the standpoint of protection of legal rights. Cornish & Carey Commercial, a commercial real estate company, or its agents or employees, as to the legal sufficiency, legal effect, or tax consequences of this document or the transaction relating thereto, make no representation or recommendation. THESE ARE QUESTIONS FOR YOUR ATTORNEY AND TAX CONSULTANT.

**25. Broker Representations:**

Purchaser and Seller understand that Broker has not made any investigation or determination regarding the value of the Property; the present or future use of the Property; any possible violations of any federal, state, county, or municipal ordinances, statutes, zoning; proposed acquisition of the Property by the federal, state, county or municipal governments; the accuracy of income and expense information; existence or content of any leases; the existence of physical defects in the Property, the size of the Property or the size of any improvements, and Purchaser and Seller hereby release Broker from any liability relating thereto and agree that such investigation and determination has been Purchaser's sole responsibility and Broker shall not be held responsible therefor.

Purchaser is advised that any representation of square footage with respect to the Property and any improvements thereon are approximations only, which may be inaccurate. Purchaser acknowledges that the Purchase Price is not based on the square footage of any improvements or lot size.

**26. Brokers:**

The only real estate brokers involved in the purchase and sale of the Property are Cornish & Carey Commercial representing both Buyer and Seller. The Buyer shall defend, indemnify and hold Seller harmless against any commission or finder's fees or claims relating to the sale of the Property by any other person or entity whose claim arises out of the actions of Buyer. The Seller shall defend, indemnify and hold Buyer harmless against any commission or finder's fees or claims relating to the sale of the Property by any other person or entity whose claim arises out of the actions of Seller. The Seller shall be responsible for the payment of the Broker's fee or commission fee for the above referenced brokers to be paid immediately upon the close of escrow and transfer of title from Seller to Buyer. The commission to be paid Cornish & Carey Commercial is 4% of the gross sales price.

Any dispute with respect to the amount or payment of such commissions shall be subject to Paragraph 19 (Arbitration of Disputes) of this Agreement.

**27. Time And Date For Acceptance:**

Purchaser's signature hereon constitutes an offer to Seller to purchase the Property. Unless acceptance hereof is signed by Seller and the signed copy received by Purchaser or Purchaser's agent, either in person, via facsimile, or by mail to the address shown below by 5:00 P.M., May 22<sup>ST</sup> 2003, this offer shall be deemed revoked and the deposit shall be returned to Purchaser.

**28. Time:**

Time is of the essence of this contract.

**29. Entire Agreement:**

Except for any addenda attached hereto, this Agreement constitutes the entire agreement between Purchaser and Seller with respect to the purchase of the Property by Purchaser and supersedes all other agreements, letters, memoranda or understanding respecting the same, whether written or oral. This Agreement may not be modified by either party by oral representation made before, contemporaneous with or after the execution of this Agreement. All modifications, amendments or additions to this Agreement must be in writing signed by Seller and by Purchaser.

**30. Other Terms And Conditions:**

**Building Plans:**

Within 10 days after the Contract Date, Seller shall provide to Purchaser, at no expense to Purchaser, a copy of building layout plans, including floor plans and building elevation plans, in Seller's possession or under Seller's control.





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**“As Built” Plans:**

Within 10 days after the Contract Date, Seller shall provide Purchaser with a complete set of “as built” plans of the Property.

**Soils and Engineering Reports:**

Within 10 days after the Contract Date, Seller shall provide to Purchaser, at no expense to Purchaser, copies of any and all soils and engineering reports and studies in Seller’s possession or under Seller’s control.

**Earnest Money Deposit:**

Any deposits made by Purchaser shall be placed in an interest bearing account by Escrow Holder, with any interest accrued thereon to be credited to Purchaser.

**No New Leases:**

After the contract date, Seller shall not enter into any new leases or options to lease or negotiate termination, extensions or modifications of any existing leases without Purchaser’s prior written consent.

**Representations and Warranties of Seller.**

Seller hereby makes the following representations and warranties to Purchaser, which representations and warranties shall survive the Closing and all of which (i) are material and are being relied upon by Buyer; and (ii) are true, complete and accurate as of the date hereof and shall be true, complete and accurate at the Closing Date.

- a. This Agreement and all documents executed by Seller which are to be delivered to Purchaser at the Closing are, or at the time of Closing will be, duly authorized, executed, and delivered by Seller, and are, or at the Closing will be, legal, valid, and binding obligations of Seller, and do not, and at the time of Closing will not, violate any provision of any agreement to which Seller is a party or to which it is subject or any law, judgment or order applicable to Seller.
- b. No proceedings under any federal or state bankruptcy or insolvency laws have been commenced by or against Seller which have not been terminated; no general assignment for the benefit of creditors has been made by Seller; and no trustee or receiver of Seller’s property has been appointed.
- c. There is no litigation or proceeding pending or, to Seller’s knowledge, threatened, involving Seller or the Property which might materially and adversely affect the Property or Seller’s ability to consummate the transactions contemplated by this Agreement, including claims of encroachment or prescriptive easement effecting the Property.
- d. Seller has not received any written notice or information regarding the Property’s failure to comply with or violation of any applicable law, rule, regulation, ordinance or government directive from any administrative or governmental authority or any restrictive easements or covenants affecting the Property.
- e. Seller does not have knowledge of any condemnation, environmental, zoning, sewer moratorium, or other land-use regulation proceedings, either instituted or planned to be instituted, which would affect the use and operation of the Property, nor has Seller received notice of any special assessment proceedings affecting the Property.
- f. The contracts and documents delivered to Purchaser pursuant to this Agreement or in connection with the purchase and sale contemplated hereby are all of the documents or agreements affecting the Property and are complete and accurate originals or copies. No information or documents given to Buyer pursuant to this Agreement will contain any untrue statement of a material fact or omit to state a material fact making the statements contained therein misleading.
- g. There are no leases, licenses or other agreements affecting the Property, which will be binding on Purchaser, or the Property at Closing.
- h. To Seller’s knowledge (i) no asbestos-containing materials were installed or exposed in the Property through demolition, renovation or otherwise, at any time during or prior to Seller’s ownership of the Property; (ii) no electrical transformers, fluorescent light fixtures with ballasts or other equipment containing PCB’s are or were located on the Property at any time during or prior to Seller’s ownership of the Property; (iii) no storage tanks for gasoline or any other substances are or were located on the Property at any time during or prior to Seller’s ownership of the Property; and (iv) no toxic, hazardous, extremely toxic, or extremely hazardous or similarly dangerous substances or materials are or were located on, in or under the Property or have affected the Property at any time during or prior to Seller’s ownership of the Property. The materials described in the preceding clauses (i) through (iv) shall be termed “**Hazardous Materials**” herein. Seller has not received any written notice under the California Health and Safety Code or any other applicable local, state or federal law regarding Hazardous



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Materials on, under or affecting the Property or requiring the removal of any Hazardous Materials from the Property.

**Property to be Sold "As Is":**

(1) Except as otherwise expressly set forth herein, Purchaser acknowledges that Purchaser is purchasing the Property solely in reliance on Purchaser's own investigation and that no representations or warranties of any kind whatsoever, express or implied, have been made by Seller, Seller's agents, or Broker. Purchaser further acknowledges that as of the close of escrow, Purchaser will be aware of all zoning regulations, other governmental requirements, site and physical conditions, and other matters affecting the use and condition of the Property, and Purchaser agrees to purchase the Property in the condition in which it is at close of escrow.

(2) Except for the specific representations or warranties of Seller contained herein, Purchaser is purchasing the Property hereunder strictly on an "as is" basis, and regardless of the Property's topography, climate, air, water rights, utilities, water, possible toxic waste or hazardous materials, present and future zoning, soil, subsoil, purpose to which the Property is suited, drainage, access to public roads, proposed routes or enlargement of roads or extensions thereof. Purchaser further acknowledges and agrees that the Property is or may be subject to zoning, P.U.D., or other municipal ordinance restrictions (which Purchaser acknowledges Purchaser is familiar with). The Property is to be purchased, conveyed, and accepted by Purchaser in its present condition, "as is," and no patent or latent physical condition of the Property, whether or not known or unknown or discovered at a later date, shall affect this transaction and the Purchase Price paid for the Property hereunder. Purchaser is obligated to close escrow notwithstanding the condition of the Property. All work in connection with preparing the Property for the use intended by Purchaser, all costs incidental thereto, and all other costs, fees, studies, reports, approvals, plans, surveys, permits, and expenses whatsoever necessary or desirable in connection with Purchaser's acquiring, developing, using and/or operating the Property shall be obtained and paid for by and shall be the sole responsibility of Purchaser. Purchaser has investigated and has knowledge of operative or proposed governmental laws and regulations, including, but not limited to, zoning, environmental (including specifically the regulations of the Environmental Protection Agency and the Bay Area Pollution Control District) and land use laws and regulations to which the Property may be subject, and shall acquire the Property subject to the foregoing and to such other laws and regulations that pertain to the Property.

(3) Purchaser has neither received nor relied upon any representations concerning any laws and regulations made by Seller, Seller's employees, agents, brokers or any other person acting on or in behalf of Seller. Purchaser hereby waives, releases, acquits, and forever discharges Seller and Broker of and from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses, or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, that it now has or which may arise in the future on account of or in any way growing out of or connected with the condition of the Property, any toxic wastes or hazardous materials located thereon, any settlement or subsidence of construction thereon, if any, or with any operative or proposed governmental laws and regulations, including, but not limited to, zoning, environmental, and land use laws and regulations to which the Property may be subject or with Purchaser's contemplated use and development of the Property.

**Assignment of Warranties:**

Seller shall assign to Purchaser all warranties and all Seller's rights against the contractors, subcontractors, suppliers and materialmen involved in the construction or operation of the Property.

The undersigned Purchaser offers and agrees to buy the Property on the terms and conditions above stated and acknowledges receipt of a copy hereof.



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REAL PROPERTY PURCHASE AGREEMENT & DEPOSIT RECEIPT

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**Purchaser:** Satellite Housing, Inc.

**By:**

*Joan Davis*

**Date:**

*May 21, 2003*

**Acceptance**

The undersigned Seller accepts the foregoing offer and agrees to sell the Property on the terms and conditions set forth.

The undersigned Seller acknowledges receipt of a copy hereof and authorizes Broker(s) to deliver a signed copy of it to Purchaser.

**Seller:** SALVATION ARMY

**By:**

\_\_\_\_\_

**Date:**

\_\_\_\_\_

Broker(s) agree(s) to the commission provisions above.

CORNISH & CAREY COMMERCIAL

**By:**

\_\_\_\_\_

**Date:**

\_\_\_\_\_





DISCLOSURE REQUIREMENTS

tanks may be present on all types of real property. This Notice is intended to apply to any transaction involving any type of real property, whether improved or unimproved.

4. **The Americans With Disabilities Act:**

Please be advised that an owner or tenant of real property may be subject to the Americans With Disabilities Act (the ADA). The Act requires owners and tenants of "public accommodations" to remove barriers to access by disabled persons and provide auxiliary aids and services for hearing, vision or speech impaired persons. You are advised to consult your attorney with respect to the application of this Act to the Property. Cornish & Carey Commercial cannot give you legal advice on this Act or its requirements.

5. **Broker Disclosure:**

The parties hereby expressly acknowledges that Broker has made no independent determination or investigation regarding, but not limited to, the following: present or future use of the Property; environmental matters affecting the Property; the condition of the Property, including, but not limited to structural, mechanical and soils conditions, as well as issues surrounding hazardous wastes or substances as set out above; violations of the Occupational Safety and Health Act or any other federal, state, county or municipal laws, ordinances, or statutes; measurements of land and/or buildings. Lessee/Purchaser agrees to make its own investigation and determination regarding such items.

6. **Broker Representation (Dual Agency)**

Seller and Purchaser acknowledge that Broker is the agent of both Seller and Purchaser. Seller and Purchaser hereby consent to such dual representation and waive any possible conflict of interest arising out of such dual agency. A dual agency is obligated to disclose to both parties all material facts or confidential information that could affect Seller's or Purchaser's decision to enter into the transaction. Broker, however, will not disclose to Purchaser the price that Seller is willing to accept, nor to Seller the price that Purchaser is willing to pay, without the express permission of the other party.

Receipt of a copy of this Notice and Agreement is hereby acknowledged.

**Acknowledged and Agreed:**

Seller: SALVATION ARMY

CORNISH & CAREY COMMERCIAL

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Purchaser: Satellite Housing, Inc.

By: *Juan C. Davis Pres & CEO*

Date: *May 21, 2003*

CONSULT YOUR ADVISORS: NO REPRESENTATION OR RECOMMENDATION IS MADE BY CORNISH & CAREY COMMERCIAL OR ITS AGENTS OR EMPLOYEES AS TO THE LEGAL EFFECT, INTERPRETATION, OR ECONOMIC CONSEQUENCES OF THE NATIONAL FLOOD INSURANCE PROGRAM AND RELATED LEGISLATION, NOR OF OTHER LEGISLATION REFERRED TO HEREIN. THESE ARE QUESTIONS THAT YOU SHOULD ADDRESS WITH YOUR CONSULTANTS AND ADVISORS.