

**INTERCOMPANY LOAN AGREEMENT**

between

**TD COVERED BOND (LEGISLATIVE) GUARANTOR LIMITED PARTNERSHIP**

as the Guarantor

and

**THE TORONTO-DOMINION BANK**

as the Issuer and as Cash Manager

June 25, 2014

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## INTERCOMPANY LOAN AGREEMENT

THIS INTERCOMPANY LOAN AGREEMENT is dated as of this 25<sup>th</sup> day of June, 2014.

### BETWEEN:

**TD Covered Bond (Legislative) Guarantor Limited Partnership**, a limited partnership existing under the law of the Province of Ontario, whose registered office is at 66 Wellington Street West, 21<sup>st</sup> Floor, TD Bank Tower, Toronto, Ontario, Canada M5K 1A2, acting by its managing general partner **TD Covered Bond (Legislative) GP Inc.** (referred to herein as the “**Guarantor**”); and

**The Toronto-Dominion Bank**, a bank named in Schedule I to the *Bank Act* (Canada), whose executive office is at 66 Wellington Street West, P.O. Box 1, TD Bank Tower, Toronto, Ontario, Canada M5K 1A2, as the Issuer (referred to herein as the “**Issuer**”) and as the Cash Manager (hereinafter referred to as the “**Cash Manager**”).

### WHEREAS:

- (A) From time to time the Issuer will issue Covered Bonds pursuant to the Programme.
- (B) The Issuer has agreed that it will lend to the Guarantor an aggregate amount of Cdn \$20 billion (the “**Total Credit Commitment**”), which amount may be amended from time to time in accordance with the terms of this Agreement.
- (C) A portion of the Total Credit Commitment, the “**Initial Advance Commitment**”, will be used by the Guarantor to acquire the Initial Covered Bond Portfolio.
- (D) A portion of the Total Credit Commitment equal to the amount, if any, by which the Total Credit Commitment exceeds the amount of the Guarantee Loan on the immediately preceding Calculation Date (such amount, from time to time, the “**Revolving Commitment**”) shall be made available by the Issuer on a revolving basis, to the Guarantor to be used by the Guarantor for the purposes permitted hereby.
- (E) This Intercompany Loan Agreement sets out, among other things, the agreement between the Issuer and the Guarantor in relation to the lending of amounts to be used by the Guarantor to acquire Loans and their Related Security.

**IT IS AGREED** as follows:

### 1. INTERPRETATION

- 1.1 The Master Definitions and Construction Agreement made between, *inter alios*, the parties to this Agreement on June 25, 2014 (as the same may be amended, restated, varied or supplemented from time to time with the consent of the parties thereto) is expressly and specifically incorporated into this Agreement and, accordingly, the expressions defined in the Master Definitions and Construction Agreement (as so amended, restated,

varied or supplemented) shall, except where the context otherwise requires and save where otherwise defined herein, have the same meanings in this Agreement, including the recitals hereto and this Agreement shall be construed in accordance with the interpretation provisions set out in Section 2 of the Master Definitions and Construction Agreement.

## **2. THE INTERCOMPANY LOAN**

### **2.1 The Intercompany Loan**

Subject to the terms of this Agreement, the Issuer agrees to make available to the Guarantor, on an unsecured basis, an Intercompany Loan (the “**Intercompany Loan**”) in an aggregate amount equal to the Total Credit Commitment comprised of the Initial Advance Commitment and the Revolving Commitment. On any Toronto Business Day, the Guarantor may request that advances (each an “**Advance**” and collectively “**Advances**”) denominated in Canadian dollars under the Intercompany Loan be made available to it, subject to the terms of this Agreement, on such Toronto Business Day (each such date, a “**Drawdown Date**”).

### **2.2 Total Credit Commitment**

The Guarantor may from time to time request that the amount of the Total Credit Commitment be increased and upon written notice by the Issuer to the Guarantor, the amount of the Total Credit Commitment shall be increased to the amount as set out in such notice.

## **3. PURPOSE AND NATURE OF INTERCOMPANY LOAN**

### **3.1 Application of Advances by Guarantor**

- (a) The Initial Advance Commitment hereunder may only be used to purchase the Initial Covered Bond Portfolio from Seller in accordance with the terms of the Mortgage Sale Agreement.
- (b) Each Advance other than the initial Advance hereunder may only be used by the Guarantor:
  - (i) To purchase New Loans and their Related Security pursuant to the terms of this Agreement and/or the Mortgage Sale Agreement; and/or
  - (ii) to invest in Substitute Assets (in an amount up to but not exceeding the limit prescribed in Section 9.8 of the Guarantor Agreement); and/or
  - (iii) subject to written confirmation from the Guarantor that the Asset Coverage Test is met on the relevant Drawdown Date (both before and immediately following the making of the relevant Advance), to make a

Capital Distribution to any Seller (in its capacity as Partner) by way of distribution of that Partner's equity in the Guarantor in an amount equal to the Advance or any part thereof, which shall be paid to the Partner on the relevant next Guarantor Payment Date by wire transfer or as otherwise directed by the Partner; and/or

- (iv) to make a deposit of the proceeds in the Guarantor Accounts (including, without limitation, to fund the Reserve Fund to an amount not exceeding the limit prescribed in Section 6.1 of the Guarantor Agreement); and/or
- (v) to fund the Pre-Maturity Liquidity Ledger.

### 3.2 Guarantee Loan and Demand Loan

The aggregate principal amount of Advances outstanding at any time shall be recorded in the Intercompany Loan Ledger in accordance with Section 5.4 and deemed to be comprised of:

- (a) a guarantee loan (the "**Guarantee Loan**") portion in an amount equal to:

$$(X/Y) * Z + W$$

where,

X = the Adjusted Aggregate Loan Amount (see Schedule 2 for reference) at such time, but where "A" in the calculation of such amount is equal to the aggregate True Balance of the Loans in the Covered Bond Portfolio for the purposes of determining X;

Y = the maximum Canadian Dollar Equivalent of the aggregate Principal Amount Outstanding of Covered Bonds that could be issued by the Issuer without contravening the Asset Coverage Test at such time based on the assets of the Guarantor at such time;

Z = the actual Canadian Dollar Equivalent of the aggregate Principal Amount Outstanding of the Covered Bonds at such time, and

W = the sum of (i) the Contingent Collateral Amount relating to any Contingent Collateral Notice in effect at such time and delivered with respect to the Interest Rate Swap Agreement, plus (ii) the Contingent Collateral Amount relating to any Contingent Collateral Notice in effect at such time and delivered with respect to the Covered Bond Swap Agreement, in each case determined at such time,

and

- (b) a demand loan (the “**Demand Loan**”) portion in the amount, if any, by which the aggregate principal amount of the Advances outstanding at that time exceeds the amount of the Guarantee Loan at such time.

### **3.3 Revolving Intercompany Loan**

Any amount under the Revolving Commitment repaid hereunder may be re-borrowed provided that (i) such re-borrowing is for the purposes set out in Section 3.1(b), (ii) each of the conditions set forth in Section 4 have been satisfied, (iii) such re-borrowing does not result in the Guarantor being unable to satisfy the Asset Coverage Test on a pro forma basis following such re-borrowing and the application of the proceeds thereof, (iv) such re-borrowing does not result in the Intercompany Loan exceeding the Total Credit Commitment, and (v) no Issuer Event of Default or Guarantor Event of Default has occurred and is continuing.

Unless otherwise agreed by the Bank and subject to satisfaction of the Rating Agency Condition, no further advances will be made to the Guarantor under the Intercompany Loan following the occurrence of a Demand Loan Repayment Event.

### **3.4 Maturity and Extension of Revolving Commitment**

The Revolving Commitment shall expire and terminate, and all Advances together with accrued and unpaid interest thereon shall become immediately payable on, the date that is 364 days after the date of this Agreement (or 364 days after the effective date of the most recent extension pursuant to this Section 3.4) if (i) the Guarantor requests by notice in writing that the Issuer terminate its Revolving Commitment, or (ii) the Issuer notifies the Guarantor in writing that it intends to terminate its Revolving Commitment, in each case no less than 5 Toronto Business Days prior to such scheduled expiry and termination date, otherwise, the Revolving Commitment shall automatically renew for a further period of 364 days effective as of the date such commitment would otherwise expire and terminate. For certainty, the Revolving Commitment may be automatically renewed pursuant to this Section 3.4 one or more times.

### **3.5 No Obligation to Monitor**

Without prejudice to the obligations of the Guarantor under this Section 3, neither the Issuer nor the Bond Trustee nor any of the Secured Creditors shall be obligated to concern themselves as to the application of amounts drawn by the Guarantor under this Agreement.

### **3.6 Contingent Collateral**

- (a) Upon the occurrence of (x) a Contingent Collateral Trigger Event, (y) an event of default (other than an insolvency event of default) or an additional termination event in respect of which the relevant Swap Provider is the defaulting party or the affected party, as applicable, or (z) a Downgrade Trigger Event, in each case, in respect of the Interest Rate Swap Agreement or the Covered Bond Swap

Agreement, the relevant Swap Provider, in its capacity as (and provided it is) the lender under this Agreement, may deliver a notice substantially in the form attached as Schedule 3 hereto (each, a “**Contingent Collateral Notice**”) to the Guarantor under which it elects to decrease the amount of the Demand Loan with a corresponding increase in the amount of the Guarantee Loan, in each case, in an amount equal to the related Contingent Collateral Amount(s). A Contingent Collateral Notice may only be delivered if the balance of the Demand Loan (determined in accordance with Section 3.2 without regard to the related Contingent Collateral Amount) at such time exceeds the related Contingent Collateral Amount.

- (b) At any time that a Contingent Collateral Notice is in effect, the Guarantor (or the Cash Manager on its behalf) shall determine the Contingent Collateral Amount(s), the balance of the Guarantee Loan and the balance of the Demand Loan on each Toronto Business Day.
- (c) If (i) the circumstances triggering the delivery of a particular Contingent Collateral Notice have been cured, or (ii) the relevant Swap Provider and the Guarantor mutually agree to terminate a particular Contingent Collateral Notice, such Contingent Collateral Notice will be automatically revoked and of no further effect and the related Contingent Collateral Amount shall no longer be applicable in the determination of “W” in accordance with Section 3.2.

#### **4. CONDITIONS PRECEDENT**

##### **4.1 Conditions Precedent for Advances**

Save as the Issuer and the Guarantor may otherwise agree, each Advance will not be available unless on the date of the proposed Advance:

- (a) the Issuer shall have received a copy of a resolution duly passed by the board of directors of the managing general partner of the Guarantor authorizing its execution, delivery and performance on behalf of the Guarantor of this Agreement, such copy to be certified by an officer of such managing general partner;
- (b) the aggregate outstanding amount of Advances after giving effect to such Advance does not exceed the Total Credit Commitment;
- (c) no Issuer Event of Default, Guarantor Event of Default or Managing GP Default Event has occurred; and
- (d) unless agreed to by the Issuer and subject to satisfaction of the Rating Agency Condition, no Demand Loan Repayment Event has occurred.

## 5. ADVANCES

### 5.1 Giving of Advance Requests

Not later than 10:00 a.m. (Toronto Time) on each Drawdown Date (or such later time as may be agreed in writing between the Guarantor and the Issuer), the Guarantor shall give to the Issuer a duly completed request for Advance in writing (each an “**Advance Request**”) completed in the form attached hereto as Schedule 1 specifying whether such request is for an Advance under the Initial Advance Commitment or an Advance under the Revolving Commitment (each such Advance, a “**Revolving Advance**”). Each Advance Request is irrevocable and (subject to the terms of this Agreement) obliges the Guarantor to borrow the whole amount specified in the Advance Request on the relevant Drawdown Date upon the terms and subject to the conditions of this Agreement.

### 5.2 Advances

On receipt of an Advance Request from the Guarantor and if the conditions set out in Section 4 (Conditions Precedent) have been met, the Issuer shall make the Advances available to the Guarantor on the Drawdown Date.

### 5.3 Deemed Advances

If:

- (a) a Borrower takes a Payment Holiday in respect of a Loan in the Covered Bond Portfolio in accordance with the relevant Mortgage Conditions and each of the Deemed Advance Preconditions (as defined below) are satisfied at such time, the amount equal to the unpaid interest and principal associated with that Payment Holiday and any such payment shall be deemed to constitute a Revolving Advance; or
- (b) there is any increase in the True Balance of a Loan due to the Seller making a Further Advance or Line of Credit Drawing to a Borrower, such increase shall be deemed to constitute a Revolving Advance if each of the Deemed Advance Preconditions set out below is satisfied at such time; or
- (c) on any Calculation Date, there is an increase in the Outstanding Principal Balance of Loans in the immediately preceding Calculation Period due to Capitalized Interest and/or Capitalized Arrears accruing on a Loan, such increase shall be deemed from the date of such increase to constitute a Revolving Advance if each of the Deemed Advance Preconditions set out below are satisfied at such time.

The preconditions to a Deemed Advance are the following (collectively the “**Deemed Advance Preconditions**”):

- (a) the aggregate amount of all Revolving Advances outstanding at such time after giving effect to such Deemed Advance does not exceed the Revolving Commitment;
- (b) such Deemed Advance does not result in the Guarantor being unable to satisfy the Asset Coverage Test on a pro forma basis following such Deemed Advance;
- (c) the aggregate outstanding amount of Advances after giving effect to such deemed Advance does not exceed the Total Credit Commitment; and
- (d) no Issuer Event of Default, Guarantor Event of Default or Demand Loan Repayment Event has occurred.

#### **5.4 Intercompany Loan Ledger**

The Cash Manager shall ensure that each Advance (including each Deemed Advance), each repayment, all payments of interest and repayments of principal of each Advance hereunder and the amount of the Guarantee Loan and Demand Loan at each Calculation Date are recorded in the Intercompany Loan Ledger at the appropriate time (which in the case of the amount of the Guarantee Loan and the Demand Loan at least two days prior to the Guarantor Payment Date following such Calculation Date).

### **6. INTEREST**

#### **6.1 Interest Periods**

- (a) Each loan interest period (each a “**Loan Interest Period**”) will correspond to each Calculation Period and each date on which interest is payable hereunder (each a “**Loan Interest Payment Date**”) will correspond to each Guarantor Payment Date, provided that the Loan Interest Period for any Advance made during a Calculation Period shall commence on the date of such Advance.
- (b) Whenever it is necessary to compute an amount of interest in respect of an Advance for any period (including any Loan Interest Period), such interest shall be calculated on the basis of actual days elapsed in a 365 (or 366, as applicable) day year.
- (c) Subject to the applicable Priority of Payments and Section 11.2 herein, interest payable in respect of an Advance shall be payable in respect of the preceding Loan Interest Period for such Advance on each Loan Interest Payment Date following the Drawdown Date of that Advance.

#### **6.2 Interest Rate**

- (a) Subject to the applicable Priority of Payment and Section 11.2 herein, the rate of interest payable in respect of each Advance for each Loan Interest Period shall be

the rate per annum notified in writing by the Issuer to the Guarantor from time to time.

- (b) With respect to each Loan Interest Period, the Issuer shall, as soon as practicable following the relevant Loan Interest Period, determine and notify the Cash Manager, the Guarantor and the Bond Trustee of the Canadian dollar amount (the “**Intercompany Loan Interest Amount**”), in each case, payable in respect of such Loan Interest Period. In respect of each Advance, the Intercompany Loan Interest Amount shall be determined by applying the applicable rate of interest (determined in accordance with sub-section (a)) to the outstanding principal balance of the relevant Advance, multiplying the result of that calculation by the actual number of days in the applicable Loan Interest Period divided by 365 days and rounding the resultant figure to the nearest penny (half a penny being rounded upwards) provided that the amount of interest hereunder payable and the applicable rate of interest in respect of any Loan Interest Period shall not exceed the amount received by the Guarantor pursuant to the Interest Rate Swap Agreement less the sum of: (i) a minimum spread to be notified in writing by the Issuer to the Guarantor from time to time; and (ii) an amount equal to the amount of the Guarantor Expenses for the corresponding Guarantor Calculation Period.
- (c) All notifications, opinions, determinations, certificates, calculations, quotations and decisions given, expressed, made or obtained for the purposes of this Section 6, shall (in the absence of wilful default, bad faith or proven error) be binding on the Guarantor and the Cash Manager and (in such absence as aforesaid) no liability to the Guarantor shall attach to the Cash Manager or the Issuer in connection with the exercise or non-exercise by them or any of them of their powers, duties and discretions hereunder.
- (d) Solely for the purposes of the *Interest Act* (Canada), whenever the amount of interest payable hereunder in respect of any Loan Interest Period is not the amount obtained by applying the applicable rate of interest to the outstanding principal balance of the relevant Advance and multiplying the result of that calculation by the actual number of days in the applicable Loan Interest Period divided by 365 days (or 366, as applicable), the annual rate of interest payable hereunder in respect of such Loan Interest Period is equivalent to the product obtained when (i) the amount of interest payable hereunder in respect of such Loan Interest Period is divided by the sum of the daily average aggregate amount of Advances outstanding hereunder and the result of such division is multiplied by (ii) 365 (or 366, as applicable) divided by the number of calendar days in such Loan Interest Period.

## 7. REPAYMENT

### 7.1 Repayment of Demand Loan on Demand

Subject to the applicable Priorities of Payment, the principal amount of the Demand Loan or any portion thereof for which demand is made by the Issuer in accordance with this Section (but in each case, other than any amount standing to the credit of the Pre-Maturity Liquidity Ledger) shall be due and payable by the Guarantor no later than the first Toronto Business Day following the date that is 60 days after the demand is made therefor by the Issuer by notice in writing to the Guarantor subject to:

- (a) a Demand Loan Repayment Event having occurred (in which case payment shall be made in accordance with Section 7.2); and
- (b) the Asset Coverage Test, as calculated by the Cash Manager, being satisfied on the repayment date after giving effect to such repayment.

### 7.2 Mandatory Repayment Upon Demand Loan Repayment Event

- (a) Subject to the applicable Priorities of Payment and sub-Section (b) below, the Guarantor shall repay the amount, if any, by which the Demand Loan exceeds the Demand Loan Contingent Amount on the first Guarantor Payment Date following 60 days after the earliest of the date on which one of the following occurs:
  - (i) the Bank is required to assign the Interest Rate Swap Agreement to a third party (due to a failure by the Issuer to meet the ratings levels specified in the Interest Rate Swap Agreement or otherwise);
  - (ii) a Notice to Pay has been served on the Guarantor; and
  - (iii) this Agreement is terminated or the Revolving Commitment hereunder is not renewed;

(each of (i), (ii) and (iii) above, a “**Demand Loan Repayment Event**”).

- (b) Subject to the applicable Priorities of Payment, following a Demand Loan Repayment Event, the Guarantor shall repay the full amount of the then outstanding Demand Loan on the date on which the Asset Percentage is next calculated (whether or not such calculation is a scheduled calculation or a calculation made at the request of the Bank) provided that the Asset Coverage Test, as calculated by the Cash Manager, is met on the date of repayment after giving effect to such repayment. For greater certainty, following an Issuer Event of Default, the Asset Coverage Test will be conducted and the Asset Percentage calculated, solely for the purpose of determining the amount of the Demand Loan repayable on the relevant repayment date and that the Asset Coverage Test will be met after giving effect to any such repayment. In calculating the Asset Coverage Test following an Issuer Event of Default for such purpose, the amount of any

Excess Proceeds received by the Guarantor from the Bond Trustee will be deducted from the Adjusted Aggregate Loan Amount.

### **7.3 Payments under Guarantee discharge obligations of Guarantor under this Agreement**

To the extent that the Guarantor makes, or there is made on its behalf, a payment under the Covered Bond Guarantee, the Issuer will on such payment being made become indebted to the Guarantor for an amount equal to such payment. Any amounts owing by the Issuer to the Guarantor in respect of amounts paid by the Guarantor under the Covered Bond Guarantee shall be setoff automatically (and without any action being required by the Guarantor, the Issuer or the Bond Trustee) against any amounts repayable by the Guarantor under the terms of this Agreement. The setoff amount shall be the Canadian Dollar Equivalent of the relevant payment made by the Guarantor under the Covered Bond Guarantee, which amount shall be applied to reduce amounts repayable under the Intercompany Loan in the following order of priority:

- (a) *first*, to reduce and discharge any outstanding amounts due and payable by the Guarantor to the Issuer under this Agreement other than interest and principal;
- (b) *second*, to reduce and discharge interest (including accrued interest) due and unpaid on the outstanding principal balance of the Advances; and
- (c) *third*, to reduce and discharge the outstanding principal balance of the Advances.

### **7.4 Repayment of Guarantee Loan**

The Guarantee Loan shall be repaid in accordance with the applicable Priority of Payments and is subordinated to the Demand Loan in accordance with such Priority of Payments. Such repayment will be made using (i) funds being held for the account of the Guarantor by its service providers and/or funds in the Guarantor Accounts (other than any amount in the Pre-Maturity Liquidity Ledger); and/or, (ii) proceeds from the sale of Substitute Assets; and/or (iii) proceeds from the sale, pursuant to the Guarantor Agreement, of Loans and their Related Security to the Seller or to another person subject to a right of pre-emption on the part of the Seller.

## **8. TAXES**

### **8.1 No gross up**

All payments by the Guarantor under this Agreement shall be made without any deduction or withholding for or on account of and free and clear of, any Taxes, except to the extent that the Guarantor is required by law to make payment subject to any Taxes.

## **8.2 Not a Non-resident**

The Guarantor represents and warrants to the Issuer that it is, and covenants that it will at all times remain, a person that is not a Non-resident.

## **8.3 Tax receipts**

All Taxes required by law to be deducted or withheld by the Guarantor from any amounts paid or payable under this Agreement shall be paid by the Guarantor when due and the Guarantor shall, within 90 days of the payment being made, deliver to the Issuer evidence satisfactory to the Issuer (including all relevant Tax receipts) that the payment has been duly remitted to the appropriate authority.

## **9. ILLEGALITY**

If, at any time, it is unlawful for the Issuer to make, fund or allow to remain outstanding an Advance made or to be made by it under this Agreement, then the Issuer shall, promptly after becoming aware of the same, deliver to the Guarantor, the Bond Trustee and the Rating Agencies a legal opinion to that effect from reputable counsel and the Issuer may require the Guarantor to prepay, on any Guarantor Payment Date, having given not more than 60 days' and not less than 30 days' (or such shorter period as may be required by any relevant law) prior written notice to the Guarantor and the Bond Trustee, and while the relevant circumstances continue, the applicable Advance(s) without penalty or premium but subject to Article 5 (Exercise of Certain Rights) of the Security Agreement and Section 10 (Mitigation) of this Agreement.

## **10. MITIGATION**

If circumstances arise in respect of the Issuer which would, or would upon the giving of notice, result in the prepayment of the Advances pursuant to Section 9 (Illegality), then, without in any way limiting, reducing or otherwise qualifying the obligations of the Guarantor under this Agreement, the Issuer shall:

- (a) promptly upon becoming aware of the circumstances, notify the Bond Trustee, the Guarantor and the Rating Agencies; and
- (b) upon written request from the Guarantor, take such steps as may be practical to mitigate the effects of those circumstances including (without limitation) the assignment of all its rights under this Agreement to, and assumption of all its obligations under this Agreement by, another company satisfactory to the Bond Trustee, which is willing to participate in the relevant Advances in its place and which is not subject to any illegality as referred to in Section 9 (Illegality),

provided that no such assignment and assumption may be permitted unless the Rating Agency Condition has been satisfied in respect of such assignment and assumption and

the Guarantor indemnifies (subject to Article 5 of the Security Agreement) the Issuer for any reasonable costs and expenses properly incurred by them as a result of such assignment and assumption.

## **11. PAYMENTS**

### **11.1 Payment**

Subject to the applicable Priorities of Payment and Section 11.2 herein, all amounts to be paid to the Issuer under this Agreement shall be paid in Canadian dollars for value by the Guarantor to such account as is notified to the Guarantor by the Issuer for this purpose by not less than 5 Toronto Business Days' prior notice on each Guarantor Payment Date.

### **11.2 Alternative Payment Arrangements**

If, at any time, it shall become impracticable (by reason of any action of any governmental authority or any change in law, exchange control regulations or any similar event) for the Guarantor to make any payments under this Agreement in the manner specified in Section 11.1 (Payment), then the Guarantor shall make such alternative arrangements for the payment directly to the Issuer of amounts due under this Agreement as are acceptable to the Issuer and the Bond Trustee (acting reasonably).

## **12. FURTHER PROVISIONS**

### **12.1 No set-off by the Issuer**

The Issuer agrees that it will advance the Advances to the Guarantor (subject to the terms of this Agreement, including without limitation, Sections 4 and 5) without set-off (including, without limitation, in respect of any amounts owed to it under any other Advance or in its capacity as a Partner in the Guarantor or in any other capacity under any of the Transaction Documents to which it is a party) or counterclaim.

### **12.2 Evidence of Indebtedness**

In any proceeding, action or claim relating to this Agreement a statement as to any amount due to the Issuer under this Agreement shall, unless otherwise provided in this Agreement, be prima facie evidence that such amount is in fact due and payable.

### **12.3 Rights Cumulative, Waivers**

The respective rights of the Guarantor and the Issuer under this Agreement:

- (a) may be exercised as often as necessary;
- (b) are cumulative and not exclusive of its rights under applicable law; and

- (c) may be waived only in writing and specifically.

Delay in exercising or non-exercise of any such right is not a waiver of that right.

#### **12.4 Severability**

The invalidity or unenforceability of any provision of this Agreement in any jurisdiction shall not in any way affect or impair:

- (a) the validity or enforceability in that jurisdiction of any other provision of this Agreement; or
- (b) the validity or enforceability in other jurisdictions of that or any other provision of this Agreement.

#### **12.5 Notices**

- (a) Any notice, direction or other communication given under this Agreement shall be in writing and given by delivering it or sending it by prepaid first class mail to the registered office of such person set forth above unless an alternative address is provided below, in which case delivery shall be to the address provided below, or by facsimile transmission to facsimile number set forth below, as applicable:

in the case of the Guarantor, to:

TD Covered Bond (Legislative) Guarantor Limited Partnership  
66 Wellington Street West  
21<sup>st</sup> Floor, TD Bank Tower  
Toronto, Ontario  
Canada M5K 1A2

Attention: Associate Vice President,  
Treasury and Balance Sheet Management  
Fax: (416) 868-0792

in the case of the Issuer or the Cash Manager, to:

The Toronto-Dominion Bank  
66 Wellington Street West  
21<sup>st</sup> Floor, TD Bank Tower  
Toronto, Ontario  
Canada M5K 1A2

Attention: Associate Vice President,  
Treasury and Balance Sheet Management  
Fax: (416) 868-0792

- (b) Any such communication will be deemed to have been validly and effectively given (i) if personally delivered, on the date of such delivery if such date is a Toronto Business Day and such delivery was made prior to 4:00 p.m. (Toronto time) and otherwise on the next Toronto Business Day, (ii) in the case of first class post, when it would be received in the ordinary course of the post, or (ii) if transmitted by facsimile transmission on the Toronto Business Day following the date of transmission provided the transmitter receives a confirmation of successful transmission.
- (c) Any party may change its address for notice, or facsimile contact information for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to such party at its changed address, or facsimile contact information, as applicable.

## **12.6 Assignment**

None of the Issuer, the Guarantor nor the Cash Manager may assign or transfer any of its rights or obligations under this Agreement, except as provided for in the Transaction Documents, including the pledge of rights under the Security Agreement by the Guarantor, unless the Rating Agency Condition has been satisfied for any such assignment.

## **12.7 Amendments and Waiver**

Subject to the terms of Section 7.02 of the Security Agreement, any amendments to this Agreement will be made only with the prior written consent of each party to this Agreement provided, for certainty, no such consent shall be required in connection with the amendment or other change to the rate of interest on Advances payable hereunder. No waiver of this Agreement shall be effective unless it is in writing and signed by (or by some person duly authorised by) each of the parties. Each proposed amendment or waiver of this Agreement that is considered by the Guarantor to be a material amendment or waiver shall be subject to satisfaction of the Rating Agency Condition and the Guarantor (or the Cash Manager on its behalf) shall deliver notice to the Rating Agencies of any amendment or waiver which does not require satisfaction of the Rating Agency Condition provided that failure to deliver such notice shall not constitute a breach of the obligations of the Guarantor under this Agreement. No single or partial exercise of, or failure or delay in exercising, any right under this Agreement shall constitute a waiver or preclude any other or further exercise of that or any other right.

## **12.8 Non-Petition**

The Issuer and Cash Manager agree that they shall not institute or join any other Person or entity in instituting against, or with respect to, the Guarantor, or any of the general partners of the Guarantor, any bankruptcy or insolvency event so long as any Covered Bonds issued by the Issuer under the Programme shall be outstanding or there shall not have elapsed one year plus one day since the last day on which any such Covered Bonds

shall have been outstanding. The foregoing provision shall survive the termination of this Agreement by any of the parties hereto.

### **12.9 Counterparts**

This Agreement may be signed (manually or by facsimile) and delivered in more than one counterpart all of which, taken together, shall constitute one and the same Agreement.

### **12.10 Third Party Rights**

This Agreement does not create any right which is enforceable by any person who is not a party to this Agreement.

### **12.11 Limitation of Liability**

The Guarantor is a limited partnership formed under the Limited Partnerships Act (Ontario), a limited partner of which is, except as expressly required by law, only liable for any of its liabilities or any of its losses to the extent of the amount that the limited partner has contributed or agreed to contribute to its capital.

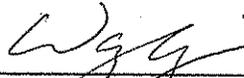
## **13. GOVERNING LAW**

This Agreement is governed by and shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

*[The remainder of this page intentionally left blank.]*

**IN WITNESS WHEREOF** the parties have caused this Agreement to be duly executed on the day and year appearing on Page 1.

**TD COVERED BOND (LEGISLATIVE)  
GUARANTOR LIMITED PARTNERSHIP,  
acting by its managing general partner TD  
COVERED BOND (LEGISLATIVE) GP INC.**

Per:   
Name: Christina Wang  
Title: Vice President

**THE TORONTO-DOMINION BANK**

Per:   
Name: Christina Wang  
Title: Associate Vice President, TBSM

## SCHEDULE 1

### ADVANCE REQUEST

From: TD Covered Bond (Legislative) Guarantor Limited Partnership (“Guarantor”)

To: The Toronto-Dominion Bank (the “Issuer”)

Date:

Dear Sirs,

We refer to the agreement between, ourselves and you (as from time to time amended, varied, novated or supplemented (the “**Intercompany Loan Agreement**”)) dated June 25, 2014 whereby an Intercompany Loan was made available to us. Terms defined in the Intercompany Loan Agreement shall have the same meaning in this Advance Request.

We hereby give you notice that, pursuant to the Intercompany Loan Agreement and upon the terms and subject to the conditions contained therein, we wish the following Advances to be made available to us as follows:

- (a) *[List Advances specifying type]*
- (b) Aggregate Amount: [ ].
- (c) Drawdown Date: [ ]

We confirm that as of the date hereof;

- (i) the undersigned has delivered a copy of a resolution duly passed by the board of directors of the managing general partner of the Guarantor authorizing its execution, delivery and performance on behalf of Guarantor of the Intercompany Loan Agreement certified by an officer of the managing general partner;
- (ii) the aggregate outstanding amount of the Advances after giving effect to the Advance requested herein does not exceed the Total Credit Commitment;
- (iii) no Issuer Event of Default, Guarantor Event of Default or Managing GP Default Event has occurred and is continuing; and
- (iv) unless agreed to by the Issuer and subject to satisfaction of the Rating Agency Condition, no Demand Loan Repayment Event has occurred and is continuing.

The net proceeds of this drawdown should be credited to our account numbered [ ] with the [ ].

Yours faithfully,

**TD COVERED BOND (LEGISLATIVE)  
GUARANTOR LIMITED  
PARTNERSHIP, acting by its managing  
general partner TD COVERED BOND  
(LEGISLATIVE) GP INC.**

Per: \_\_\_\_\_  
Name:  
Title:

## **SCHEDULE 2**

### **ASSET COVERAGE TEST**

(included for reference only)

*N.B. The parties to this Intercompany Loan Agreement agree this Schedule 2 is included for reference only. To the extent of any inconsistency between this Schedule 2 and the Asset Coverage Test as set out in Schedule 2 to the Guarantor Agreement, the terms of Schedule 2 to the Guarantor Agreement shall govern. For defined terms used and not otherwise defined herein see the Master Definitions and Construction Agreement.*

[See Attached]

## Schedule 2

### Asset Coverage Test

- (a) The “**Asset Coverage Test**” is met if the Adjusted Aggregate Loan Amount (as defined below) shall be in an amount at least equal to the Canadian Dollar Equivalent of the aggregate Principal Amount Outstanding of the Covered Bonds as calculated on the relevant Calculation Date. For greater certainty, references in this Schedule to “**immediately preceding Calculation Date**” and “**previous Calculation Date**” are to the Calculation Period ending on the Calculation Date.
- (b) For the purposes of the Asset Coverage Test, the “**Adjusted Aggregate Loan Amount**” means the amount calculated as at each Calculation Date as follows:

$$A+B+C+D+E-Y-Z$$

where,

A = the lower of (i) and (ii), where:

(i) = the sum of the “**LTV Adjusted True Balance**” of each Loan in the Covered Bond Portfolio, which shall be the lower of (1) the actual True Balance of the relevant Loan in the Covered Bond Portfolio on such Calculation Date, and (2) 80% multiplied by the Latest Valuation relating to that Loan, in each case multiplied by M,

“M” means:

(a) 100% for all Loans that are not Non-Performing Loans; or

(b) 0% for all Loans that are Non-Performing Loans;

*minus*

the aggregate sum of the following deemed reductions to the aggregate LTV Adjusted True Balance of the Loans in the Covered Bond Portfolio if any of the following occurred during the previous Calculation Period:

(1) a Loan or its Related Security was, in the immediately preceding Calculation Period, in breach of the Loan Representations and Warranties contained in the Mortgage Sale Agreement or subject to any other obligation of the Seller to repurchase the relevant Loan and its Related Security, and in each case the Seller has not repurchased the Loan or Loans of the relevant Borrower and its or their Related Security to the extent required by the terms of the Mortgage Sale Agreement. In this event, the aggregate LTV Adjusted True Balance of the Loans in the Covered Bond Portfolio on such Calculation Date will be deemed to be reduced by an amount equal to the LTV Adjusted True Balance of the relevant Loan or Loans on such Calculation Date of the relevant Borrower; and/or

(2) the Seller, in any preceding Calculation Period, was in breach of any other material warranty under the Mortgage Sale Agreement and/or the Servicer was, in any preceding Calculation Period, in breach of a material term of the Servicing Agreement. In this event, the aggregate LTV Adjusted True Balance of the Loans in the Covered Bond Portfolio on such Calculation Date will be deemed to be reduced by an amount equal to the resulting financial loss incurred by the Partnership in the immediately preceding Calculation Period (such financial loss to be calculated by the Cash Manager without double counting and to be reduced by any amount paid (in cash or in kind) to the Partnership by the Seller to indemnify the Partnership for such financial loss);

AND

(ii) = the aggregate “**Asset Percentage Adjusted True Balance**” of the Loans in the Covered Bond Portfolio which in relation to each Loan shall be the lower of (1) the actual True Balance of the relevant Loan on such Calculation Date, and (2) the Latest Valuation relating to that Loan, in each case multiplied by N,

“N” means:

- (a) 100% for all Loans that are not Non-Performing Loans; or
- (b) 0% for all Loans that are Non-Performing Loans;

*minus*

the aggregate sum of the following deemed reductions to the aggregate Asset Percentage Adjusted True Balance of the Loans in the Covered Bond Portfolio if any of the following occurred during the previous Calculation Period:

(1) a Loan or its Related Security was, in the immediately preceding Calculation Period, in breach of the Loan Representations and Warranties contained in the Mortgage Sale Agreement or subject to any other obligation of the Seller to repurchase the relevant Loan and its Related Security, and in each case the Seller has not repurchased the Loan or Loans of the relevant Borrower and its or their Related Security to the extent required by the terms of the Mortgage Sale Agreement. In this event, the aggregate Asset Percentage Adjusted True Balance of the Loans in the Covered Bond Portfolio on such Calculation Date will be deemed to be reduced by an amount equal to the Asset Percentage Adjusted True Balance of the relevant Loan or Loans (as calculated on such Calculation Date) of the relevant Borrower; and/or

(2) the Seller, in any preceding Calculation Period, was in breach of any other material warranty under the Mortgage Sale Agreement and/or the Servicer was, in the immediately preceding Calculation Period, in breach of a material term of the Servicing Agreement. In this event, the aggregate Asset Percentage Adjusted True Balance of the Loans in the Covered Bond Portfolio on such Calculation Date will be deemed to be reduced by an amount equal to the resulting financial loss

incurred by the Partnership in the immediately preceding Calculation Period (such financial loss to be calculated by the Cash Manager without double counting and to be reduced by any amount paid (in cash or in kind) to the Partnership by the Seller to indemnify the Partnership for such financial loss),

*the result of the calculation in this paragraph (ii) being multiplied by the Asset Percentage (as defined below);*

B = the aggregate amount of any Principal Receipts (excluding proceeds of the sale of Loans and their Related Security) on the Loans in the Covered Bond Portfolio up to such Calculation Date (as recorded in the Principal Ledger) which have not been applied as at such Calculation Date to acquire further Loans and their Related Security or otherwise applied in accordance with Article 6 (Priorities of Payments) and/or the other Transaction Documents;

C = the aggregate amount of (i) any Cash Capital Contributions made by the Partners (as recorded in the Capital Account Ledger for each Partner of the Guarantor), (ii) proceeds advanced under the Intercompany Loan Agreement or (iii) proceeds from any sale of Loans and their Related Security which, in each case, have not been applied as at such Calculation Date to acquire further Loans and their Related Security or otherwise applied in accordance with Article 6 (Priorities of Payments) and/or the other Transaction Documents;

D = the aggregate outstanding principal balance of any Substitute Assets;

E = the balance, if any, of the Reserve Fund;

Y = the sum of (i) the Contingent Collateral Amount relating to any Contingent Collateral Notice in effect as at such Calculation Date and delivered with respect to the Interest Rate Swap Agreement, plus (ii) the Contingent Collateral Amount relating to any Contingent Collateral Notice in effect as at such Calculation Date delivered with respect to the Covered Bond Swap Agreement, in each case, determined as at such Calculation Date; and

Z = zero so long as the Interest Rate Swap Agreement (x) has an effective date that has occurred prior to the related Calculation Date and (y) provides for the hedging of interest received in respect of (i) the Loans and their Related Security in the Covered Bond Portfolio; (ii) any Substitute Assets; and (iii) cash balances held in the GDA Account; otherwise the weighted average remaining maturity expressed in years of all Covered Bonds then outstanding multiplied by the Canadian Dollar Equivalent of the aggregate Principal Amount Outstanding of the Covered Bonds *multiplied* by the Negative Carry Factor where the “**Negative Carry Factor**” is, if the weighted average margin of the interest rate payable on the Principal Amount Outstanding of the Covered Bonds relative to the interest rate receivable on the Covered Bond Portfolio is (i) less than or equal to 0.1 per cent per annum, 0.5 per cent or (ii) greater than 0.1 per cent per annum, 0.5 per cent plus such margin minus 0.1 per cent (provided that if the weighted

average remaining maturity is less than one, the weighted average shall be deemed, for the purposes of this calculation, to be one)

(c) The “**Asset Percentage**” shall be determined as follows:

(1) Prior to the Guarantor Payment Date immediately following the Cash Flow Model Calculation Date (as defined below) falling in February, May, August and November of each year and on such other date as the Limited Partner may request following the date on which the Bank is required to assign the Interest Rate Swap Agreement to a third party (each such date, a “**Cash Flow Model Calculation Date**”), the Managing GP (or the Cash Manager on its behalf) will determine the percentage figure selected by it as the Asset Percentage based on such methodologies as the Rating Agencies may prescribe from time to time (to ensure sufficient credit enhancement for the Covered Bond Guarantee will be maintained) for the Covered Bond Portfolio based on the value of the Loans as at the Calculation Date immediately preceding such Cash Flow Model Calculation Date as a whole or on the basis of a sample of Randomly Selected Loans in the Covered Bond Portfolio, such calculations to be made on the same basis throughout unless the Rating Agency Condition has been satisfied in respect thereof.

(2) The Asset Percentage (including as applied in respect of item A or item B of the Asset Coverage Test) will from time to time be adjusted in accordance with the various methodologies of the Rating Agencies to ensure that sufficient credit enhancement for the Covered Bond Guarantee will be maintained.

(3) The Managing GP (or the Cash Manager on its behalf) will, or will use all reasonable efforts to determine the Asset Percentage at least two days prior to the Guarantor Payment Date following a relevant Cash Flow Model Calculation Date and shall apply such Asset Percentage to any calculations in respect of the Calculation Period ending on such Cash Flow Model Calculation Date and in respect of each subsequent Calculation Period until the Asset Percentage is required to be redetermined in accordance with this Schedule 2.

(4) Notwithstanding anything to the contrary in this Schedule 2, the Asset Percentage shall at all times be less than or equal to 97%, as determined in accordance with this Schedule 2 and as provided by Clause 14 of the Trust Deed, provided that the Asset Percentage shall not be less than 80%, unless otherwise agreed by the Bank (and following an Issuer Event of Default, the Partnership for the purposes of making certain determinations in respect of the Intercompany Loan).

**SCHEDULE 3**  
**CONTINGENT COLLATERAL NOTICE**

To: TD Covered Bond (Legislative) Guarantor Limited Partnership

From: The Toronto-Dominion Bank

Date:

Dear Sirs,

We refer to the agreement between, ourselves and you (as from time to time amended, varied, novated or supplemented (the “**Intercompany Loan Agreement**”)) dated June 25, 2014 whereby an Intercompany Loan was made available to you. Terms defined in the Intercompany Loan Agreement, whether directly or by reference, shall have the same meaning in this Contingent Collateral Notice.

In our capacity as the [**Interest Rate Swap Provider/Covered Bond Swap Provider**], we hereby give you notice that, one of the following events has occurred under the [**Interest Rate Swap Agreement/Covered Bond Swap Agreement**]:

- (a) a Contingent Collateral Trigger Event,
- (b) an event of default (other than an insolvency event of default) or an additional termination event in respect of which the Swap Provider is the defaulting party or the affected party, as applicable, or
- (c) a Downgrade Trigger Event.

As a result of the foregoing, in our capacity as lender under the Intercompany Loan Agreement, we hereby give you notice that we elect to decrease the amount of the Demand Loan with a corresponding increase in the amount of the Guarantee Loan, in each case, in an amount equal to the related Contingent Collateral Amount, which amount shall be determined on a daily basis for so long as this Contingent Collateral Notice continues to be in effect.

If and to the extent that (i) the foregoing event under the [**Interest Rate Swap Agreement/Covered Bond Swap Agreement**] is cured, or (ii) you and the undersigned shall otherwise mutually agree to terminate this Contingent Collateral Notice, this Contingent Collateral Notice shall be automatically revoked and of no further effect and the related Contingent Collateral Amount shall be deemed nil from the date of such cure or agreement to terminate, as applicable.

Yours faithfully,

**THE TORONTO-DOMINION BANK**

Per: \_\_\_\_\_  
Name:  
Title: