

# Commercial Mortgage Loan Fee Agreement

(and authorization to release information)

This agreement is made this \_\_\_\_ Day of \_\_\_\_, 200\_\_, by and between **American Capital Financial Services** (Commercial Mortgage Loans) hereinafter referred to as AmCap Commercial and > \_\_\_\_\_ > hereinafter referred to as "Applicant," concerning the property described below hereinafter referred to as "Project". This Agreement serves to set forth the understanding in connection with the proposed financing for the "Project" as depicted herein below:

Project Name: \_\_\_\_\_

Location: \_\_\_\_\_

City: \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_

- Minimum Loan Amount: \$ \_\_\_\_\_
  - Minimum Loan Term: \_\_\_\_\_ Years
  - Minimum Loan Amortization: \$ \_\_\_\_\_ Years
  - Maximum Interest Rate: \_\_\_\_\_%
  - Loan Type: Fixed: \_\_\_\_\_ Variable: \_\_\_\_\_ Either: \_\_\_\_\_
  - Recourse Options: Full Recourse: \_\_\_\_\_ Non-Recourse: \_\_\_\_\_ Negotiable: \_\_\_\_\_
  - Other stipulations: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

## Applicant hereby agree as follows:

**APPLICANT'S AGENT** - AmCap Commercial, is hereby engaged as Applicant's agent and is authorized to solicit loan applications for Project from any or all of the lenders that American Capital Financial Services has and Origination Agreement with or with whom a Broker Agreement is honored by said lender, to negotiate terms of these applications and, if an application is signed by Applicant, to assist in the closing of the loan, **Applicant understands that American Capital Financial Service, or American Capital Commercial is not a direct lender and none of its funds will be used to finance the Project.**

**APPLICANT RESPONSIBILITIES** – Applicant agrees to provide the information required by AmCap Commercial to create the loan request package. Applicant agrees to review the completed loan request package and is responsible for its accuracy. After the loan application has been obtained, Applicant agrees to use due diligence to close the loan. Applicant is responsible to ensure that the agreed upon FINANCING SUCCESS FEE is paid out of escrow/closing.

**LENDERS** – AmCap Commercial is hereby authorized to solicit loan applications for the Project from the lenders with whom it has agreements with (150) and any or all of the approximately 500 Commercial Mortgage Lenders it has contact with as necessary. Applicant agrees, that AmCap Commercial, shall be Applicant's only agent for financing of this project during the term of this agreement.

**NO GUARANTEE OF FINANCING SUCCESS** – AmCap Commercial agrees to use reasonable commercial efforts to obtain and close financing for the Project. AmCap Commercial does not guarantee that financing can or will be obtained. Applicant agrees that AmCap Commercial will not be liable to Applicant for any losses or damages whatsoever in the event financing is not obtained.

**Fees.** The Applicant hereby agrees to pay the following fees: (\$     to \$     ) Processing Fee. The Applicant agrees to pay AmCap Commercial a non-refundable application/processing Fee of \$\_\_\_\_\_ for services performed in accordance with this Agreement, whether or not the Proposed financing is completed. This fee is earned when the project has been fully underwritten and a “Request for Mortgage Loans Quote” is generated and submitted to at least 4 lenders with a copy to the Applicant.

**Success Fee.** (0.5% to 1.5% with a minimum fee of %7,500.00) The Applicant agrees to pay AmCap Commercial a success fee equal to \_\_\_\_\_% of any loan secured by the Property as defined in this “Project” for which AmCap Commercial was the procuring cause of the financing. The success fee is fully earned when the financing has been approved in writing by a lender with the terms and conditions acknowledged in writing to be acceptable to the Applicant.

**Other Fees.** Applicant to pay the customary lender fees, escrow/closing and other reasonable expenses necessary for the closing of said loan, including without limitation title insurance, attorneys fees, escrow, notary, tax service, recording, structural/seismic report, environmental audit fees, survey fees, credit reports, commitment and standby fees, if any, and appraisals if required.

**Payment From Closing Proceeds.** Applicant agrees that AmCap Commercial has the right to require that payment of the FINANCING SUCCESS FEE be made directly out of the proceeds of the loan and disbursed directly from escrow/closing, and Applicant hereby irrevocably appoints AmCap Commercial its limited Attorney-in-Fact for the sole purpose of issuing instructions to Escrow/Closing Holder to pay the FINANCING SUCCESS FEE directly to AmCap Commercial *Applicant further agrees that AmCap Commercial may use this executed Fee Agreement as a demand in escrow/closing, directing Escrow/Closing Holder to pay and remit the loan fee.*

**DURATION OF AGREEMENT.** This agreement shall be valid for a period of (twelve) 12 Months from date hereof. Unless cancelled in writing by Applicant at the end of said period, this agreement will automatically be extended for an additional 30 days, at the end of which time it will terminate unless extended in writing by both parties.

**GOVERNED BY LAWS OF CALIFORNIA** – AmCap Commercial is a Licensed Real Estate Broker in the state of California # -----. All services rendered to Applicant (no matter what state the Applicant Project is located in) are provided within the state and conform to the CA DRE regulations for commercial loans. Some states limit the involvement of a Broker in the Commercial Loan Process and our involvement shall be limited to those activities allowed. The fees and charges paid to us by the Applicant will remain as stipulated herein irregardless of the extend of our involvement in the loan process as long as the project is financed. This agreement shall be governed by and construed in accordance with the laws of the State of California. If legal action is undertaken to enforce or to declare in effect any provision of this Agreement, that legal action shall be in the venue of the Superior Court of California in and for the County of Los Angeles, and the Court, as part of its judgment, shall award reasonable attorney’s fees, interest on

amount owed to the maximum allowable rate by law and any other related costs to the prevailing party.

**MEDIATION OF DISPUTES** - In the event any dispute or controversy arises with respect to the subject matter of this agreement or the transaction contemplated herein (including, but not limited to, the parties rights with respect to payment of commissions as provided herein) which the parties are unable to resolve among themselves after a good faith effort to do so, at the request of either party. All parties to this agreement agree to attempt to resolve such dispute or controversy through mediation in Los Angeles California pursuant to a mediation conducted by a mediator appointed by the American Arbitration Association in accordance with its mediation rules.

**ARBITRATION OF DISPUTES** – In the event any dispute or controversy arises with respect to the subject matter of this agreement or the transaction contemplated herein (including, but not limited to, the parties rights with respect to payment of Commissions as provided herein) that is not resolved as provided in paragraph “Mediation of Disputes” Above. Applicant and Miromax Lending agree that such dispute or controversy shall be settled by final, binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court that has jurisdiction thereof.

**APPLICANTS DUTIES** – The Applicant agrees to provide any and all requested information required by AmCap Commercial or any Lender with whom a request is made, in full and timely manner. Additionally, the Applicant shall execute and deliver the appropriate completed forms that may be customarily required to secure financing on the Project Property including this authorization to release information for credit scores.

Applicants Name: \_\_\_\_\_  
Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_  
Zip: \_\_\_\_\_  
SS#: \_\_\_\_\_  
Email: \_\_\_\_\_

**FULL AUTHORITY TO EXECUTE THIS AGREEMENT ON BEHALF OF ALL PARTIES INVOLVED IS WARRANTED TO BE HELD BY THE UNDERSIGNED.**

**ACCEPTED AND AGREED TO:**

Applicant:

Broker:

By: \_\_\_\_\_  
Applicant Date: \_\_\_\_\_

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