**Breakage Fee Provisions**

**(Commitment)**

**(Revised 10-11-2021)**

**(ONLY APPLICABLE TO LETTERS OF COMMITMENT)**

**(NOT APPLICABLE TO SBL, BOND CREDIT ENHANCEMENTS OR UNFUNDED FORWARDS)**

**(CONTACT FREDDIE MAC FOR EARLY RATE LOCK APPLICATIONS)**

**[SELLER MUST INSERT INTO APPLICATION, COMMITMENT, OR OTHER WRITTEN AGREEMENT WITH BORROWER AS REQUIRED BY GUIDE SECTION 27.4(b)]**

Property Name and Address:

Borrower: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Guarantor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Mortgage Amount: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Breakage Fee

Borrower and Breakage Obligor each acknowledges that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[SELLER TO INSERT SELLER’S NAME]** (“**Lender**”) is executing this \_\_\_\_\_\_\_\_\_\_\_\_\_\_ with Borrower (“**Lender Commitment**”) in reliance on the agreement of the Federal Home Loan Mortgage Corporation (“**Freddie Mac**”) to lock the interest rate (“**Rate Lock**”) for the Mortgage and enter into a Commitment to purchase the Mortgage (“**Freddie Mac** **Commitment**”).

Borrower and Breakage Obligor each further acknowledges:

a. In connection with the Rate Lock, Freddie Mac will enter into one or more “hedge” transactions (“**Hedge**”) in which it will incur trading costs (“**Hedging Costs**”).

b. If Freddie Mac is forced to liquidate its Hedge and unwind the Rate Lock because of a Default (as defined below), Freddie Mac could incur Hedge losses (“**Hedging Losses**”). The Hedging Costs and the Hedging Losses are referred to collectively as the “**Breakage Fee**”. In such event, Lender will be obligated to pay Freddie Mac the Breakage Fee determined as set forth in the Section entitled “Determination of Breakage Fee” below.

c. Upon a Default, Lender intends to pay to Freddie Mac any good faith deposit Lender has collected under this Lender Commitment (“**GFD**”). Any GFD collected by Lender is a deposit for, and not in full satisfaction of, the payment of the Breakage Fee, and the Breakage Fee may exceed the amount of the GFD.

d. Upon a Default, Lender also intends to assign to Freddie Mac the Borrower’s and Breakage Obligor’s obligation pursuant to this Lender Commitment to pay Lender the Breakage Fee (“**Assignment**”). Pursuant to the Assignment, Freddie Mac will be entitled to collect from Borrower and Breakage Obligor any portion of the Breakage Fee that exceeds the GFD.

2. Default under Lender Commitment

Borrower and Breakage Obligor each acknowledges that if after Rate Lock any of the following occurs (each, a “**Default**”), Borrower and Breakage Obligor will be liable to Lender for the payment of the Breakage Fee, in addition to the Application Fee.

a. Borrower fails to execute and return Exhibit A by the date specified in the Lender Commitment.

b. Borrower breaches the terms of the Lender Commitment and as a result of such breach, Lender is in breach of its obligations under the Freddie Mac Commitment.

3**.** Determination of Breakage Fee. Notwithstanding anything in the *Guide* to the contrary, the Breakage Fee will be determined as set forth below.

a*.* Floating Rate Mortgages: If the Mortgage that is the subject of this Lender Commitment accrues interest at a floating rate of interest, the Breakage Fee will be 1% of the Mortgage amount set forth on Exhibit A (“**Rate Locked Mortgage Amount**”).

b. Fixed Rate Mortgages: If the Mortgage that is the subject of this Lender Commitment accrues interest at a fixed rate of interest, the Breakage Fee will be the greater of (A) or (B) below, but will in no event exceed 3.0% of the Rate Locked Mortgage Amount:

(A) 0.5% of the Rate Locked Mortgage Amount; or

(B) the product obtained by multiplying:

(1) the Rate Locked Mortgage Amount

***by***

(2) the value obtained by subtracting

a. the Monthly Yield Rate at Breakage

***from***

b. the Monthly Applicable Yield Rate at Rate Lock

***by***

(3) the Present Value Factor

For purposes of this Section the following definitions will apply:

**Breakage Date**: the earliest to occur of (i) the date the Borrower notifies Lender or Freddie Mac in writing that it will not or cannot originate the Mortgage, (ii) the date Lender notifies Freddie Mac in writing of its inability to deliver the Mortgage, or (iii) the Mandatory Delivery Date

**Rate Locked Mortgage Amount**: the amount of the Mortgage set forth in Exhibit A

**Yield Rate at Breakage**: as of the close of the trading session on the Breakage Date, the yield rate with a maturity equal to the term of the Index set forth in Exhibit A, found among the Daily Treasury Yield Curve Rates, commonly known as the Constant Maturity Treasury (CMT) rates, as reported on the U.S. Department of the Treasury website.

The Yield Rate at Breakage will be expressed as a decimal to two digits.

If no published CMT maturity matches the term of the Index, Freddie Mac will interpolate as a decimal to two digits the yield rate between (i) the CMT with a maturity closest to, but shorter than, the term of the Index, and (ii) the CMT with a maturity closest to, but longer than, the term of the Index, as follows:

**(B-A)**

**(D-C)**

+

**A**

[(

)

X

**(E-C)**

]

A = yield rate for the CMT with a maturity shorter than the term of the Index

B = yield rate for the CMT with a maturity longer than the term of the Index

C = number of months to maturity for the CMT maturity shorter than the term of the Index

D = number of months to maturity for the CMT maturity longer than the term of the Index

E = number of months in the term of the Index

In the event the U.S. Department of the Treasury ceases publication of the CMT rates, the Yield Rate at Breakage will equal the yield rate on the U.S Treasury security which is not callable or indexed to inflation and which has a maturity closest to (but not shorter than) the term of the Index.

The selection of an alternate security pursuant to this Section will be made in Freddie Mac’s discretion.

**Monthly Yield Rate at Breakage**: the Yield Rate at Breakage divided by 12

**Applicable Yield Rate at Rate Lock:**

(1)For any Mortgage for which there was **not** an Index Lock (as indicated in Exhibit A), the “**Applicable Yield Rate at Rate Lock**” is the “Actual Index Rate at Rate Lock” set forth in Exhibit A.

(2) For any Mortgage for which there **was** an Index Lock (as indicated in Exhibit A), the “**Applicable Yield Rate at Rate Lock**” is the “Yield on Index at Index Lock” set forth in Exhibit A to the Index Lock Agreement with respect to the Index-Locked Portion, and, with respect to the Non Index-Locked Portion (if any) the “**Applicable Yield Rate at Rate Lock**” will be the “Actual Index Rate at Rate Lock” set forth in Exhibit A.

**Monthly Applicable Yield Rate at Rate Lock:** the Applicable Yield Rate at Rate Lock divided by 12

**Present Value Factor**: the factor that discounts to present value the costs resulting to Freddie Mac from the difference in the Applicable Yield Rate at Rate Lock and the Yield Rate at Breakage calculated using the following formula:

1 - (1 + r)-n

(r)

r = Monthly Yield Rate at Breakage

n = the number of months in the Mortgage term (set forth in Exhibit A)

4. Obligation to Pay Breakage Fee; Joint and Several Liability

If there is a Default or if the Breakage Fee is otherwise due and payable (“**Breakage Fee Event**”), Lender will be liable to Freddie Mac, and Borrower and Breakage Obligor will be liable to Lender, for the Breakage Fee. The liability of each person and/or entity constituting Borrower and Breakage Obligor for the Breakage Fee will be joint and several.

5. Payment of GFD; Assignment to Freddie Mac of Obligation to Pay Remaining Breakage Fee

Upon a Breakage Fee Event, Lender will (a) pay the GFD to Freddie Mac, who will credit the GFD, less any portion of the Application Fee that is still owed to Freddie Mac, towards the Breakage Fee and (b) effectuate the Assignment, pursuant to which Borrower and Breakage Obligor will be obligated to pay to Freddie Mac any portion of the Breakage Fee that exceeds the GFD. Borrower and Breakage Obligor each consents to the Assignment and the delivery of the GFD to Freddie Mac. Borrower and Breakage Obligor each acknowledges that the Assignment will in no way alter or diminish Borrower’s or Breakage Obligor’s other obligations to Lender under this Lender Commitment; provided, however, to the extent that Borrower and/or Breakage Obligor has paid the Breakage Fee to Freddie Mac directly, Lender will not be entitled to collect the Breakage Fee. Borrower and Breakage Obligor each confirms and acknowledges that if the Breakage Fee becomes due, pursuant to the Assignment, Freddie Mac may demand that Borrower and Breakage Obligor pay the Breakage Fee directly to Freddie Mac and Freddie Mac will not be required to pursue its remedies first against Lender.

6. Waiver of Right to Assert Defenses

By execution of this Lender Commitment, Borrower and Breakage Obligor each waives, to the fullest extent permitted by applicable law, the right to assert against Freddie Mac as assignee of Lender, any claim or defense to the claim assigned that arises out of transactions or relationships between Borrower and Lender and/or between Breakage Obligor and Lender, including claims or defenses for fraud or set-off. By execution of this Lender Commitment, Borrower and Breakage Obligor each acknowledges and agrees that this waiver is entered into knowingly and voluntarily with the benefit of competent legal counsel.

7. Waiver of Right to Contest Liquidated Damages

By execution of this Lender Commitment, Borrower and Breakage Obligor each waives, to the fullest extent permitted by applicable law, any defense as to the validity of any liquidated damages set forth in this Lender Commitment on the grounds that such liquidated damages are void as penalties or are not reasonably related to the actual damages. By execution of this Lender Commitment, Borrower and Breakage Obligor each acknowledges and agrees that this waiver is entered into knowingly and voluntarily with the benefit of competent legal counsel.