

AMENDED AND RESTATED
SUBORDINATED LOAN AGREEMENT

between

NIBC Conditional Pass-Through Covered Bond Company B.V.
as the CBC

and

B.V. NIBC Mortgage Backed Assets
as the Subordinated Loan Provider

and

NIBC Bank N.V.
as the Issuer

Stichting Security Trustee NIBC Conditional
Pass-Through Covered Bond Company
as the Security Trustee

Originally dated 19 July 2013
as amended and restated on 29 July 2015

NautaDutilh N.V.
Amsterdam

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Schedule 1: Form of Subordinated Loan Drawing Report

This Subordinated Loan Agreement is originally made on the 19th day of July 2013, as lastly amended and restated on 29 July 2015 between:

1. **NIBC Conditional Pass-Through Covered Bond Company B.V.**, a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) organised under the laws of the Netherlands, and established in Amsterdam, the Netherlands (the **CBC**);
2. **NIBC Bank N.V.**, a public company with limited liability (*naamloze vennootschap met beperkte aansprakelijkheid*) organised under the laws of the Netherlands and established in The Hague, the Netherlands (the **Issuer**);
3. **B.V. NIBC Mortgage Backed Assets**, a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) organised under the laws of the Netherlands, and established in The Hague, the Netherlands (the **Subordinated Loan Provider**); and
4. **Stichting Security Trustee NIBC Conditional Pass-Through Covered Bond Company**, a foundation (*stichting*) organised under the laws of the Netherlands, and established in Amsterdam, the Netherlands (the **Security Trustee**);

WHEREAS

- A. The Issuer has set up the Programme;
- B. in connection with the establishment of the Programme it is required that the CBC issues the Guarantee. In order to enable the CBC to pay the Guaranteed Amounts, sufficient Eligible Assets need to be held by the CBC;
- C. under the Programme the Transferors may sell and transfer from time to time Eligible Assets (which includes, *inter alia*, New Mortgage Receivables and Substitution Assets) to the CBC and the CBC may purchase and accept the transfer of the Eligible Assets, provided that NIBC Bank N.V. will only transfer Eligible Collateral to the CBC and will not transfer Eligible Receivables to the CBC;

- D. pursuant to the Trust Deed, the CBC will be required to open a Reserve Account which will be credited by the CBC, with an amount equal to the higher of (i) Reserve Account Required Amount and (ii) the Liquidity Reserve Required Amount and such further amounts as are necessary from time to time to ensure that an amount up to the higher of (i) the Reserve Account Required Amount and (ii) the Liquidity Reserve Required Amount is credited to the Reserve Account;
- E. for the purpose of (i) paying the purchase price for the New Mortgage Receivables and Substitution Assets payable by the CBC to the relevant Transferor and (ii) crediting the Reserve Account up to the higher of (i) the Reserve Account Required Amount and (ii) the Liquidity Reserve Required Amount, the Subordinated Loan Provider is willing to make available to the CBC a Subordinated Loan Facility subject to and in accordance with the terms of this Agreement.

IT IS HEREBY AGREED AS FOLLOWS:

1. Definitions and Interpretation

- 1.1. In this Agreement (including its recitals), except so far as the context otherwise requires, words, expressions and capitalised terms used herein and not otherwise defined or construed herein shall have the meanings defined or construed in the master definitions agreement originally dated 19 July 2013 as lastly amended and restated on 29 July 2015 and signed by, amongst others, the parties to this Agreement, as the same may be amended, restated, novated, supplemented or otherwise modified from time to time (the **Master Definitions Agreement**). The rules of usage and of interpretation as set forth in the Master Definitions Agreement and all other agreements and understandings between the parties hereto contained therein shall apply to this Agreement, unless otherwise provided herein.
- 1.2. The expressions "**Agreement**" shall herein mean this Subordinated Loan Agreement including its Schedule.

2. The Subordinated Loan Facility

- 2.1. The Subordinated Loan Provider undertakes to make available to the CBC the Subordinated Loan Facility and shall advance the Subordinated Loan Advances, upon receipt of a request for a Subordinated Loan Advance as

set out in Clause 5, subject to and in accordance with the terms and conditions of this Agreement, (A) on the first Transfer Date and each Transfer Date thereafter, in an amount equal to the initial purchase price for the New Mortgage Receivables and Substitution Assets due and payable by the CBC to the relevant Transferor on such Transfer Date in accordance with the Guarantee Support Agreement and (B) on any day, in an amount equal to the positive difference between the higher of (i) the Reserve Account Required Amount and (ii) Liquidity Reserve Required Amount and the balance standing to the credit of the Reserve Account on such date, if any (each such day on which a Subordinated Loan Advance is advanced an "**Utilisation Date**").

- 2.2. The amount of the Subordinated Loan Facility is EUR 7,500,000,000 (unless agreed otherwise).

3. Purpose

- 3.1. The Subordinated Loan Facility shall be used by the CBC for the purpose of (i) paying the purchase price for the New Mortgage Receivables and Substitution Assets payable by the CBC to the relevant Transferor and (ii) crediting the Reserve Account up to the higher of (i) the Reserve Account Required Amount and (ii) the Liquidity Reserve Required Amount.
- 3.2. The Subordinated Loan Provider is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4. Conditions to Utilisation

The obligation of the Subordinated Loan Provider to make available any Subordinated Loan Advance under this Agreement shall be subject to the fulfilment on or prior to each Utilisation Date of the following conditions:

- a) a request for a Subordinated Loan Advance as set out in Clause 5 below has been served;
- b) the aggregate amount outstanding under the Subordinated Loan Facility including the relevant Subordinated Loan Advance on such date does not exceed EUR 7,500,000,000;
- c) other than in case a Subordinated Loan Advance is requested for the purpose of paying the purchase price for New Mortgage

Receivables, no Issuer Acceleration Notice has been served nor a CBC Event of Default has occurred.

5. Request for Subordinated Loan

The CBC, or the Administrator on its behalf, may request the Subordinated Loan Provider to grant a Subordinated Loan Advance in the form as agreed between the Subordinated Loan Provider and the CBC.

6. Interest

- 6.1. Each Subordinated Loan Advance and any interest accrued pursuant to Clause 8.2 will bear interest, by reference to successive CBC Payment Periods, from (and including) the relevant Utilisation Date until (but excluding) the day such Subordinated Loan Advance (and all accrued interest thereon) is repaid in full, initially at a rate of 3.00 per cent. per annum and from and including 17 June 2015 at a rate of 2.50 per cent. per annum, which rate may be reset on the CBC Payment Period falling in June of each year by the Subordinated Loan Provider at a rate which is in line with the last publicly issued senior unsecured debt obligations of the Issuer under its Euro Medium Term Notes programme, unless the Subordinated Loan Provider determines that such rate substantially deviates from the rate which at such date would be expected to be payable by NIBC Bank on such senior unsecured debt obligations, in which case the Subordinated Loan Provider will set the interest rate at a level which it, in its reasonable discretion, determines to be a fair interest rate for NIBC Bank's senior unsecured debt obligations.
- 6.2. Interest on each Subordinated Loan Advance and any interest accrued pursuant to Clause 8.2 will be payable in arrears on each CBC Payment Date.
- 6.3. Interest shall be calculated by reference to any CBC Payment Period on the basis of the actual number of days elapsed in the relevant CBC Payment Period, or, in respect of the first interest payment in respect of a new Subordinated Loan Advance from and including the Utilisation Date up to and including the last day of the CBC Payment Period in which such Utilisation Date falls and a 365 day year.

- 6.4. For the avoidance of doubt, no commitment fee will accrue on the undrawn part of the Subordinated Loan Facility.

7. Repayment

- 7.1. The Subordinated Loan outstanding under this Agreement shall be repaid ultimately on the CBC Payment Date falling in June 2060.
- 7.2. On each CBC Payment Date the CBC will apply the Subordinated Loan Available Redemption Amount towards redemption of the Subordinated Loan up to the Subordinated Loan Maximum Redemption Amount.
- 7.3. After the earlier to occur of (i) service of a Breach of Asset Cover Test Notice (to the extent the Breach of Asset Cover Test is not remedied on such date) and (ii) service of an Issuer Acceleration Notice and a Notice to Pay on the CBC, the CBC will not have funds available in accordance with the CBC Priority of Payments for any payments to the Subordinated Loan Provider unless all Covered Bonds have been redeemed.

8. Interest Shortfall

- 8.1. If on any CBC Payment Date the CBC has insufficient funds available to it to satisfy its obligations to pay any amount of interest on the Subordinated Loan, the amount available (if any) shall be applied to the amount of interest due on such Subordinated Loan.
- 8.2. In the event of a shortfall as described in Clause 8.1, such shortfall shall not be treated as due on that CBC Payment Date for the purposes of this Agreement, but shall accrue interest as long as it remains outstanding at the rate of interest applicable to the Subordinated Loan for such period, and such shortfall and accrued interest thereon will be aggregated as if it were interest due on the next succeeding CBC Payment Date and the CBC, or the Administrator on its behalf, shall credit the Subordinated Loan Interest Deficiency Ledger pursuant to Clause 6 of the Administration Agreement with the amount of such shortfall.

9. Acceleration

- 9.1. If a CBC Event of Default occurs the Subordinated Loan Provider may by notice to the CBC declare that the Subordinated Loan shall become

immediately due and payable upon which the Subordinated Loan shall become immediately due and payable.

- 9.2. The CBC shall immediately notify the Subordinated Loan Provider of the occurrence of such CBC Event of Default.

10. Payments

- 10.1. All payments to be made hereunder by the CBC shall be made in euro in immediately available funds to the Subordinated Loan Provider's account as the Subordinated Loan Provider may have specified in writing to the CBC for this purpose. If any sum falls due hereunder otherwise than on a business day, it shall be paid on the next succeeding business day.
- 10.2. If the Subordinated Loan Advance is requested and made to finance the Initial Purchase Price for New Mortgage Receivables, the CBC will, unless otherwise indicated by it in the Utilisation Request, be deemed to have requested the Subordinated Loan Provider to pay the amount of the Subordinated Loan Advance directly to NIBC Bank on its behalf as payment of the Initial Purchase Price for the New Mortgage Receivables. NIBC Bank and the Subordinated Loan Provider may amongst themselves agree to transfer such amount or otherwise settle the amount due including by means of set-off.
- 10.3. On a CBC Payment Date on which New Mortgage Receivables are purchased by the CBC, the amount set off pursuant to this Clause 10 will be reported by the Issuer, on behalf of the Transferors, in a Subordinated Loan Drawing Report, a form of which has been attached hereto as **Schedule 1**, and provided to the CBC, the Security Trustee and the Subordinated Loan Provider.

11. Subordination and Limited Recourse

- 11.1. The parties hereby agree that the Subordinated Loan shall be subordinated to all other amounts payable ranking higher in the CBC Priority of Payments or, after the service of an CBC Acceleration Notice, the Post CBC Acceleration Priority of Payments.
- 11.2. The Subordinated Loan Provider agrees to be bound by the provisions of the Trust Deed.

- 11.3. The Subordinated Loan Provider covenants that, except as permitted under any of the Transaction Documents, it will not set off or claim to set off the Subordinated Loan or any interest thereon or any part of either thereof against any liability owed by it (in any of its capacities) to the CBC.
- 11.4. For as long as no CBC Acceleration Notice has been served, the CBC shall only be required to make repayments of all or any part of the Subordinated Loan if, and to the extent that the Interest Available Amount and the Principal Available Amount are sufficient after making the payments and provisions referred to in items (a) through (j) of the CBC Priority of Payments.
- 11.5. The Subordinated Loan Provider shall have no further claim against the CBC for the principal amount outstanding under the Subordinated Loan after the date on which the CBC no longer holds any Transferred Assets and there is no balance standing to the credit of the CBC Transaction Accounts and the CBC has no further rights under or in connection with any of the Transaction Documents.
- 11.6. In the event that the security created pursuant to the Pledge Agreements in respect of the Covered Bonds and the Coupons appertaining thereto has been fully enforced and the proceeds of such enforcement and any other amounts received by the Security Trustee, after payment of all other claims ranking under the Trust Deed in priority to the Subordinated Loan, are insufficient to pay in full all principal and interest, if any, and other amounts whatsoever due in respect of such Subordinated Loan, the Subordinated Loan Provider, shall have no further claim against the CBC or the Security Trustee in respect of any such unpaid amounts.

12. Reduction of Subordinated Loan

In connection with the CBC issuing the Guarantee, the Subordinated Loan Provider, the Issuer and the CBC agree that each time when the CBC has paid any Guaranteed Amount under the Guarantee, the Subordinated Loan may be reduced by the CBC with notice to the Issuer and to the Subordinated Loan Provider with an amount equal to the Guaranteed Amounts to be paid by the CBC to the Covered Bondholders. The Subordinated Loan will after such notice be reduced automatically with an amount equal to the amount paid by the CBC under the Guarantee.

13. Notices

Any notices to be given pursuant to this Agreement or to any of the parties hereto shall be sufficiently served if given in accordance with the Master Definitions Agreement.

14. Taxes

- 14.1. All payments to be made by the CBC to the Subordinated Loan Provider hereunder shall be made free and clear of and without deduction or withholding for or on account of tax unless the CBC is required by law to make such a payment subject to the deduction or withholding of tax, in which case the CBC shall promptly upon becoming aware thereof notify the Subordinated Loan Provider of such obligation, and shall make such payments subject to such deduction or withholding of tax which it is required to make.
- 14.2. If the CBC makes any payment hereunder in respect of which it is required to make any deduction or withholding, it shall pay the full amount required to be deducted or withheld to the relevant taxation or other authority within the time allowed for such payment under applicable law and shall deliver to the Subordinated Loan Provider, within thirty days after such payment falls due to the applicable authority, any original receipt (or a certified copy thereof) issued by such authority evidencing such payment.

15. Security Trustee as a Party

The Security Trustee has agreed to become a party to this Agreement for the better preservation and enforcement of its rights under this Agreement but shall have no responsibility for any of the obligations of, nor assume any liabilities to, the Subordinated Loan Provider or to the CBC hereunder.

16. No Assignment

Other than in accordance with the Transaction Documents, this Agreement and each party's rights and obligations thereunder may not be assigned nor pledged by any of the parties hereto.

17. No Dissolution, No Nullification, No Suspension

To the extent permitted by law, the parties hereby waive their rights pursuant to Articles 6:265 to 6:272 inclusive of the Dutch Civil Code to dissolve (*ontbinden*), or demand in legal proceedings the dissolution (*ontbinding*) of, this Agreement. Furthermore, to the extent permitted by law, the parties hereby waive their rights under Article 6:228 of the Dutch Civil Code to nullify, or demand in legal proceedings the nullification of, this Agreement on the ground of error (*dwalig*). Each party to this Agreement irrevocably waives any right it may have at any time to suspend (*opschorten*) any obligation under this Agreement under sections 6:52, 6:262 and 6:263 of the Dutch Civil Code or any other applicable law.

18. Governing Law and Jurisdiction

- 18.1. This Agreement, including Clause 18.2, and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of the Netherlands.
- 18.2. Any disputes arising out of or in connection with this Agreement, and any non-contractual obligations arising out of or in connection with it, shall be submitted to the district court in Amsterdam.

SIGNATORIES:

NIBC Conditional Pass-Through Covered Bond Company B.V.

by :
title :

NIBC Bank N.V.

by :
title : proxy holder
title :

by :
title : proxy holder

B.V. NIBC Mortgage Backed Assets

by :
title : proxy holder

by :
title : proxy holder

**Stichting Security Trustee NIBC Conditional Pass-Through
Covered Bond Company**

by :
title :

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50100663 (NIBC PTCB Programme)

Subordinated Loan Agreement

Execution copy

SCHEDULE 1

Form of Subordinated Loan Drawing Report

[as included in the execution copy of this Agreement dated 19 July 2013]