



# EXCLUSIVE RIGHT TO REPRESENT OWNER FOR SALE OR LEASE OF REAL PROPERTY

(Non-Residential)

AIR COMMERCIAL REAL ESTATE ASSOCIATION

## 1. BASIC PROVISIONS ("BASIC PROVISIONS").

1.1 **Parties:** This agency Agreement ("**Agreement**"), dated for reference purposes only July 1, 2009, is made by and between Chuck Trout, whose address is 563 N. Fairview, Santa Ana, California, telephone number (714) 542-3706, Fax No. ( ) ("**Owner**"), and Voit Commercial Brokerage (Brian Williams), whose address is 3500 W. Orangewood Avenue, Orange, CA 92868, telephone number (714) 978-7880, Fax No. (714) 978-9431 ("**Agent**").

1.2 **Property/Premises:** The real property, or a portion thereof, which is the subject of this Agreement is commonly known by the street address of 563 N. Fairview, located in the City of Santa Ana, County of Orange, State of California, and generally described as (describe briefly the nature of the property): an industrial condo consisting of approximately 3,452 square feet ("**Property**"). (See also Paragraph 3).

1.3 **Term of Agreement:** The term of this Agreement shall commence on July 1, 2009 and expire at 5:00 p.m. on November 30, 2009, except as it may be extended ("**Term**"). (See also paragraph 4)

1.4 **Transaction:** The nature of the transaction concerning the Property for which Agent is employed ("**Transaction**") is (check the appropriate box(es)):

(a)  A sale for the following sale price and terms: Not For Sale foot, or term acceptable to owner.

and other additional standard terms reasonably similar to those contained in the "STANDARD OFFER, AGREEMENT AND ESCROW INSTRUCTIONS FOR THE PURCHASE OF REAL ESTATE" published by the AIR Commercial Real Estate Association ("**AIR**"), or for such other price and terms agreeable to Owner;

(b)  A lease or other tenancy for the following rent and terms: A 3-5 year term at an asking lease rate of \$0.89 gross per square foot or terms acceptable to Owner.

and other additional standard terms reasonably similar to those contained in the appropriate AIR lease form or for such other rent and terms agreeable to Owner.

## 2. EXCLUSIVE EMPLOYMENT AND RIGHTS.

2.1 Owner hereby employs Agent as Owner's sole and exclusive agent to represent Owner in the Transaction and to find buyers or lessees/tenants ("**lessees**"), as the case may be, for the Property. Agent shall use reasonably diligent efforts to find such buyers or lessees. All negotiations and discussions for a Transaction shall be conducted by Agent on behalf of Owner. Owner shall promptly disclose and refer to Agent all written or oral inquiries or contacts received by Owner from any source regarding a possible Transaction.

2.2 Owner authorizes Agent to:

- (a) Place advertising signs on the Property;
- (b) Place a lock box on the Property if vacant;
- (c) Accept deposits from potential buyers or lessees; and
- (d) Distribute information regarding the Property to participants in THE MULTIPLE ("**MULTIPLE**") of the AIR and/or any other appropriate local commercial multiple listing service, to other brokers, and to potential buyers or lessees of the Property. Owner shall identify as "confidential" any information provided to Agent that Owner considers confidential and does not want disclosed. All other information provided by Owner may be disclosed as Agent may deem appropriate or necessary. After consummation of a Transaction, Agent may publicize the terms of such Transaction.

2.3 Agent shall comply with the Rules of Professional Conduct of the AIR, if a member or if not, the Rules of Professional Conduct of the Society of Industrial and Office Realtors, and shall submit the Property to the MULTIPLE. Agent shall cooperate with participants in the MULTIPLE and may, at Agent's election, cooperate with other real estate brokers (collectively "**Cooperating Broker**"). A Cooperating Broker may, as a third-party beneficiary hereof, enforce the terms of this Agreement against Owner or Agent.

2.4 If the Transaction is a sale and Agent finds a prospective buyer for the Property, or if the Transaction is a lease and Agent finds a prospective lessee for the Property, Owner hereby authorizes Agent also to represent and act as the agent for such buyer or lessee, and Owner consents to such dual agency. If a Cooperating Broker finds such a buyer or lessee, then Agent shall act as agent for Owner only, the Cooperating Broker shall act as agent for the buyer or lessee only, and the Cooperating Broker shall not be Owner's agent, even though the Cooperating Broker may share in the commission paid by Owner to Agent. A Cooperating Broker shall not be an agent or subagent of Owner or Agent.

2.5 Owner agrees that Agent may, during the ordinary and normal course of marketing the Property, respond to inquiries on the Property by showing and providing information on the Property, as well as on other competing properties, to prospective buyers and lessees and that such activities may result in the payment of a commission to Agent by a third party.

## 3. PROPERTY.

3.1 The term "Property" shall include all of the following which are currently located on the Property and owned by Owner: permanent improvements, electrical distribution systems (power panels, buss ducting, conduits, disconnects, lighting fixtures, etc.), telephone distribution systems (lines, jacks and connections), space heaters, air conditioning equipment, air lines, carpets, window coverings, wall coverings, partitions, doors, suspended ceilings, built-ins such as cabinets, and all other built in fixtures.

(if there are no additional items write "NONE"). If the Transaction is a sale, the term "Property" shall additionally include, to the extent owned by Owner, oil and mineral rights, leases and other agreements which will continue in effect after Owner's transfer of title to the Property.

3.2 Within five business days after the commencement of the Term hereof, Owner shall provide Agent with the following:

- (a) A duly completed and fully executed Property Information Sheet on the most current form published by the AIR;
- (b) Copies of all leases, subleases, rental agreements, option rights, rights of first refusal, rights of first offer, or other documents containing any other limitations on Owner's right, ability and capacity to consummate a Transaction, and
- (c) If available to Owner, copies of building plans, and if the Transaction is a sale, title reports, boundary surveys, and existing notes and trust deeds which will continue to affect the Property after consummation of a sale.

3.3 Agent shall have no responsibility for maintenance, repair, replacement, operation, or security of the Property, all of which shall be Owner's sole responsibility. Unless caused by Agent's gross negligence, Agent shall not be liable for any loss, damage, or injury to the person or property of Owner, any lessees of the Property, any buyer, prospective buyer, lessee, or prospective lessee, including, but not limited to, those which may occur as a result of Agent's use of a lock box.

#### 4. EXTENSION OF TERM.

If the Transaction is a sale, and a sale is not consummated for any reason after Owner accepts an offer to purchase the Property ("**Sale Agreement**"), then the expiration date of the Term of this Agreement shall be extended by the number of days that elapsed between the date Owner entered into the Sale Agreement and the later of the date on which the Sale Agreement is terminated or the date Owner is able to convey title to a new buyer free and clear of any claims by the prior buyer of the Property; provided, however, in no event shall the Term be so extended beyond one year from the date the Term would have otherwise expired.

#### 5. COMMISSION.

5.1 Owner shall pay Agent a commission  in the amount of \_\_\_\_\_

in accordance with the commission schedule attached hereto ("**Agreed Commission**"), for a Transaction, whether such Transaction is consummated as a result of the efforts of Agent, Owner, or some other person or entity. Agent shall also be entitled to the Agreed Commission if any of the Owner's representations and warranties described in paragraph 8 are shown to be false. Such Agreed Commission is payable:

(a) If the Transaction is a sale, (i) a buyer is procured who is ready, willing and able to buy the Property at the price and on the terms stated herein, or on any other price and terms agreeable to Owner; (ii) Owner breaches or repudiates any Sale Agreement, escrow instructions or other documents executed by Owner regarding the sale of the Property; (iii) the Property or any interest therein is voluntarily or involuntarily sold, conveyed, contributed or transferred; (iv) the Property or any interest therein is taken under the power of Eminent Domain or sold under threat of condemnation, or (v) if Owner is a partnership, joint venture, limited liability company, corporation, trust or other entity, and any interest in Owner is voluntarily or involuntarily sold, contributed, conveyed or transferred to another person or entity that, as of the date hereof, does not have any ownership interest in Owner;

(b) If the Transaction is a lease, (i) a lease of the Property, or a portion thereof is executed; or (ii) a lessee is procured who is ready, willing and able to lease the Property on the terms stated herein, or on any other rent and/or terms agreeable to Owner; or

(c) If Owner (i) removes or withdraws the Property from a Transaction or the market; (ii) acts as if the Property is not available for a Transaction; (iii) treats the Property as not available for a Transaction; (iv) breaches, terminates, cancels or repudiates this Agreement; (v) renders the Property unmarketable; or (vi) changes the status of the Property's title, leases, agreements, physical condition or other aspects thereof, which such change adversely impacts the value, use, desirability or marketability of the Property.

5.2 If the Transaction is a sale, the purchase agreement and/or escrow instructions to be entered into by and between Owner and a buyer of the Property shall provide that:

(a) Owner irrevocably instructs the escrow holder to pay from Owner's proceeds accruing to the account of Owner at the close of escrow the Agreed Commission to Agent;

(b) A contingency to the consummation of the sale shall be the payment of the Agreed Commission to Agent at or prior to close of the escrow; and

(c) No change shall be made by Owner or buyer with respect to the time of, amount of, or the conditions to payment of the Agreed Commission, without Agent's written consent.

#### 6. ALTERNATIVE TRANSACTION.

If the Transaction changes to any other transaction, including, but not limited to, a sale, exchange, option to buy, right of first refusal, ground lease, lease, sublease or assignment of lease (collectively "**Alternative Transaction**"), then Agent shall automatically be Owner's sole and exclusive Agent for such Alternative Transaction and represent Owner in such Alternative Transaction, under the terms and conditions of this Agreement. If, during the Term hereof, an Alternative Transaction is entered into, then Owner shall pay Agent the Agreed Commission.

#### 7. EXCLUDED AND REGISTERED PERSONS.

7.1 Owner shall, within 5 business days after the date hereof, provide Agent, in writing, with the names of those persons or entities registered with Owner by any other broker under any prior agreement concerning the Property ("**Excluded Persons**", see paragraph 7.5). Owner shall also specify for each Excluded Person the type of transaction the consummation of which during the Term of this Agreement entitles such other broker to any compensation ("**Excluded Transaction**"). Agent may within 10 days of receiving such written list, either (a) accept the Excluded Persons and Excluded Transactions, (b) cancel this Agreement, or (c) attempt to renegotiate this portion of the Agreement with Owner. Once accepted by Agent, the written list shall automatically become an exhibit to this Agreement. If Owner timely provides Agent with the names of the Excluded Persons and specifies the Excluded Transaction for each Excluded Person, then the Agreed Commission paid to Agent with respect to consummation of such an Excluded Transaction with an Excluded Person shall be limited as follows: if such Excluded Transaction is concluded within the first 30 days of the commencement of the Term hereof, then Agent shall be paid a commission equal to the reasonable out-of-pocket expenses incurred by Agent in the marketing of the Property during said 30 days; or if such Excluded Transaction is concluded during the remainder of the Term hereof, then Agent shall be entitled to a commission equal to one-half of the Agreed Commission. If the specified information concerning Excluded Persons and Transactions is not provided as set forth herein, then it shall be conclusively deemed that there are no Excluded Persons.

7.2 Agent shall, within 5 business days after the expiration of the Term hereof, provide Owner, in writing, with the name of those persons or entities with whom Agent either directly or through another broker had negotiated during the Term hereof ("**Registered Persons**", see paragraph 7.5), and specify the type of transaction of the Property for which such negotiations were conducted ("**Registered Transaction**"). Those persons or entities who submitted written offers or letters of intent shall, however, automatically be deemed to be Registered Persons for the type of transaction which was the subject of such offer or letter of intent. If Agent fails to timely notify Owner of the existence of any other Registered Persons, then it shall be conclusively deemed that there are no other Registered Persons. A person or entity shall not be a Registered Person if Agent fails to timely specify a Registered Transaction for such person or entity. If Agent wishes to register the client of a Cooperating Broker, Agent must obtain and submit to Owner written approval of such registration signed by such Cooperating Broker. The parties are aware that the registration of certain individuals and/or entities might create a Dual Agency, and Owner hereby consents to any such Dual Agency.

7.3 If, within 180 days after the expiration of the Term hereof, Owner enters into a contract with a Registered Person for consummation of a Registered Transaction, then Owner shall, upon consummation of such Registered Transaction, pay Agent the Agreed Commission for the Registered Transaction.

7.4 If, within 180 days after the expiration of the Term hereof, Owner enters into another owner-agency or listing agreement with a broker other than Agent for any transaction concerning the Property, then Owner shall provide to Owner's new broker the names of the Registered Persons and the Registered Transaction for each Registered Person, and provide in such new agreement that the new broker shall not be entitled to receive any of the compensation payable to Agent hereunder for consummation of a Registered Transaction with a Registered Person.

7.5 In order to qualify to be an Excluded Person or a Registered Person the individual or entity must have: toured the Property, submitted a letter of interest or intent, and/or made an offer to buy or lease the Property. In addition, Excluded Persons may only be registered by a broker who previously had a valid listing agreement covering the Property, and such broker may only register individuals and entities actually procured by such listing broker.

#### 8. OWNER'S REPRESENTATIONS.

Owner represents and warrants that:

(a) Each person executing this Agreement on behalf of Owner has the full right, power and authority to execute this Agreement as or on behalf of Owner;

(b) Owner owns the Property and/or has the full right, power and authority to execute this Agreement and to consummate a Transaction as provided herein, and to perform Owner's obligations hereunder;

(c) Neither Owner nor the Property is the subject of a bankruptcy, insolvency, probate or conservatorship proceeding;

(d) Owner has no notice or knowledge that any lessee or sublessee of the Property, if any, is the subject of a bankruptcy or insolvency proceeding;

(e) There are no effective, valid or enforceable option rights, rights of first refusal, rights of first offer or any other restrictions, impediments

or limitations on Owner's right, ability and capacity to consummate a Transaction, except as disclosed in writing pursuant to Paragraph 3.2(b).

**9. OWNER'S ACKNOWLEDGMENTS.** Owner acknowledges that it has been advised by Agent to consult and retain experts to advise and represent it concerning the legal and tax effects of this Agreement and consummation of a Transaction or Alternative Transaction, as well as the condition and/or legality of the Property, including, but not limited to, the Property's improvements, equipment, soil, tenancies, title and environmental aspects. Agent shall have no obligation to investigate any such matters unless expressly otherwise agreed to in writing by Owner and Agent. Owner further acknowledges that in determining the financial soundness of any prospective buyer, lessee or security offered, Owner will rely solely upon Owner's own investigation, notwithstanding Agent's assistance in gathering such information.

**10. MISCELLANEOUS.**

10.1 This Agreement shall not be construed either for or against Owner or Agent, but shall be interpreted, construed and enforced in accordance with the mutual intent of the parties ascertainable from the language of this Agreement.

10.2 All payments by Owner to Agent shall be made in lawful United States currency. If Owner fails to pay to Agent any amount when due under this Agreement, then such amount shall bear interest at the rate of 15% per annum or the maximum rate allowed by law, whichever is less.

10.3 In the event of litigation or arbitration between or among Owner, Agent, a Cooperating Broker, a buyer, prospective buyer, lessee, or prospective lessee of the Property, or any of them, arising under or relating to this Agreement or the Property, the prevailing party shall be paid its attorney's fees and costs by the losing party. The term, "Prevailing Party" shall include, without limitation, one who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other party of its claim or defense. The attorney's fees award shall not be computed in accordance with any court fee schedule, but shall be in an amount to fully reimburse all attorney's fees reasonably incurred in good faith.

10.4 Owner agrees to indemnify, defend (with counsel reasonably acceptable to Agent), and hold Agent harmless from and against any claim or liability asserted against Agent as a result of the failure of Owner to make a full and complete disclosure pursuant to law and paragraph 3.2(a) or as a result of the fact that any of the representations made by Owner (see paragraph 8) were not true at the time that this Agreement was signed.

10.5 Owner hereby releases and relieves Agent, and waives Owner's entire right of recovery against Agent, for direct or consequential loss or damage arising out of or incident to the perils covered by insurance carried by Owner, whether or not due to the negligence of Agent.

10.6 In the event that the Transaction is not an outright sale, Owner agrees that if Agent is not paid the Agreed Commission provided for herein within thirty days of the date due, that Agent shall have a lien in the amount of such commission, and may record a notice of such lien, against the Property.

10.7 Owner agrees that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to the services to be performed by Agent pursuant to this Agreement may be brought against Agent more than one year after the date set forth in paragraph 1.1 and that the liability (including court costs and attorney's fees) of Agent with respect to any such lawsuit and/or legal proceeding shall not exceed any fee received by Agent pursuant to this Agreement; provided, however, that the foregoing limitation on liability shall not be applicable to any gross negligence or willful misconduct of Agent.

**11. ARBITRATION OF DISPUTES.**

11.1 ANY CONTROVERSY ARISING UNDER OR RELATING TO THIS AGREEMENT SHALL BE DETERMINED BY BINDING ARBITRATION TO BE CONDUCTED BY:  THE AMERICAN ARBITRATION ASSOCIATION OR  USING THE COMMERCIAL RULES ESTABLISHED BY SUCH ORGANIZATION OR IF NONE THE AMERICAN ARBITRATION ASSOCIATION'S COMMERCIAL RULES. ARBITRATION HEARINGS SHALL BE HELD IN THE COUNTY WHERE THE PROPERTY IS LOCATED.

11.2 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 THOSE 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 AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

11.3 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.

\_\_\_\_\_  
Owner's Initials

\_\_\_\_\_  
Agent's Initials

11.4 THE PROVISIONS OF THE ABOVE ARBITRATION CLAUSE SHALL NOT BE BINDING ON EITHER PARTY UNLESS BOTH PARTIES HAVE PLACED THEIR INITIALS UNDER PARAGRAPH 11.3.

**12. Additional Provisions:** Additional provisions of this Agreement are set forth in the following blank lines or in an addendum attached hereto and made a part hereof consisting of paragraphs \_\_\_\_\_ through None (if there are no additional provisions write "NONE"):

**13. Disclosures Regarding The Nature of a Real Estate Agency Relationship.** When entering into an agreement with a real estate agent an Owner should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction.

(i) *Owner's Agent.* An Owner's agent may act as an agent for the Owner only. An Owner's agent or subagent has the following affirmative obligations: *To the Owner:* A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings. *To a potential buyer/lessee and the Owner:* a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) *Agent Representing Both Parties.* A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both Parties in a transaction, but only with the knowledge and consent of the Parties. In a dual agency situation, the agent has the following affirmative obligations to both Parties: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Party. b. Other duties to the Owner as stated above in subparagraph (i). When representing both Parties, an agent may not without the express permission of the respective Party, disclose to the other Party that the Owner will accept rent/purchase price in an amount less than that indicated in the listing or that the buyer/lessee is willing to pay a higher rent/purchase price than that offered.

The above duties of the Agent do not relieve Owner from the responsibility to protect its own interests. Owner should carefully read all agreements to assure that they adequately express its understanding of the transaction.

**"OWNER"**

**"AGENT"**

Service Concept International, Inc.

Voit Commercial Brokerage

By: \_\_\_\_\_  
Name Printed: Chuck Trout

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

Title: Owner

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

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

**NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 800 W 6th Street, Suite 800, Los Angeles, CA 90017. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616. H:\AIRFORMS\BWIN\Fairview563\ListingAgmt\ps**



## Schedule of Commissions

### LEASE COMMISSIONS

**I. Gross Lease:**

1st year .....	6% of the rent	5th year .....	4% of the rent
2nd year .....	6% of the rent	6th through 10th year .....	3% of the rent
3rd year .....	5% of the rent	11th through 30th year .....	2% of the rent
4th year .....	4% of the rent	Balance of the term .....	1% of the rent

**II. Net Lease:**

1st year .....	7% of the rent	5th year .....	5% of the rent
2nd year .....	7% of the rent	6th through 10th year .....	3% of the rent
3rd year .....	6% of the rent	11th through 30th year .....	2% of the rent
4th year .....	5% of the rent	Balance of the term .....	1% of the rent

**III. Commencement of Rent:** For the purpose of computing the amount of the commission due for a lease transaction, the first month the base or minimum rental commences shall be deemed to be the first month of the lease.

**IV. Percentage Rental:** As to any leases which contain a percentage rent clause. Owner shall pay a commission on the percentage rent at the same rate as applicable for the minimum guaranteed rent as above provided. This commission shall be due and payable within fifteen days after the Tenant's final payment and accounting of percentage rental for the preceding lease year. At the end of the third full lease year there shall be a settlement as to any commission due on percentage rental for the remainder of the original term of the lease calculated upon the assumption that the percentage rental for each year of the remainder of the term will be the same as the percentage rental for the third full lease year.

**V. Base or Minimum Guaranteed Rental Increases:** As to any leases which contain a base or minimum rental increase clause, of which said rental increase is to be based upon a Consumer Price Index, Cost of Living Index or any other method or Index of which said Increases are undeterminable at the time when lease commissions are due, then Owner, for the purpose of computing the amount of commission due for said undeterminable rental increases, will pay a commission based upon a 3% annualized rental increase at the same rate as that applicable for the base or minimum guaranteed rental as provided above. If said Base or Minimum Guaranteed Rental Increase Clause contains a provision for an Increase not to be less than, nor more than a certain amount or percentage increase, then Owner will pay the commission based upon the lesser of the two increases.

**VI. Extension of Lease or Additional Space Taken:** Should the term of the lease be extended or the Tenant occupy additional space in the same building or same complex of buildings. whether by virtue of provisions in the lease or through subsequent modification of the lease to provide same, then a leasing commission shall be paid at such time as said term is extended or said additional space is occupied. Said leasing commission shall be computed in accordance with the provisions of this Schedule and by using the rates applicable as if the initial term of the lease had included said extension period and/or in the case Tenant occupies additional space, by using the rates applicable for new occupancy.

**VII. Purchase of Leased Property By Tenant:** Should Tenant, his successor or assignee purchase the leased property, or any part thereof, during the term of the lease, any extensions thereof or within 180 days after expiration thereof, then a sales commission shall be paid at such time as the purchase is effected. Said sales commission shall be computed as set forth herein below, less the amount of the paid-up lease commissions relating to the portion of the lease extending beyond the effective date of said purchase, provided, however, that there shall be no rebate in the event the sales commission be less than the paid-up lease commission relating to that portion of the lease extending beyond the effective date of said purchase.

**VIII. Build to Suit/New Construction/Tenant Improvements:** Where the negotiation of a lease is the originating cause of a build to suit, new construction, or tenant improvements in excess of \$100,000, each commission rate for all leases pertaining to the first ten years of the term of the lease shall be increased by %.

**IX. Month-to-Month Tenancy:** Commission shall be 50% of the first month's rent, but in no event, less than \$1,000.00, payable upon execution of the month-to-month rental agreement. In the event a month-to-month tenant subsequently executes a lease, either direct with Owner, Lessor, Sublessor or through Broker, the Broker shall receive a leasing commission in accordance with provisions of this Schedule, due upon execution of the lease.

**X. Subleases:** The commission shall be computed and payable in the same manner as a lease, but in no event less than \$1,000.00. In the event property is offered as a sublease, and in lieu of a sublease with a new tenant, the Lessee (Sublessor) is relieved of his lease obligation either through an assignment of the lease or a cancellation of the lease, then Broker shall be paid a commission based on the amount of actual rental relief, net or gross, accruing to Lessee (Sublessor), and in accordance with the rates and provisions of this Schedule, but in no event less than \$1,000.

### EXHIBIT "A"

**SALE & EXCHANGE COMMISSIONS**

- I. Unimproved Property (acreage substantially lacking amenities necessary for urban development, such as utilities, and/or zoning):** 10% of the gross sale price.
- II. Improved Property:** 6% of the gross sale price.
- III. Option to Purchase, First Right of Refusal to Purchase:** Owner shall pay Broker a sales commission in accordance with this Schedule on the price paid for said option or First Right of Refusal and for any extensions thereof. This commission shall be paid upon receipt by Owner of any such payment(s). In the event such an option or First Right is exercised, Owner shall also pay Broker a sales commission on the gross sales price of the Property in accordance with this Schedule (less any commission previously paid by Owner to Broker for such option payments, provided said option payments were applied to the purchase price).
- IV. Exchange:** Each party to the exchange shall pay a full commission based upon the type and fair market value of the properties exchanged by it in accordance with this Schedule. Fair Market Value of the properties shall be that as set forth in the exchange documents.
- V. Joint Venture:** Should a joint venture be effected in lieu of a sale, a full commission shall be paid based upon the Fair Market Value of the property as determined for purposes of the joint venture agreement.
- VI. Business Opportunity:** 10% of the total consideration.

**PAYMENT OF COMMISSIONS**

- I. Lease Commission:** Commissions shall be due and payable on the execution of a lease by Owner and Tenant, Broker is hereby authorized to deduct its commission pursuant to the foregoing schedule from funds held in its trust account; the Owner shall pay any differences in cash in accordance herewith.
- II. Sales & Exchange Commission:** Commissions shall be paid through Escrow upon the closing thereof; absent an escrow, commissions shall be paid upon recordation of a deed; in the event of a contract for deed, a commission shall be paid upon execution of the contract. If a joint venture agreement is effected in lieu of a sale, the commission shall be paid upon execution of the joint venture agreement.

**MISCELLANEOUS PROVISIONS**

- I.** In the event of any action by Broker to recover a commission or other payment due it as a result of or arising out of this Schedule, or as a result of any facts based upon or involving this Schedule, the prevailing party shall be entitled to recover from the non-prevailing party or parties such prevailing party's attorney's fees, court costs, expert witness fees and other expenses related to such attempts to recover, including such fees, costs and expenses on appeal. In the event any commissions or other payments are due and owing hereunder to Broker and not promptly paid when due and owing, they shall, from the date of such default bear interest at the maximum rate of interest to which the parties could contract in writing for the forbearance of money under California and Federal law on the date of such default.
  - II.** While this schedule is not affected thereby, it is understood that there are certain instances whereby a higher rate may be charged. The provisions hereof are subject, however, to the terms and provisions of any Listing Agreement or other agreement to which this schedule may be attached and which is executed by the parties hereto.
  - III.** The undersigned hereby acknowledges receipt of a copy of this schedule and further agrees that it shall be binding upon the heirs successors and assigns of the undersigned. The term Owner, when used herein shall be deemed to mean the owner of the property, a lessee under a ground lease, and any lessee desiring to effect subleases
- Note:** If the property covered by this Schedule of Commissions is owned solely, jointly or by a corporation, each individual signing represents and warrants that he is authorized to execute and deliver this document and to bind said owners or such other owners or corporation having any interest in the property.

**Approved by: "OWNER"**

Service Concept International, Inc. \_\_\_\_\_

Property: 563 N. Fairview  
Address: Santa Ana, CA

Telephone: 714-542-3706

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

Name Printed: Chuck Trout

Title: Owner

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

**Accepted by: "BROKER"**

VOIT COMMERCIAL BROKERAGE

Address: 3500 W. Orangewood Avenue  
Orange, CA 92868

Telephone: (714) 978-7880 FAX: (714) 978-9431

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

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

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

**This schedule is for use only in transactions in which Voit Commercial Brokerage is involved and is not to be distributed to others.**