
**AMENDED AND RESTATED
RECEIVABLES PURCHASE AGREEMENT**

CAPITAL ONE BANK (CANADA BRANCH)

- and -

**BNY TRUST COMPANY OF CANADA,
in its capacity as trustee of
ALGONQUIN CREDIT CARD TRUST,**

- and -

COMPUTERSHARE TRUST COMPANY OF CANADA

Dated as of September 20, 2005

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SCHEDULES

- Schedule 1 - Definitions
- Schedule 2 - Computer file or Microfiche list of Accounts

EXHIBITS

- Exhibit A - Assignment
- Exhibit B - Reassignment
- Exhibit C - Opinions of Counsel

THIS AMENDED AND RESTATED RECEIVABLES PURCHASE AGREEMENT made as of the 20th day of September, 2005,

B E T W E E N:

CAPITAL ONE BANK (CANADA BRANCH), a branch of Capital One Bank, a Virginia banking corporation, licensed under the laws of Canada,

(hereinafter sometimes referred to as “**Capital One**”, the “**Seller**” or the “**Servicer**”),

- and -

BNY TRUST COMPANY OF CANADA, a trust company incorporated under the laws of Canada and licensed to carry on business in each of the provinces of Canada, in its capacity as trustee of **ALGONQUIN CREDIT CARD TRUST** (formerly, Capital One Credit Card Master Trust),

(in such capacity, hereinafter referred to as the “**Trust**”), and

- and -

COMPUTERSHARE TRUST COMPANY OF CANADA, a trust company incorporated under the laws of Canada and licensed to carry on the business of a trust company in each of the provinces of Canada,

(hereinafter referred to as the “**Indenture Trustee**”)

WHEREAS the Seller is the originator of Receivables arising in the Accounts and is desirous of selling to the Trust the Purchased Assets (including the Receivables on a fully serviced basis) and the Trust is desirous of purchasing the Purchased Assets from the Seller;

AND WHEREAS a Receivables Purchase Agreement (the “**Original Receivables Purchase Agreement**”) made as of June 22, 1998 was entered into by Capital One Inc., as seller, Montreal Trust Company (the “**Original Issuer Trustee**”), as trustee of Capital One Credit Card Master Trust (in such capacity, the “**Original Trust**”), and Montreal Trust Company of Canada, as indenture trustee (the “**Original Indenture Trustee**”), which was amended by a First Amendment Agreement made as of June 28, 1999 between the same parties (the Original Receivables Purchase Agreement, as so amended, the “**Amended Original Receivables Purchase Agreement**”);

AND WHEREAS pursuant to an Assignment and Amending Agreement made as of February 1, 2001 between Capital One Inc., the Seller, the Original Trust, the Original Indenture

Trustee, and BMO Nesbitt Burns Inc., (i) Capital One Inc. assigned to the Seller its rights under the Amended Original Receivables Purchase Agreement, the Original Certificate Issuance Agreement and the 1998-1 Supplement made as of June 25, 1998 between Capital One Inc., the Original Trust, the Original Indenture Trustee, and BMO Nesbitt Burns Inc., and all instruments, documents and other agreements related thereto (together, the “**Assigned Agreements**”), (ii) the Seller assumed the obligations of Capital One Inc. under the Assigned Agreements, and (iii) the Amended Original Receivables Purchase Agreement was further amended by such Assignment and Amending Agreement (the Amended Original Receivables Purchase Agreement, as so amended, the “**Amended Amended Original Receivables Purchase Agreement**”);

AND WHEREAS the Amended Amended Original Receivables Purchase Agreement was further amended by an SFAS 140 Amendment Agreement made as of October 31, 2001 between the Original Trust, the Original Indenture Trustee, BMO Nesbitt Burns Inc. and the Seller (the Amended Amended Original Receivables Purchase Agreement, as so amended, the “**SFAS 140 Amended Original Receivables Purchase Agreement**”);

AND WHEREAS the SFAS 140 Amended Original Receivables Purchase Agreement was further amended by a Second Amendment Agreement made as of June 12, 2002 between the Original Trust, the Original Indenture Trustee, and the Seller (the SFAS 140 Amended Original Receivables Purchase Agreement, as so amended, the “**Second Amended Original Receivables Purchase Agreement**”);

AND WHEREAS the Original Indenture Trustee ceased to be the indenture trustee and assigned all of its right, title and interest in the Second Amended Original Receivables Purchase Agreement to the Indenture Trustee effective October 30, 2002;

AND WHEREAS the name of Capital One Credit Card Master Trust was changed effective April 8, 2003 to Algonquin Credit Card Trust;

AND WHEREAS the Original Issuer Trustee amalgamated with Montreal Trust Company of Canada on October 31, 2002 and became the amalgamated entity, Montreal Trust Company of Canada, which in turn, as of April 8, 2003, resigned as trustee of the Trust and assigned all of the assets and interests in the Trust to BNY Trust as of April 8, 2003;

AND WHEREAS the parties entered into an Amended and Restated Receivables Purchase Agreement (the “**2003 RPA**”) made as of April 28, 2003, which amended and restated the Second Amended Original Receivables Purchase Agreement;

AND WHEREAS the 2003 RPA was amended as of November 25, 2003 (the “**2003 Amendment**”);

AND WHEREAS the parties hereto desire to amend and restate the 2003 RPA, as amended by the 2003 Amendment, in accordance with this amended and restated receivables purchase agreement (the 2003 RPA, as amended by the 2003 Amendment and as amended and restated by this amended and restated receivables purchase agreement, hereinafter referred to as this “**Agreement**”);

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises, covenants and agreements of the parties herein contained and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties), the parties hereby covenant and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 **Definitions.** Schedule 1 annexed hereto sets out definitions for various capitalized terms used in this Agreement. Unless the context otherwise requires, all such capitalized terms used in this Agreement (including the recitals hereto) will be interpreted in accordance with the definitions provided for in Schedule 1.

1.2 **Terms Defined in Trust Indenture and Supplements.** All capitalized terms used herein and not otherwise defined in Schedule 1 shall, unless the context otherwise requires, have the meanings ascribed to them in the Trust Indenture or the relevant Supplement, as the case may be.

1.3 **Terms Defined in Instruments Delivered Hereunder.** All capitalized terms used in any certificate or other document made or delivered pursuant hereto not otherwise defined therein shall, unless the context otherwise requires, have the meanings ascribed to them in Schedule 1, the Trust Indenture or the relevant Supplement, as the case may be.

1.4 **Accounting Principles.** As used in this Agreement and in any certificate or other document made or delivered pursuant hereto or thereto, accounting terms not defined in this Agreement or in any such certificate or other document, and accounting terms partly defined in this Agreement or in any such certificate or other document to the extent not defined, shall have the respective meanings given to them under Canadian generally accepted accounting principles or regulatory accounting principles, as applicable, as of the date hereof; *provided* that to the extent of any conflict between generally accepted accounting principles and regulatory accounting principles, the meanings given under generally accepted accounting principles shall prevail. To the extent that the definitions of accounting terms in this Agreement or in any such certificate or other document are inconsistent with the meanings of such terms under generally accepted accounting principles or regulatory accounting principles, the definitions contained in this Agreement or in any such certificate or other document shall control.

1.5 **References, Etc.** The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The term “including” shall mean “including, without limitation”.

1.6 **Headings, Etc.** The division of this Agreement into Articles, sections, subsections, paragraphs and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, sections, subsections, paragraphs, schedules, exhibits and other subdivisions are to Articles, sections, subsections, paragraphs, schedules, exhibits and other subdivisions in or to this Agreement.

1.7 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and each of the parties hereby attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

1.8 **Currency.** Unless expressly provided otherwise, all amounts expressed herein in terms of money refer to the lawful currency of Canada and all payments to be made hereunder shall be made in such currency.

1.9 **Non-Business Days.** Unless provided to the contrary herein, whenever any payment to be made hereunder shall be due, any period of time would begin or end, any calculation is to be made or any other action is to be taken on, or as of, or from a period ending on, a day other than a Business Day, such payment shall be made, such period of time shall begin or end, such calculation shall be made and such other actions shall be taken, as the case may be, on or as of the next succeeding Business Day.

1.10 **Reference to Statutes.** Unless provided to the contrary herein, all references herein to any statute or any provision thereof shall, unless otherwise specified herein, mean such statute or provision as the same may be amended, re-enacted or replaced from time to time.

1.11 **PPSA Terms.** Unless the context otherwise requires, all terms herein which are defined in the PPSA and are not defined herein shall have the meanings ascribed to them, respectively, in the PPSA.

1.12 **Severability.** In the event that one or more provisions in this Agreement shall be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions hereof or thereof shall not be effected or impaired thereby. Each of the provisions of this Agreement is hereby declared to be separate and distinct.

1.13 **Number and Gender.** Words importing the singular number shall include the plural and *vice versa* and words importing the masculine gender shall include the feminine and neuter genders and *vice versa*.

1.14 **Schedules.** The following Schedules annexed hereto are incorporated herein by reference and are deemed to be a part hereof:

- Schedule 1 - Definitions
- Schedule 2 - Computer file or Microfiche list of Accounts (s.2.1)

1.15 **Exhibits.** The following Exhibits annexed hereto are incorporated herein by reference and are deemed to be a part hereof:

- Exhibit A - Assignment
- Exhibit B - Reassignment
- Exhibit C - Opinions of Counsel

1.16 **Amendment and Restatement.** This Agreement amends and restates in full the 2003 RPA, as amended by the 2003 Amendment, as of the date hereof.

**ARTICLE 2
CONVEYANCE OF RECEIVABLES**

2.1 Conveyance of Receivables.

- (a) Subject to the terms and conditions hereof, the Seller has sold, transferred, assigned and conveyed or hereby sells, transfers, assigns and conveys, as applicable, to the Trust (on a fully serviced basis, including those services to be provided by the Servicer pursuant to this Agreement, the Trust Indenture and any Supplement), and the Trust has purchased or hereby purchases, as applicable, from the Seller, all of the Seller's right, title and interest in, to and under (I) the Receivables existing (A) at the close of business on the Trust Cut-Off Date and arising in the Initial Accounts, (B) at the close of business on each Additional Cut-Off Date which occurred prior to the date hereof and arising in the applicable Additional Accounts and (C) on and after the date hereof, on the day they are created, the Receivables in such Initial Accounts and Additional Accounts subsequently created from time to time until the time specified in Section 5.1 hereof, (II) all Participation Interests conveyed to the Trust, (III) all Funds Collateral securing any such Receivables and the related Accounts, (IV) all monies due or to become due and all amounts received with respect thereto and (V) all proceeds of the foregoing, including Insurance Proceeds, Recoveries, and the right to receive Interchange (collectively, the "**Purchased Assets**"). The foregoing does not constitute and is not intended to result in the creation or assumption by the Trust of any obligation of the Seller, any Additional Seller or any other person in connection with the Accounts, the Receivables, or the Participation Interests or under any agreement or instrument relating thereto, including any obligation to Obligors, merchant banks, acquiring banks or other financial institutions, MasterCard or any other credit card company, including VISA, or insurers.
- (b) In consideration for the purchase of the Purchased Assets existing as of the Original Execution Date, the Trust has, as of the Original Execution Date, created the Seller Indebtedness in the initial amount of \$210,327,137.56, being the face amount of the Principal Receivables purchased on the Original Execution Date (minus the amount of any Discount Option Receivables or Discount Receivables subject to such purchase), and representing the Trust's obligation to pay the amounts required to be paid to the Seller pursuant to (i) subsection 3.5(c)(A) of the Trust Indenture and (ii) the Trust Indenture and any relevant Supplement in respect of the Performance Origination Payment in respect of such Purchased Assets. The purchase price for the Purchased Assets acquired at any time and from time to time after the Original Execution Date shall be equal to the sum of (A) the face amount of the Principal Receivables acquired (minus the amount of any Discount Option Receivables or Discount Receivables subject to such purchase), (B) the amounts payable to the Seller pursuant to subsection 3.5(c)(A) of the Trust Indenture, and (C) the amounts payable to the Seller pursuant to the terms of the Trust Indenture and any relevant Supplement in respect of the Performance Origination Payment in respect of such Purchased Assets. Such purchase price shall be satisfied (x) as to the portion of the purchase price referred to in (A) at the option of the Seller, in cash or by adjusting

upward the amount payable by the Trust to the Seller in respect of the Seller Indebtedness or a combination thereof, in either case, at the times and in the manner specified in the Trust Indenture and the relevant Supplement, and (y) as to the portion of the purchase price referred to in (B) and (C) above, by payment of such amounts at the times and in the manner specified in the Trust Indenture and the relevant Supplement.

- (c) The Seller agrees to record and file, at its own expense, assignments, financing statements or continuation statements (and financing change statements or other documents when applicable) with respect to the Receivables existing as of the Original Execution Date and thereafter created meeting the applicable Requirements of Law in such manner and in such jurisdictions as are necessary to protect, perfect and maintain the protection and perfection of the sale and assignment of the Receivables to the Trust, and to deliver a file stamped or duplicate copy of each such assignment, financing statement or continuation statement or other evidence of such filing to the Trust on or prior to the applicable Document Delivery Date; *provided, however*, that each such assignment, financing statement, continuation statement or other evidence of filing relating to the sale and assignment of Receivables arising in Additional Accounts shall be duly filed, registered and dated, on or prior to the applicable Additional Purchase Date (or in the case of any applicable Quebec registrations, within three (3) Business Days following the applicable Additional Purchase Date).
- (d) The Seller further agrees, at its own expense, (i) on or prior to (A) the Original Execution Date, in the case of the Initial Accounts, (B) the applicable Additional Purchase Date, in the case of Additional Accounts, and (C) the applicable Redemption Date, in the case of Redeemed Accounts, to indicate in the appropriate computer files or other records of the Seller that Receivables created in connection with the Accounts (other than Redeemed Accounts) have been conveyed to the Trust pursuant to this Agreement, and (ii) on or prior to the applicable Document Delivery Date, to deliver to the Trust a computer file or microfiche list containing a true and complete list of all such Accounts (other than Redeemed Accounts) specifying for each such Account, as of the Trust Cut-Off Date, in the case of the Initial Accounts, and the applicable Additional Cut-Off Date, in the case of Additional Accounts, its account number, the aggregate amount of Principal Receivables outstanding in such Account and the aggregate amount of Receivables outstanding in such Account. Such file or list, as supplemented from time to time to reflect Additional Accounts and Redeemed Accounts, shall be marked as Schedule 2 to this Agreement and is hereby incorporated into, and made a part of, this Agreement.
- (e) The parties hereto intend and agree that each transfer of Receivables and other Purchased Assets from the Seller to the Trust pursuant to this Agreement constitutes an absolute sale, assignment, conveyance and transfer of such Receivables and other Purchased Assets, including for accounting purposes.

2.2 **Confidentiality.** The Trust hereby agrees not to disclose to any person any of the account numbers or other information contained in the computer files or microfiche lists marked as

Schedule 2 delivered to the Trust from time to time, except (a) to a Successor Servicer or as required by any Requirement of Law applicable to the Trust, (b) in connection with the performance of the Trust's duties hereunder, or (c) in enforcing or preparing to enforce the rights of the Indenture Trustee under the Trust Indenture. The Trust agrees to take such measures as shall be reasonably requested by the Seller to protect and maintain the security and confidentiality of such information and, in connection therewith, will allow the Seller, on reasonable notice, to inspect the Trust's security and confidentiality arrangements from time to time during normal business hours. The Trust shall provide the Seller with notice at least 30 Business Days prior to any disclosure pursuant to this section 2.2, except where the provision of such 30 Business Days' notice would be materially adverse to the interests of the Series Indebtedness Holders.

2.3 **Representations and Warranties of the Seller Relating to the Seller.** The Seller hereby represents and warrants to the Trust and the Indenture Trustee as of the date hereof and each Series Issuance Date that:

- (a) **Organization and Good Standing.** The Seller is a branch of Capital One Bank, a Virginia banking corporation, licensed under the laws of Canada and has, in all material respects, full power and authority to own its properties and conduct its credit card business as presently owned and conducted by it, and to execute, deliver and perform all of its obligations under this Agreement.
- (b) **Due Qualification.** The Seller is duly qualified to do business, is in good standing and has obtained all necessary licences and approvals in each jurisdiction in which failure to so qualify or to obtain such licences and approvals would render any Lending Agreement relating to an Account or any Receivable unenforceable by the Seller or the Trust or would have a material adverse effect on the Series Indebtedness Holders or the Purchased Assets; *provided, however*, that no representation or warranty is made with respect to any qualifications, licences or approvals which the Trust would have to obtain to do business in any jurisdiction in which the Trust seeks to enforce directly any Account or any Receivable.
- (c) **Due Authorization.** The execution and delivery of this Agreement, the Trust Indenture and each Supplement by the Seller and the performance by the Seller of its obligations hereunder and thereunder, have been duly authorized by the Seller by all necessary corporate action on the part of the Seller.
- (d) **No Conflict.** The execution and delivery by the Seller of this Agreement, the Trust Indenture and each Supplement, the performance of the transactions contemplated by this Agreement, the Trust Indenture and each Supplement and the fulfilment of the terms hereof and thereof applicable to the Seller, will not (i) conflict with or violate the constating documents of the Seller, or any Requirements of Law applicable to the Seller, or (ii) conflict with, or result in any breach of any of the material terms and provisions of, or constitute (with or without notice or lapse of time or both) a material default under, any material indenture, contract, agreement, mortgage, deed of trust or other instrument to which the Seller is a party or by which it or its properties are bound.

- (e) **No Proceedings.** There are no proceedings or investigations pending or, to the best knowledge of the Seller, threatened against the Seller before any Governmental Authority (i) asserting the invalidity of this Agreement, the Trust Indenture, any Supplement or the Indebtedness, (ii) seeking to prevent the consummation of any of the transactions contemplated by this Agreement, the Trust Indenture, any Supplement or the Indebtedness, (iii) seeking any determination or ruling that, in the reasonable judgment of the Seller, would materially and adversely affect the performance by the Seller of its obligations under this Agreement, the Trust Indenture or any Supplement, or (iv) seeking any determination or ruling that would materially and adversely affect the validity or enforceability of this Agreement, the Trust Indenture, any Supplement or the Indebtedness.
- (f) **All Consents.** All authorizations, consents, orders or approvals of, or registrations or declarations with, any person or any Governmental Authority required to be obtained, effected or given by the Seller in connection with the execution and delivery by the Seller of this Agreement, the Trust Indenture, each Supplement and the performance of the transactions contemplated by this Agreement, the Trust Indenture and each Supplement by the Seller have been duly obtained, effected or given and are in full force and effect.

2.4 **Representations and Warranties of the Seller Relating to the Agreement and Any Supplement and the Receivables.**

- (a) **Representations and Warranties.** The Seller hereby represents and warrants to the Trust as of the Trust Cut-Off Date and the Original Execution Date and, with respect to each Supplement, as of each Series Issuance Date and, with respect to Additional Accounts, as of the related Additional Purchase Date, that:
 - (i) this Agreement, the Trust Indenture, each Supplement and, in the case of Additional Accounts, the related Assignment, each constitutes a legal, valid and binding obligation of the Seller enforceable against the Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally from time to time in effect and except as such enforceability may be limited by general principles of equity;
 - (ii) as of (A) September 20, 2005, in the case of all Accounts, (B) the Trust Cut-Off Date, in the case of the Initial Accounts, and (C) the applicable Additional Purchase Date, in the case of Additional Accounts, Schedule 2 to this Agreement, as supplemented to such date, is an accurate and complete listing in all material respects of all the Accounts as of (x) September 20, 2005, in the case of all such Accounts, (y) the Trust Cut-Off Date, in the case of Initial Accounts, and (z) the applicable Additional Cut-Off Date, in the case of Additional Accounts, and the information contained therein with respect to the identity of such Accounts and the Receivables existing thereunder is true and correct in all material respects as of each such date;

- (iii) each Receivable has been conveyed to the Trust free and clear of any Liens;
- (iv) with respect to each Receivable, all authorizations, consents, orders or approvals of or registrations or declarations with any Governmental Authority required to be obtained, effected or given by the Seller in connection with the conveyance of such Receivable to the Trust have been duly obtained, effected or given and are in full force and effect;
- (v) this Agreement or, in the case of Additional Accounts, the relevant Assignment, constitutes a valid sale, transfer and assignment to the Trust of all of the Seller's right, title and interest in, to and under the Receivables arising under (and any Participation Interests relating to) the Initial Accounts and the Additional Accounts which, (A) in the case of Receivables arising under (and any Participation Interests relating to) the Initial Accounts during the period from the Trust Cut-Off Date to the Original Execution Date, is enforceable upon the Original Execution Date, (B) in the case of such Receivables arising in (and any Participation Interests relating to) the Additional Accounts during the period from the applicable Additional Cut-Off Date to the applicable Additional Purchase Date, is enforceable upon the applicable Additional Purchase Date, and (C) in the case of Receivables subsequently arising in (and any Participation Interests relating to) the Initial Accounts and the Additional Accounts, is enforceable upon the date such Receivables or the Receivables relating to such Participation Interests are created. Upon the filing of the assignments, financing statements and continuation statements (and other documents where applicable) required under the PPSA and, in the case of Receivables created after the Original Execution Date, the creation thereof, the Trust shall have a first priority perfected ownership interest in all such Receivables (or any Participation Interests therein, as applicable), and the proceeds thereof;
- (vi) except as otherwise expressly provided in this Agreement, the Trust Indenture or any Supplement, neither the Seller nor any person claiming through or under the Seller has any claim to the Collection Account, the Excess Funding Account, any Series Account or any Series Enhancement;
- (vii) on the Trust Cut-Off Date, each Initial Account was an Eligible Account and, on the applicable Additional Cut-Off Date, each related Additional Account was or will be an Eligible Account;
- (viii) on the Trust Cut-Off Date, each Receivable contained in the Initial Accounts was an Eligible Receivable and, on the applicable Additional Cut-Off Date, each Receivable contained in the applicable Additional Accounts was or will be an Eligible Receivable;
- (ix) as of the date of the creation of any new Receivable, such Receivable is an Eligible Receivable;

- (x) no selection procedures reasonably believed by the Seller to be materially adverse to the interests of the Series Indebtedness Holders (without regard to the availability of any Series Enhancement) were used in selecting the Initial Accounts on the Trust Cut-Off Date; and
 - (xi) with respect to Additional Accounts, as of the related Additional Purchase Date, neither the Seller nor the Obligors in respect of any Receivable owing in respect of such Additional Accounts will be required to withhold or pay any amount with respect to Tax as a result of payments required to be made to the Trust under or by virtue of this Agreement.
- (b) **Notice of Breach.** The representations and warranties set forth in section 2.3, this section 2.4 and subsection 2.9(e) shall survive the transfers and assignments of the Receivables to the Trust for an indefinite period of time. Upon discovery by the Seller, the Servicer or the Trust of a breach of any of the representations and warranties set forth in section 2.3, this section 2.4 or subsection 2.9(e), the party discovering such breach shall give notice to the other parties and to the Indenture Trustee and each Series Enhancer within three Business Days following such discovery.

2.5 **Reassignment of Ineligible Receivables.**

- (a) If:
 - (i) any representation or warranty contained in paragraph 2.4(a)(ii), (iii), (iv), (vii), (viii) or (ix) is not true and correct in any material respect as of the date made with respect to any Receivable or the related Account and such breach has a material adverse effect on the Trust's interest in any Receivable or the proceeds thereof (which determination shall be made without regard to whether funds are then available to the Trust or any Series Indebtedness Holders pursuant to any Series Enhancement), unless cured within 60 days (or such longer period, not in excess of 150 days, as may be agreed to in writing by the Trust and each Rating Agency) after the earlier to occur of the discovery thereof by the Seller or receipt by the Seller of notice thereof given by the Trust or the Servicer (the "**Reassignment Notice**"); or
 - (ii) the Seller fails to duly observe or perform the covenants and agreements of the Seller contained in subsection 2.7(a),

then the Seller shall accept reassignment of the Trust's interest in all Receivables in the related Account ("**Ineligible Receivables**").

- (b) The purchase price for the Ineligible Receivables reassigned to the Seller shall be the face amount of such Ineligible Receivables which are Principal Receivables (minus the amount of any such Ineligible Receivables that are Discount Option Receivables or Discount Receivables which remain outstanding) and shall be paid by deducting such amount from the amount payable by the Trust to the Seller in respect of the Seller Indebtedness. In addition, the Servicer shall deduct the portion of the

Ineligible Receivables reassigned to the Seller which are Principal Receivables (minus the amount of any such Ineligible Receivables that are Discount Option Receivables or Discount Receivables which remain outstanding) from the aggregate amount of Principal Receivables used to calculate the Seller's Allocated Amount and the Seller's Allocation Percentage and to calculate the Floating Allocation Percentage and the Fixed Allocation Percentage applicable to any Series. In the event that following the exclusion of such Principal Receivables from the calculation of the Seller's Allocated Amount, the Seller's Allocated Amount would be less than the Required Seller's Allocated Amount or following the deduction of such Principal Receivables from the aggregate amount of Principal Receivables, the aggregate amount of Principal Receivables would be less than the Required Principal Balance, then not later than 12:00 noon (Toronto time) on the first Allocation Date following the Monthly Period in which such reassignment obligation arises, the Seller shall make a deposit into the Excess Funding Account in immediately available funds in an amount equal to the greater of (A) the amount by which the Seller's Allocated Amount would be less than the Required Seller's Allocated Amount, and (B) the amount by which the aggregate amount of Principal Receivables would be less than the Required Principal Balance (up to the amount of such deducted Principal Receivables).

- (c) Upon the adjustments contemplated in Section 2.5(b) and the making of the deposits, if any, into the Excess Funding Account, all pursuant to this section 2.5, the Trust shall automatically, and without further action, sell, transfer, assign, set over and otherwise convey to the Seller or its designee, without recourse, representation or warranty, all the right, title and interest of the Trust, in, to and under such Ineligible Receivables, all monies due or to become due and all amounts received with respect thereto, any Funds Collateral securing such Receivables and all proceeds thereof. The Trust shall execute such documents and instruments of transfer or assignment, release, reconveyance or discharge, as the case may be, and take such other actions as shall reasonably be requested by the Seller to effect the conveyance by the Trust to the Seller of such Ineligible Receivables pursuant to this section 2.5. The obligations of the Seller to accept reassignment of any Ineligible Receivables, and to make the deposits, if any, required to be made to the Excess Funding Account as provided in this section 2.5, shall constitute the sole remedy respecting the event giving rise to such obligation available to the Trust except as provided in section 3.4.

2.6 **Reassignment of Receivables.**

- (a) If any representation or warranty set forth in subsection 2.3 (a), (c), (d) or (e) or paragraph 2.4(a)(i), (v), (vi) or (x) is not true and correct in any material respect as of the date made and such breach has a material adverse effect on the Trust's interest in the Receivables or the proceeds thereof (which determination shall be made without regard to whether funds are then available to the Trust or any Series Indebtedness Holders pursuant to any Series Enhancement), unless cured within 60 days (or such longer period, not in excess of 150 days, as may be agreed to in writing by the Trust and each Rating Agency) after the earlier to occur of the discovery thereof by the

Seller or receipt by the Seller of notice thereof given by the Trust or the Servicer, then:

- (i) if the Trust provides written notice to the Seller of its desire to assign the Receivables and any Participation Interest to the Seller, the Trust shall assign to the Seller or its designee, and the Seller or its designee shall purchase from the Trust, all of the Trust's right, title and interest in, to and under the Receivables and any Participation Interest on the first Allocation Date following the Monthly Period in which such notice is received by the Seller;
 - (ii) in payment for such purchase, (A) the Seller shall make a deposit, not later than 12:00 noon (Toronto time) on such Allocation Date, into the Collection Account in immediately available funds in an amount equal to the sum of the amounts specified therefor with respect to each outstanding Series in the related Supplement, and (B) the amount payable by the Trust to the Seller in respect of the Seller Indebtedness shall be reduced by an amount equal to an amount by which the Principal Receivables purchased exceeds the amount specified to be payable by the Seller to the Trust pursuant to the related Supplement.
- (b) Upon the making of the deposits to the Collection Account, if any, and the reassignment of the Receivables and any Participation Interests, all pursuant to this section 2.6, the Trust shall automatically and without further action be deemed to sell, transfer, assign, set over and otherwise convey to the Seller or its designee, without recourse, representation or warranty, all the right, title and interest of the Trust, in, to and under such Receivables and any Participation Interests, all monies due or to become due and all amounts received with respect thereto, any Funds Collateral securing such Receivables and all proceeds thereof. The Trust shall execute such documents and instruments of transfer or assignment, release, reconveyance or discharge, as the case may be, and take such other actions as shall reasonably be requested by the Seller to effect the conveyance by the Trust to the Seller of such Receivables pursuant to this section 2.6. The obligation of the Seller to accept reassignment of any Receivables and any Participation Interests, and to make the deposits, if any, required to be made to the Collection Account as provided in this section 2.6, shall constitute the sole remedy respecting the event giving rise to such obligation available to the Trust, except as provided in section 3.4.

2.7
that:

Covenants of the Seller Relating to the Receivables. The Seller hereby covenants

- (a) **Receivables Not To Be Evidenced by Instruments.** Except in connection with its enforcement or collection of an Account, the Seller will take no action to cause any Receivable to be evidenced by any instrument and if any Receivable is so evidenced it shall be deemed to be an Ineligible Receivable in accordance with subsection 2.5(a) and shall be reassigned to the Seller in accordance with subsections 2.5(b) and (c); *provided, however*, that Receivables evidenced by notes taken from Obligor in

the ordinary course of business of the Servicer's collection efforts shall not be deemed Ineligible Receivables solely as a result thereof.

- (b) **Security Interests.** Except for the conveyances hereunder, the Seller will not sell, pledge, assign or transfer to any other person, or grant, create, incur, assume or suffer to exist any Lien on, any Purchased Assets, whether now existing or hereafter created, or any interest therein, and the Seller shall defend the right, title and interest of the Trust as owner of the Receivables or Participation Interests, whether now existing or hereafter created, against all claims of third parties claiming through or under the Seller.
- (c) **Delivery of Collections.** In the event that the Seller receives Collections or Recoveries, the Seller agrees to pay the Servicer all such Collections and Recoveries as soon as practicable after receipt thereof but in no event later than two Business Days after the Date of Processing by the Seller. Upon becoming entitled to do so under the Deposit Documents, the Seller will realize upon and deposit to the Collection Account all Funds Collateral.
- (d) **Notice of Liens.** The Seller shall notify the Trust and the Indenture Trustee, and each Series Enhancer or other person entitled to such notice under the applicable Supplement, promptly after becoming aware of any Lien on any Purchased Assets other than the conveyances hereunder.
- (e) **Notation of Conveyance.** The Seller shall indicate generally in its computer files or other records that the Receivables arising in the Accounts have been conveyed to the Trust pursuant to this Agreement. The Seller shall, prior to the sale or transfer to a third party of any receivable held in its custody, examine its computer or other records to determine that such receivable is not a Receivable.
- (f) **Bulk Sales Legislation.** The Seller agrees to pay, indemnify and hold harmless the Trust from and against any losses, claims, damages and liabilities of the Trust arising from any failure by the Seller to comply with any applicable bulk sales legislation in respect of the purchase and sale of the Purchased Assets.
- (g) **Canadian Banking Business.** All amounts paid or credited to or by the Seller under this Agreement will be accounted for in respect of its Canadian banking business.

2.8 **Additional Covenants of the Seller.** The Seller hereby covenants that:

- (a) **Periodic Rate Finance Charges and Other Fees.** The Seller hereby agrees that, except as otherwise required by any Requirement of Law, or as is deemed by the Seller to be necessary in order to maintain its lending business on a competitive basis based on a good faith assessment by the Seller of the nature of its competition in the lending business, it shall not at any time reduce the annual percentage rate of the Periodic Rate Finance Charges assessed on the Receivables or other fees charged on any of the Accounts if, as a result of any such reduction, either (i) in the reasonable judgment of the Seller such reduction would cause an Amortization Event or a Series Amortization Event, or any event that, after the giving of notice or the lapse of time

or both, would result in the occurrence of an Amortization Event or a Series Amortization Event, or (ii) such reduction is not also applied to any comparable segment of revolving accounts in Canada owned by the Seller or any of its Affiliates which have characteristics the same as, or substantially similar to, the Accounts that are the subject of such reduction.

- (b) **Lending Agreements and Lending Guidelines.** Subject to compliance with all Requirements of Law and paragraph (a) above, (i) the Seller, as the owner of the Accounts, shall comply with and perform its obligations under the Lending Agreements relating to the Accounts and the Lending Guidelines and all applicable rules and regulations of MasterCard or VISA, if applicable, or their respective substantial equivalents except insofar as any failure so to comply or perform would not materially adversely affect the rights of the Trust or the Indebtedness Holders, and (ii) the Seller may change the terms and provisions of the Lending Agreements or the Lending Guidelines with respect to any of the Accounts in any respect (including the calculation of the amount, or the timing, of charge-offs and the Periodic Rate Finance Charges and other fees to be assessed thereon), only if the change is also made applicable to the comparable segment of revolving credit card accounts in Canada owned by the Seller or any of its Affiliates which have characteristics the same as, or substantially similar to, the Accounts that are the subject of such change.
- (c) **Interchange.** On or prior to each Determination Date, the Seller shall notify the Servicer of the amount of Interchange to be included as Finance Charge Collections with respect to the preceding Monthly Period, which amount shall be equal to the amount of Interchange paid or payable to the Seller with respect to such Monthly Period multiplied by a fraction, the numerator of which is the aggregate amount of cardholder charges for goods and services in the Accounts owned by the Seller with respect to such Monthly Period and the denominator of which is the aggregate amount of cardholder charges for goods and services in all the “**MasterCard**”, and, if applicable, “**VISA**” revolving credit card accounts and all other types of revolving credit card accounts (including the Accounts) owned by the Seller with respect to such Monthly Period. Not later than 12:00 noon (Toronto time) on each Allocation Date, the Seller shall deposit into the Collection Account in immediately available funds the amount of Interchange to be so included as Finance Charge Collections with respect to the preceding Monthly Period.

2.9 **Sale of Additional Accounts.**

- (a) **Required Lump Sales.** If, during any period of thirty consecutive days, the Seller’s Allocated Amount is less than the Required Seller’s Allocated Amount averaged over that period or the average amount of Principal Receivables for that period is less than the Required Principal Balance averaged over that period, the Seller shall, on or prior to the close of business on the tenth Business Day following the last Business Day of such 30-day period (the “**Required Designation Date**”), unless the Seller’s Allocated Amount exceeds the Required Seller’s Allocated Amount and the aggregate amount of Principal Receivables is greater than the Required Principal

Balance, in each case, as of the close of business on any five consecutive Business Days after the last Business Day of such 30 day period and prior to the Required Designation Date, designate Additional Accounts to be included as Accounts in a sufficient amount such that (A) the average of the Seller's Allocated Amount for such 30-day period, computed by assuming that the amount of the Principal Receivables of such Additional Accounts shall be deemed to be outstanding with the Trust during each day of such 30-day period, is at least equal to the Required Seller's Allocated Amount and (B) the average amount of Principal Receivables for such 30-day period, computed by assuming that the amount of the Principal Receivables of such Additional Accounts shall be deemed to be outstanding with the Trust during each day of such 30-day period, is at least equal to the Required Principal Balance averaged over that period. The failure of any condition set forth in subsection 2.9(d) shall not relieve the Seller of its obligation pursuant to this subsection 2.9(a); *provided, however*, that the failure of the Seller to transfer Receivables to the Trust as provided in this subsection 2.9(a) solely as a result of the unavailability of a sufficient amount of Eligible Receivables shall not constitute a breach of this Agreement; *provided further* that any such failure that is not cured in accordance with the applicable Supplement will nevertheless result in the occurrence of a Series Amortization Event for each Series that specifies in the related Supplement that such failure shall constitute a Series Amortization Event.

In lieu of, or in addition to, designating additional Eligible Accounts pursuant to the foregoing provisions of this subsection 2.9(a), the Seller may, subject to the conditions specified in subsection 2.9(d) and subject to the satisfaction of the Rating Agency Condition, convey to the Trust participations representing undivided interests in, or securities backed by, a pool of assets primarily consisting of receivables in credit card accounts and collections thereon ("**Participation Interests**"). The sale of Participation Interests to the Trust pursuant to this subsection 2.9(a) or subsection 2.9(b) shall be effected by an amendment hereto, dated the applicable Required Designation Date, pursuant to subsection 6.1(a).

The portion of the Receivables which have been the subject of a Lump Sale which are Principal Receivables shall be added to the amount payable by the Trust to the Seller in respect of the Seller Indebtedness. In addition, the Servicer shall add the portion of such Receivables which are Principal Receivables to the aggregate amount of Principal Receivables used to calculate the Seller's Allocated Amount and the Seller's Allocation Percentage and the Floating Allocation Percentage and the Fixed Allocation Percentage applicable to any Series.

- (b) **Permitted Lump Sales.** The Seller may from time to time, at its sole discretion, subject to the conditions specified in subsection 2.9(d), designate additional Eligible Accounts the receivables in which are to be purchased by the Trust and the Trust shall purchase the receivables in such additional Eligible Accounts as of the applicable Additional Cut-Off Date. In the event of a Lump Sale of Receivables permitted pursuant to this subsection 2.9(b), an adjustment shall be made to the amount payable in respect of the Seller Indebtedness and in the calculation of the Seller's Allocated Amount and the Seller's Allocation Percentage and the Floating

Allocation Percentage and the Fixed Allocation Percentage applicable to any Series in the manner specified in the last paragraph of subsection 2.9(a).

(c) **New Accounts.**

- (i) The Seller may from time to time, at its sole discretion, subject to and in compliance with the limitations specified in paragraphs (ii) and (iii) below and the conditions specified in subsection 2.9(d), voluntarily designate additional Eligible Accounts the receivables in which are to be purchased by the Trust and the Trust shall purchase the receivables in such additional Eligible Accounts as of the applicable Additional Cut-Off Date. For purposes of this paragraph, Eligible Accounts shall include only types of revolving credit card accounts which are included as Initial Accounts or which have previously been included in any Lump Sale if the Assignment related to such Lump Sale expressly provides that such type of revolving credit card account is permitted to be designated as a New Account;
- (ii) during any three consecutive Monthly Periods (commencing in July 1998) (x) the number of New Accounts designated with respect to any three consecutive Monthly Periods shall not exceed 15% of the number of Accounts as of the first day of such period, and (y) the aggregate amount of Principal Receivables arising in New Accounts designated with respect to such period shall not exceed 15% of the aggregate amount of Principal Receivables owned by the Trust as of the first day of such period, unless, in either case and on each such occasion, each Rating Agency shall have given its prior written consent to exceeding such limits;
- (iii) during any calendar year (x) the number of New Accounts designated with respect to any calendar year shall not exceed 20% of the number of Accounts as of the first day of the calendar year (or the Trust Cut-Off Date in the case of 1998) and (y) the aggregate amount of Principal Receivables arising in New Accounts designated with respect to such calendar year shall not exceed 20% of the aggregate amount of Principal Receivables owned by the Trust as of the first day of such calendar year (or the Trust Cut-Off Date in the case of 1998), unless, in either case and on each such occasion, each Rating Agency shall have given its prior written consent to exceeding such limits; and
- (iv) on March 31, June 30, September 30 and December 31 of each year, commencing on June 30, 1998, the Servicer shall deliver to the Trust, the Indenture Trustee and each Rating Agency, and each Series Enhancer or other person entitled thereto pursuant to any applicable Supplement, an Officer's Certificate confirming compliance with paragraphs 2.9(c)(i) and (ii) in respect of each three consecutive Monthly Periods ending within such calendar quarter and, in the Officer's Certificate for the last calendar quarter of each calendar year, confirming compliance with paragraph 2.9(c)(iii). Each such Officer's Certificate shall include the details of all relevant calculations.

- (d) **Conditions to Addition.** On the Additional Purchase Date with respect to any Additional Accounts or Participation Interests, the Trust shall purchase the Receivables in such Additional Accounts (and such Additional Accounts shall be deemed to be Accounts for purposes of this Agreement) or such Participation Interests, in each case as of the close of business on the applicable Additional Cut-Off Date, subject to the satisfaction of the following conditions:
- (i) on or before the fifth Business Day immediately preceding the Additional Purchase Date, in the case of any Additional Accounts or Participation Interests, the Seller shall have given the Trust, the Indenture Trustee, the Servicer and each Rating Agency, and each Series Enhancer or other person entitled thereto pursuant to any applicable Supplement, notice that the Additional Accounts or Participation Interests will be included and specifying the applicable Additional Cut-Off Date and Additional Purchase Date;
 - (ii) in the case of permitted Lump Sales pursuant to subsection 2.9(b), the Rating Agency Condition shall have been satisfied;
 - (iii) in the case of Additional Accounts, the Additional Accounts shall all be Eligible Accounts and shall not be non-consumer accounts unless the Rating Agency Condition shall have been satisfied;
 - (iv) in the case of any Additional Accounts or Participation Interests, to the extent required by section 3.5 of the Trust Indenture, the Seller shall have deposited in the Collection Account all Collections with respect to such Additional Accounts or Participation Interests from, and including, the Additional Cut-Off Date;
 - (v) within 10 Business Days of the related Additional Purchase Date in the case of Additional Accounts or Participation Interests, the Seller shall have delivered to the Trust and the Indenture Trustee copies of filed stamped copies of the PPSA financing statements, continuation statements or assignments (or other documents where applicable), each filed or registered on or prior to the related Additional Purchase Date (or in the case of any applicable Quebec registrations, within three (3) Business Days following the related Additional Purchase Date), covering the Additional Accounts or Participation Interests, if necessary to perfect the Trust's ownership of and the Indenture Trustee's security interest in the Receivables arising therein;
 - (vi) as of each of the Additional Cut-Off Date and the Additional Purchase Date, in the case of Additional Accounts or Participation Interests, no Insolvency Event with respect to the Seller shall have occurred nor shall the transfer of the Receivables arising in the Additional Accounts or of the Participation Interests to the Trust have been made in contemplation of the occurrence thereof;

- (vii) in the case of Additional Accounts or Participation Interests, the sale to the Trust of (A) the Receivables arising in the Additional Accounts, or (B) the Participation Interests, will not result in the occurrence of an Amortization Event or a Series Amortization Event, or any event that, after the giving of notice or lapse of time or both, would result in the occurrence of an Amortization Event or a Series Amortization Event; and
- (viii) in the case of Lump Sales, the Seller shall have delivered to the Trust and the Indenture Trustee, and each Series Enhancer or other person entitled thereto pursuant to any applicable Supplement, an Officer's Certificate, dated the Additional Purchase Date, confirming that, in the reasonable opinion of the officer certifying such Officer's Certificate, based on facts known to such officer as of the date of such certificate, after due inquiry, and to the extent applicable, the accuracy of the items set forth in clauses (ii) through (vii) above.
- (e) **Representations and Warranties.** The Seller hereby represents and warrants to the Trust as of the related Additional Purchase Date as to the matters set forth in paragraphs 2.3(a) and 2.9(d)(iv), (v), (vi) and (vii).
- (f) **Additional Sellers.** Except as otherwise provided in a Supplement, the Seller may designate other persons to be sellers ("**Additional Sellers**") under this Agreement and the Trust Indenture by an amendment hereto and thereto pursuant to subsection 6.1(a) and each Additional Seller shall acquire a Supplemental Indebtedness pursuant to subsection 2.3(e) of the Trust Indenture, which Supplemental Indebtedness may be certificated; provided, however, that no other person may be designated to be a seller as aforesaid unless the Rating Agency Condition shall have been satisfied.
- (g) **Delivery of Documents in Respect of Sale of Receivables Arising in Additional Accounts.** In the event of a designation of Additional Accounts pursuant to subsection 2.9(a), (b) or (c), the Seller shall deliver to the Trust on the applicable Document Delivery Date the computer file or micro fiche list required to be delivered pursuant to section 2.1 with respect to such Additional Accounts, a duly executed assignment substantially in the form of Exhibit A and Opinions of Counsel of the type referred to in paragraph 2.9(h)(i) and, in the case of an addition of Participation Interests, the Seller shall deliver to the Trust comparable information and documentation with respect to such Participation Interests on the applicable Document Delivery Date.
- (h) **Opinions.** The Seller will deliver to the Trust, the Indenture Trustee and each Series Enhancer (i) on each Additional Purchase Date on which any Additional Accounts are to be designated as Accounts pursuant to subsection 2.9(a), (b) or (c) or within 10 days of such date, an Opinion of Counsel substantially in the form of Exhibit C-2 and opinions of U.S. counsel relating to the matters listed on Exhibit C-3, and (ii) on each Additional Purchase Date on which any Participation Interests are to be sold to the Trust pursuant to subsection 2.9(a) or within 10 days of such date, an Opinion of Counsel covering the same substantive legal issues addressed by Exhibit C-2 and

opinions of U.S. counsel relating to the matters listed in Exhibit C-3, but conformed to the extent appropriate to relate to Participation Interests.

2.10 **Redeemed Accounts and Redeemed Participation Interests.** On any day, the Seller shall have the right to require the partial redemption of the Seller Indebtedness in exchange for the reassignment to it or its designee of all the Trust's right, title and interest in, to and under the Receivables then existing and thereafter created, all monies due or to become due and all amounts received with respect thereto and all proceeds thereof in or with respect to the Accounts designated by the Seller (the "**Redeemed Accounts**") or Participation Interests conveyed to the Trust by the Seller (the "**Redeemed Participation Interests**"), upon satisfaction of the following conditions:

- (a) on or before the fifth Business Day immediately preceding the Redemption Date, the Seller shall have given the Trust, the Indenture Trustee, the Servicer and each Rating Agency, and each Series Enhancer or other person entitled thereto pursuant to any applicable Supplement, notice of such redemption and specifying the cut-off date and closing date (the "**Redemption Date**") for the reassignment of the Receivables in the Redeemed Accounts or Redeemed Participation Interests;
- (b) on or prior to the date that is 10 Business Days after the Redemption Date, the Seller shall have amended Schedule 2 by delivering to the Trust and the Indenture Trustee a computer file or microfiche list containing a true and complete list of the Redeemed Accounts specifying for each such Account, as of the date notice of the Redemption Date is given, its account number, the aggregate amount outstanding in such Account and the aggregate amount of Principal Receivables outstanding in such Account;
- (c) the Seller shall have represented and warranted as of the Redemption Date that the list of Redeemed Accounts delivered pursuant to subsection 2.10(b) above, as of the Redemption Date, is true and complete in all material respects;
- (d) the Rating Agency Condition shall have been satisfied with respect to the redemption of Redeemed Accounts or Redeemed Participation Interests;
- (e) such redemption will not result in the occurrence of an Amortization Event or a Series Amortization Event, or any event that, after the giving of notice or lapse of time or both, would result in the occurrence of an Amortization Event or a Series Amortization Event, and the Seller shall deliver to the Trust and the Indenture Trustee, and each Series Enhancer or other person entitled thereto pursuant to any applicable Supplement, an Officer's Certificate of the Seller, dated the Redemption Date, confirming that, in the reasonable opinion of the officer certifying such Officer's Certificate, based on facts known to such officer as at the date of such certificate, after due inquiry, such redemption will not result in the occurrence of an Amortization Event or a Series Amortization Event, or any event that, after the giving of notice or lapse of time or both, would result in the occurrence of an Amortization Event or a Series Amortization Event;

- (f) such redemption will not result in (x) a reduction in the Series Indebtedness, or (y) the Seller Indebtedness being reduced to below the Required Seller's Allocated Amount; and
- (g) such redemption shall have been in compliance with any other requirement specified in any applicable Supplement.

Upon satisfaction of the above conditions, (A) the Trust shall execute and deliver to the Seller a written reassignment in substantially the form of Exhibit B (the "**Reassignment**") and shall, without further action, be deemed to sell, transfer, assign, set over and otherwise convey to the Seller or its designee, on the Redemption Date, without recourse, representation or warranty, all the right, title and interest of the Trust, in, to and under the Receivables arising in the Redeemed Accounts as of the cut-off date, all monies due and to become due and all amounts received with respect thereto and all proceeds thereof, and (B) the outstanding principal amount of the Seller Indebtedness shall be reduced by the aggregate face amount of Receivables in the Redeemed Accounts which are Principal Receivables (minus the amount of any such Receivables that are Discount Option Receivables or Discount Receivables which remain outstanding).

In addition to the foregoing, on the date when any Receivable in an Account becomes a Defaulted Receivable (including any related Finance Charge Receivables), the Trust shall automatically and without the requirement of any further action or consideration transfer, set over and otherwise convey to the Seller such Defaulted Receivables, without recourse, representation or warranty, all right, title and interest except the representation that the Defaulted Receivables are free and clear of any Lien created by, or arising through the Trust, other than the Security Interest granted in favour of the Trust in such Defaulted Receivables and Recoveries pursuant to this paragraph. The Trust shall execute and deliver such instruments of transfer and assignment, in each case without recourse, as shall be reasonably requested by the Seller to vest in the Seller or its designee all right, title and interest of the Trust in such Defaulted Receivables (including any related Finance Charge Receivables). To secure the obligation of the Seller to pay the purchase price for such Defaulted Receivables upon receipt of the Recoveries in respect thereof, the Seller hereby grants to the Trust a first priority Security Interest in and to all of the Seller's right, title and interest in, to and under all such Defaulted Receivables reconveyed to the Seller from time to time, and in all monies due thereunder, all amounts received with respect thereto, all proceeds therefrom (including all proceeds from any sale of such Defaulted Receivables) and all Recoveries with respect thereto (collectively, the "**Defaulted Receivables Collateral**"). For the purpose of the Security Interest granted pursuant to this section 2.10, this Agreement shall constitute a security agreement under applicable law. For greater certainty, the Trust hereby automatically releases its Security Interest in any such Defaulted Receivables upon the sale or securitization of, or other financing secured by, the Seller of any such Defaulted Receivables but retains a Security Interest in the proceeds of the sale or securitization of, or other financing secured by, any such Defaulted Receivables.

In addition to the foregoing, the Seller may designate Redeemed Accounts as provided in and subject to the terms and conditions contained in this Section 2.10, if the Redeemed Accounts are designated in response to a third-party action or decision not to act and not the unilateral decision of the Seller, notwithstanding clause (ii) in the following paragraph.

With respect to the Redeemed Accounts described in this Section 2.10, in addition to the foregoing requirements (i) there shall be no more than one Redemption Date in any Monthly Period and (ii) for each Redemption Date, the Accounts to be designated as Redeemed Accounts shall be selected at random by the Seller.

2.11 **Account Allocations.** If the Seller is unable for any reason to assign Receivables to the Trust in accordance with the provisions of this Agreement or section 8.2 of the Trust Indenture or any order of any Governmental Authority (a “**Transfer Restriction Event**”), then, in any such event:

- (a) the Seller agrees to pay, and agrees to cause the Servicer to pay, except as prohibited by any such order, to the Trust, after the date of such inability, all Collections, including Collections of Receivables transferred to the Trust prior to the occurrence of such event, and all amounts which would have constituted Collections but for the Seller’s inability to transfer Receivables (up to an aggregate amount equal to the amount of Receivables transferred to the Trust by the Seller and owned by the Trust on such date);
- (b) the Seller agrees that such amounts will be applied by the Seller and the Servicer as Collections in accordance with Article 3 of the Trust Indenture and the terms of each Supplement; and
- (c) for so long as the application of all Collections and all amounts that would have constituted Collections are made in accordance with subsections (a) and (b) above, Principal Receivables and all amounts which would have constituted Principal Receivables but for the Seller’s inability to transfer Receivables to the Trust which are written off as uncollectible in accordance with the Trust Indenture shall continue to be allocated in accordance with Article 3 of the Trust Indenture and the terms of each Supplement.

For the purpose of subsection (c) above, the Seller shall cause the Servicer to treat the first Collections received with respect to the Accounts as owned by the Trust until the Trust shall have been paid Collections in an amount equal to the aggregate amount of Principal Receivables owned by the Trust as of the date of the occurrence of such event.

If the Seller or the Servicer is unable pursuant to any Requirements of Law to pay Collections as required pursuant to this section 2.11, the Seller and the Servicer each agree that, after the occurrence of such event, the Seller and the Servicer shall allocate payments on each Account with respect to the principal balance of such Account first to the oldest principal balance of such Account and apply such payments as Collections in accordance with Article 3 of the Trust Indenture and the terms of each Supplement. The parties hereto agree that Finance Charge Receivables, whenever created or accrued in respect of Principal Receivables which have been conveyed to the Trust shall be owned by the Trust notwithstanding any cessation of the transfer of additional Principal Receivables to the Trust and Collections with respect thereto shall continue to be allocated and paid in accordance with Article 3 of the Trust Indenture and the terms of each Supplement.

2.12 **Limited Administrative Option of Servicer to Purchase.** In respect of the Servicer's obligation to service Purchased Assets pursuant to the terms hereof and the Trust Indenture at a time when the Allocated Amount in respect of a particular Series is at a minimum level relative to its administrative burden to so service, on the Allocation Date occurring on or after the date on which the Allocated Amount in respect of a particular Series is reduced below the level specified in the Supplement applicable to such Series, the Servicer, so long as the Seller is the Servicer or an Affiliate of the Servicer, shall be entitled, upon written notice to the Trust and the Indenture Trustee, to purchase the Series Indebtedness of such Series at a purchase price, and in the manner, specified in the related Supplement for such Allocation Date.

2.13 **Discount Option.**

- (a) The Seller shall have the option to designate at any time a Discount Percentage of the amount of Receivables arising in the Accounts on or after the date such designation becomes effective that would otherwise constitute Principal Receivables to be treated as Finance Charge Receivables ("**Discount Option Receivables**"). The Seller shall also have the option of reducing or withdrawing the Discount Percentage, at any time and from time to time, on and after the date such designation becomes effective. The Seller shall provide to the Servicer, the Trust, the Indenture Trustee and each Rating Agency, and each Series Enhancer or other person entitled thereto pursuant to any applicable Supplement, 30 days' prior written notice of such designation (or reduction or withdrawal), and such designation (or reduction or withdrawal) shall become effective on the date designated therein only if:
 - (i) the Rating Agency Condition shall have been satisfied in respect of such designation (or reduction or withdrawal);
 - (ii) the Seller shall have delivered to the Trust and the Indenture Trustee, and each Series Enhancer or other person entitled thereto pursuant to any applicable Supplement, an Officer's Certificate of the Seller stating that, in the reasonable opinion of the officer certifying such Officer's Certificate, based on facts known to such officer as at the date of such certificate, after due inquiry, such designation (or reduction or withdrawal) will not result in the occurrence of an Amortization Event or a Series Amortization Event, or any event that, after the giving of notice or lapse of time or both, would result in the occurrence of an Amortization Event or a Series Amortization Event; and
 - (iii) in the case of a reduction or withdrawal, the Seller shall have delivered to the Trust and the Indenture Trustee an Officer's Certificate of the Seller stating that, in the reasonable opinion of the officer certifying such Officer's Certificate, based on facts known to such officer as at the date of such certificate, after due inquiry, such reduction or withdrawal shall not have adverse regulatory or other accounting implications for the Seller.
- (b) On each Date of Processing after the date on which the Seller's exercise of its discount option takes effect, the Seller shall, to the extent required by section 3.5 of

the Trust Indenture, (i) deposit into the Collection Account in immediately available funds an amount equal to the product of (A) the aggregate Floating Allocation Percentages with respect to all Series, and (B) the aggregate amount of the Discount Option Receivables Collections processed on such day, and (ii) pay to the holder of the Seller Indebtedness the balance of such Discount Option Receivables Collections on account of the Trust's obligations under the Seller Indebtedness. The deposit made by the Seller into the Collection Account under the preceding sentence shall be considered a payment of such Discount Option Receivables and shall be applied as Finance Charge Receivables in accordance with Article 3 of the Trust Indenture and the terms of each Supplement.

2.14 **Power of Attorney.** The Seller hereby grants to the Trust an irrevocable power of attorney, with full power of substitution, coupled with an interest, to take in the name of the Seller or in the Trust's own name all steps necessary or advisable to collect or realize on any Receivable or to negotiate or endorse any instrument provided as payment in respect thereof and to execute and deliver, in the Seller's name and on the Seller's behalf, such instruments and documents (including assignments) necessary or desirable to evidence or protect the Trust's ownership interest in the Purchased Assets and to execute and file, in the Seller's name or on the Seller's behalf, such recording, registration, financing, continuation or similar statements (including any amendments, renewals, continuation statements and financing change statements) under applicable laws, including the PPSA, in such jurisdictions where it may be necessary to validate, perfect or protect the Trust's position as owner of the Purchased Assets.

ARTICLE 3 OTHER MATTERS RELATING TO THE SELLER

3.1 **Liability of the Seller.** Each Seller shall be liable for all obligations, covenants, representations and warranties of such Seller or any of its Affiliates arising under or related to this Agreement, the Trust Indenture or any Supplement. Except as provided in the preceding sentence, each Seller shall be liable hereunder only to the extent of the obligations specifically undertaken by such Seller or any of its Affiliates hereunder in its capacity as Seller. Each Additional Seller hereby authorizes and empowers Capital One to execute and deliver, on behalf of such Additional Seller, as attorney-in-fact or otherwise, all documents and other instruments required or permitted to be delivered by such Additional Seller under this Agreement, the Trust Indenture or any Supplement, and to do and accomplish all other acts and things required or permitted to be done or accomplished by such Additional Seller hereunder or thereunder.

3.2 **Merger or Consolidation of, or Assumption of the Obligations of, the Seller.**

- (a) The Seller shall not consolidate or amalgamate with or merge into any other corporation or enter into a statutory arrangement to similar effect or convey or transfer its properties and assets substantially as an entirety to any person unless:
 - (i) (A) the corporation formed by such consolidation, amalgamation or arrangement or into which the Seller is merged or the person which acquires by conveyance or transfer the properties and assets of the Seller substantially as an entirety shall be, if the Seller is not the surviving entity, organized and

existing under the laws of Canada, the United States of America or a province or state thereof and shall be a bank, trust company, loan company or a corporation authorized to carry on a credit card business in Canada, and, if the Seller is not the surviving entity, shall expressly assume, by supplemental agreements, executed and delivered to the Trust, in form satisfactory to the Trust, the performance of every covenant and obligation of the Seller hereunder (including its obligations under section 3.4), under the Trust Indenture and all Supplements, and (B) the Seller has delivered to the Trust an Officer's Certificate and an Opinion of Counsel each stating that such consolidation, amalgamation, arrangement, merger, conveyance or transfer and such supplemental agreements comply with this section 3.2, that such supplemental agreements are valid and binding obligations of such surviving entity enforceable against such surviving entity in accordance with their terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally from time to time in effect and except as such enforceability may be limited by general principles of equity; and

- (ii) the Rating Agency Condition shall have been satisfied with respect to such consolidation, amalgamation, arrangement, merger, conveyance or transfer.
- (b) The obligations of the Seller hereunder shall not be assignable nor shall any person succeed to the obligations of the Seller hereunder except in each case in accordance with the provisions of the foregoing subsection 3.2(a) or section 3.5.

3.3 **Limitations on Liability of the Seller.** Subject to sections 3.1 and 3.4, neither the Seller nor any of the directors, officers, employees or agents of the Seller acting in its capacity as Seller shall be under any liability to the Trust, the Indenture Trustee, the Indebtedness Holders, any Series Enhancer or any other person for any action taken or for refraining from the taking of any action in good faith in its capacity as Seller pursuant to this Agreement; *provided, however*, that this provision shall not protect the Seller or any such person against any liability which would otherwise be imposed by reason of wilful misfeasance, bad faith or gross negligence in the performance of duties or by reason of reckless disregard of obligations and duties hereunder. The Seller and any director, officer, employee or agent of any of the Seller may rely in good faith on any document of any kind prima facie properly executed and submitted by any person (other than the Seller) respecting any matters arising hereunder.

3.4 **Liabilities.** Notwithstanding section 3.3 (and notwithstanding sections 6.3 and 6.4 of the Trust Indenture), by entering into this Agreement, the Seller agrees to be liable, directly to each of the Trust, the Indenture Trustee and any of their employees, officers, directors and agents, for the entire amount of any losses, claims, damages, costs, expenses or liabilities (other than those incurred by Indebtedness Holders in their capacity as Indebtedness Holders) arising out of or based on (a) a breach of any representations, warranties or covenants by the Seller or the Servicer in this Agreement or in the Trust Indenture or any Supplement, (b) any Taxes payable by the Trust or deducted or withheld from payments made to the Trust, or (c) information provided (or omitted to be provided) by the Seller relating to itself or the Receivables and contained in (or omitted from) any disclosure document prepared for delivery to potential purchasers of Indebtedness and approved of

by the Seller. The Seller agrees to pay, indemnify and hold harmless each of the Trust, the Indenture Trustee and their respective employees, officers, directors and agents against and from any and all such losses, claims, damages, costs, expenses and liabilities, including, without limitation, reasonable legal fees and disbursements on a substantial indemnity basis and any other costs and expenses incurred in connection with the enforcement of this indemnity, except to the extent that they arise from the dishonesty, bad faith, wilful misconduct, gross negligence or reckless disregard of a duty by an indemnified person. In the event of a Service Transfer, the Trust will cause the Successor Servicer to indemnify and hold harmless the Seller against and from any losses, claims, damages and liabilities of the Seller as described in this section 3.4 arising from the actions or omissions of such Successor Servicer. The indemnity contained in this section 3.4 shall survive the resignation or removal of the Trust or the Indenture Trustee or the termination of this Agreement. No indemnification required to be paid by the Seller under this section 3.4 shall be paid out of the Trust Assets.

3.5 **Assumption of Capital One's Obligations.** Notwithstanding the provisions of section 3.2, and except as otherwise provided in any Supplement, to the extent applicable, Capital One may assign, convey and transfer all or any portion of its revolving credit card accounts and the receivables arising thereunder, which may include (a) all or any portion of the Accounts and Capital One's remaining interest in the Receivables arising thereunder, if any, (b) its interest, if any, in all or any portion of the Participation Interests, and (c) its Seller's Allocation or any applicable portion thereof (collectively, the "**Assigned Assets**"), together, to the extent applicable, with all servicing functions and other obligations under this Agreement, the Trust Indenture or any Supplement relating to the transactions contemplated hereby or thereby (collectively, the "**Assumed Obligations**"), to another entity (the "**Assuming Entity**") which may be an entity that is not affiliated with Capital One, and Capital One may assign, convey and transfer the Assigned Assets and the Assumed Obligations to the Assuming Entity, without the consent or approval of the holders of any Indebtedness, upon satisfaction of the following conditions:

- (i) the Assuming Entity shall be an Eligible Servicer;
- (ii) the Assuming Entity, Capital One, the Trust and the Indenture Trustee shall have entered into an assumption agreement (the "**Assumption Agreement**") providing for the Assuming Entity to assume the Assumed Obligations, including the obligation under this Agreement to transfer the Receivables arising under the Accounts owned by the Assuming Entity and the Receivables arising under any Additional Accounts owned by the Assuming Entity to the Trust, and Capital One shall have delivered to the Trust and the Indenture Trustee an Officer's Certificate and an Opinion of Counsel each stating that such transfer and assumption comply with this section, that such Assumption Agreement is a valid and binding obligation of such Assuming Entity enforceable against such Assuming Entity in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or other laws affecting creditors' rights generally from time to time in effect and except as such enforceability may be limited by general principles of equity, and that all conditions precedent herein provided for relating to such transaction have been complied with;

- (iii) each Series Enhancer, if any, or other person designated under any applicable Supplement, shall have consented to such transfer and assumption;
- (iv) Capital One or the Assuming Entity shall have delivered to the Trust and the Indenture Trustee copies of financing statements and/or continuation statements covering such Accounts or other appropriate evidence, satisfactory to the Trust and its counsel, each acting reasonably, of the perfection of the Trust's interest in the Receivables arising herein;
- (v) the Rating Agency Condition shall have been satisfied in connection with such transfer and assumption; and
- (vi) the Trust and the Indenture Trustee shall have received an Opinion of Counsel with respect to (ii) and (iv) above and any other relevant matters in form and substance satisfactory to the Trust and the Indenture Trustee, acting reasonably.

Notwithstanding such assumption, Capital One shall continue to be liable for all representations and warranties and covenants made by it and all obligations performed or to be performed by it in its capacity as Seller or Servicer prior to such transfer.

ARTICLE 4 AMORTIZATION EVENTS

4.1 **Amortization Events.** If an Amortization Event has been declared or is deemed to have occurred pursuant to section 8.1 of the Trust Indenture or if a Series Amortization Event or other event has occurred under any Supplement, the applicable provisions of the Trust Indenture and of the applicable Supplement(s) shall govern whether the continued sale of Receivables called for hereunder shall cease or shall continue.

ARTICLE 5 TERMINATION

5.1 **Termination of Obligations.** The respective obligations and responsibilities of the parties created hereby shall terminate, except with respect to the duties described in section 3.4, upon the earlier of (a) the date of the termination of the Trust pursuant to the Settlement Deed, (b) the day following the Allocation Date on which the Allocated Amount for each Series is permanently reduced to zero (subject to obtaining the prior written agreement of the parties hereto), and (c) in the event of an Insolvency Event under subsection 8.1 of the Trust Indenture in respect of which, in accordance with the related Supplement, the Trust sells, disposes of or otherwise liquidates (or causes to be sold, disposed of or otherwise liquidated) the Receivables, the date the Insolvency Proceeds with respect thereto are fully allocated and paid to the Series Indebtedness Holders in accordance with Article 3 of the Trust Indenture and the terms of each Supplement (provided that the parties hereto have consented in writing to such termination).

**ARTICLE 6
MISCELLANEOUS PROVISIONS**

6.1 Amendments.

- (a) This Agreement may be amended from time to time (including to change the definition of any Monthly Period) by the Seller, the Trust and the Indenture Trustee; *provided, however*, that the Seller shall have delivered to the Trust and the Indenture Trustee, and each Series Enhancer or other person entitled thereto pursuant to any applicable Supplement, an Officer's Certificate of the Seller dated the date of any such amendment, stating that, in the reasonable opinion of the officer certifying such Officer's Certificate, based on facts known to such officer as at the date of such certificate, after due inquiry, such amendment will not (i) result in the occurrence of an Amortization Event or a Series Amortization Event, or any event that, after the giving of notice or lapse of time or both, would reasonably be expected to result in the occurrence of an Amortization Event or a Series Amortization Event, or (ii) have a material adverse effect on the interests of the Series Indebtedness Holders; *provided, however*, that the Rating Agency Condition shall have been satisfied with respect to any such amendment; and provided further that an amendment pursuant to this Section 6.1(a) shall not have the effect of permitting the Trust to engage in any activity not permitted by Section 11.1(a)(iii) of the Trust Indenture.
- (b) This Agreement may also be amended from time to time by the Seller, the Trust and the Indenture Trustee for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Agreement in accordance with subsection 11.1(b) of the Trust Indenture.
- (c) Promptly after the execution of any such amendment or consent (other than an amendment pursuant to subsection 6.1(a)), the Seller shall furnish notification of the substance of such amendment to each Rating Agency and each Series Enhancer.
- (d) Notwithstanding anything in this section 6.1 to the contrary, each amendment shall be in writing and no amendment may be made to this Agreement which would adversely affect in any material respect the interests of any Series Enhancer without the consent of such Series Enhancer.

6.2 Protection of Right, Title and Interest of Trust.

- (a) If the Seller (i) makes any change in its name, identity or corporate structure which would make any assignment, financing statement, continuation statement or financing change statement filed in accordance with the provisions hereof likely to be materially misleading to a reasonable person within the meaning of the PPSA, or (ii) changes its jurisdiction of incorporation, registered office, chief place of business or chief executive office, which change would, under the applicable provisions of the PPSA, require the amendment of any assignment, financing statement, continuation statement or financing change statement filed in accordance with the provisions hereof, the Seller shall, within 15 days after a change referred to in clause (i) or prior

to making a change referred to in clause (ii), give the Trust notice of any such change and shall promptly file such financing statements, continuation statements or amendments as may be necessary to continue the perfection of the right, title and ownership interest of the Trust in the Purchased Assets.

- (b) The Seller will give the Trust prompt notice of any relocation of any office in which it keeps records concerning the Receivables and whether, as a result of such relocation, the applicable provisions of the PPSA would require the filing of any amendment of any previously filed assignment, financing statement or continuation statement or of any new assignment, financing statement or continuation statement and the Seller shall file such assignments, financing statements, continuation statements or amendments as may be necessary to preserve, protect and perfect or to continue the perfection of the Trust's right, title and ownership interest in the Purchased Assets. The Seller will at all times maintain each office in which it keeps records concerning the Receivables within Canada and its principal executive offices within Canada.
- (c) The Seller will deliver to the Trust, the Indenture Trustee and each Series Enhancer upon the execution and delivery of each amendment of this Agreement, an Opinion of Counsel to the effect specified in Exhibit C-1.

6.3 **Notices, Payments, Etc.**

- (a) All demands, notices, instructions, directions and communications (collectively, "Notices") under this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, mailed by registered mail, return receipt requested, or sent by facsimile transmission to (i) in the case of the Seller, Capital One Bank (Canada Branch), 5650 Yonge Street, Suite 1300, Toronto, Ontario M2M 4G3, Attention: Principal Officer (facsimile no. 416-228-5113), with a copy to Capital One Bank, 1680 Capital One Drive, McLean, Virginia, 22102, Attention: Director of Securitization (facsimile no. 703-720-2158), (ii) in the case of the Trust, BNY Trust Company of Canada, 4 King Street West, Suite 1101, Toronto, Ontario M5H 1B6, Attention: Senior Trust Officer, (facsimile no. 416-360-1711/1727), (iii) in the case of the Indenture Trustee, Computershare Trust Company of Canada, 100 University Avenue, 9th Floor, North Tower, Corporate Trust Department, Toronto, Ontario M5J 2Y1, Attention: Manager, Corporate Trust (facsimile no. 416-981-9777), (iv) in the case of Dominion Bond Rating Service Limited, 200 King Street West, Suite 1304, Sun Life Centre, P.O. Box 34, Toronto, Ontario M5H 3T4, Attention: Credit Card Securitization (facsimile no. 416-593-8432), (v) in the case of Moody's Investors Service, Inc., 99 Church Street, 4th Floor, New York, New York, 10007, Attention: Monitoring Department (facsimile no. 212-298-7139), or, if by e-mail, servicerreports@moodys.com and (vi) in the case of Standard & Poor's, 84 State Street, 6th Floor, Boston, Massachusetts, 02109, Attention: Asset-Backed Surveillance (facsimile no. 617-557-5197); or, as to each party, at such other address or facsimile number as shall be designated by such party in a Notice to each other party.

- (b) Any Notice shall be deemed to have been given and received on the day on which it was personally delivered or transmitted (*provided* that if such Notice is transmitted on a day which is not a Business Day or after 4:00 p.m. (local time of the recipient), such Notice shall be deemed to have been given and received on the next Business Day), or, if mailed, on the fifth Business Day following the date of mailing (provided that if at the time of mailing or within five Business Days thereafter there is or occurs a labour dispute or other event which might reasonably be expected to disrupt the delivery of documents by mail, any Notice shall be personally delivered or sent by facsimile transmission as aforesaid).

6.4 **Further Assurances.** Each party agrees to do and perform, from time to time, any and all acts and to execute any and all further instruments required or reasonably requested by any other party hereto more fully to effect the purposes of this Agreement, including the execution of any assignments, financing statements, continuation statements or financing change statements relating to the Purchased Assets for filing under the provisions of the PPSA of any applicable jurisdiction.

6.5 **No Waiver; Cumulative Remedies.** No failure to exercise and no delay in the exercise, on the part of the Trust or the Indenture Trustee, of any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided under this Agreement are cumulative and not exhaustive of any rights, remedies, powers and privileges provided in law or equity.

6.6 **Counterparts.** This Agreement may be executed in counterparts (and by different parties on separate counterparts), each of which shall be an original, but all of which together shall constitute one and the same instrument.

6.7 **Consent to Grant of Security Interest.** The Seller hereby acknowledges that pursuant to the terms of the Trust Indenture the Trust has granted a security interest in favour of the Indenture Trustee in the Trust's rights under this Agreement as security for its obligations in favour of the Indebtedness Holders and any Additional Creditor contained in the Trust Indenture and related Supplements. The Seller hereby consents to the grant by the Trust of such security interest, acknowledges that it has received notice thereof, and agrees that upon the occurrence of an event entitling the Indenture Trustee to enforce its security interest, this Agreement may be enforced by the Indenture Trustee, in the place and stead and with all the rights of the Trust, against the Seller.

6.8 **Successors, Assigns, Etc.** This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Except as otherwise expressly provided in this Agreement, no other person will have any right or obligation hereunder.

6.9 **Entire Agreement.** Except as specifically stated otherwise herein, this Agreement and the Trust Indenture set forth the entire understanding of the parties relating to the subject matter hereof, and all prior understandings, written or oral, are superseded hereby and thereby.

6.10 **Relationships.** The relationship of the Seller, the Trust and the Indenture Trustee hereunder shall, in respect of the matters contemplated hereby, be solely the relationship that arises

from the rights and obligations created hereunder. It is the intention of the Seller and the Trust to create a relationship of vendor and purchaser and there is no intention to create a relationship of trustee and beneficiary or partnership or agency between the Trust and the Seller.

6.11 **Limitation of Liability and Capacity.**

- (a) The obligations or liabilities of the Trust pursuant to this Agreement shall be satisfied only out of the Trust Assets, and recourse against the Trust and BNY Trust shall be limited to the Trust Assets and no resort shall be had to the other property or assets of either the Trust or BNY Trust or of any of its shareholders, directors, officers, employees or agents or any beneficiaries of Algonquin Credit Card Trust (other than the Trust Assets).
- (b) BNY Trust is entering into this Agreement on behalf of Algonquin Credit Card Trust solely in BNY Trust's capacity as trustee of Algonquin Credit Card Trust and this Agreement shall enure to the benefit of and be binding upon the permitted successors of BNY Trust solely in its capacity as trustee of Algonquin Credit Card Trust.

IN WITNESS WHEREOF, Capital One, in its capacity as Seller, the Trust and the Indenture Trustee have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

CAPITAL ONE BANK (CANADA BRANCH), in its capacity as Seller

By: “Robert Livingston”
Name: Robert Livingston
Title: Principal Officer

BNY TRUST COMPANY OF CANADA, in its capacity as trustee of **ALGONQUIN CREDIT CARD TRUST**

By: “Henry Hamilton II”
Name: Henry Hamilton II
Title: Trust Officer

COMPUTERSHARE TRUST COMPANY OF CANADA

By: “Patricia Wakelin”
Name: Patricia Wakelin
Title: Professional, Corporate Trust

By: “Scott Markham”
Name: Scott Markham
Title: Professional, Corporate Trust

Schedule 1
to
Receivables Purchase Agreement
and
Trust Indenture
Definitions

DEFINITIONS

“**Account**” shall mean each Initial Account, each Additional Account and each Related Account, but shall exclude any Account all the Receivables in which are either reassigned to the Seller or its designee or assigned to the Servicer in accordance with the terms of the Receivables Purchase Agreement or the Trust Indenture;

“**Accelerated Amortization Period**” shall mean, for any Series, the period, if any, specified as such in the related Supplement;

“**Accumulation Period**” shall mean, with respect to any Series or any Class within a Series, a period following the Revolving Period (as defined in the related Supplement), during which Collections of Principal Receivables are accumulated in an account for the benefit of the Noteholders of such Series or Class within such Series, which shall be the controlled accumulation period, the principal accumulation period or other accumulation period, in each case as defined with respect to such Series or Class in the related Supplement;

“**Act**” shall mean the *Securities Act* (Ontario), as amended;

“**Additional Account**” shall mean each New Account and each Lump Sale Account;

“**Additional Creditor**” shall have the meaning specified in subsection 3.2(a) of the Trust Indenture;

“**Additional Cut-Off Date**” shall mean with respect to New Accounts, Lump Sale Accounts or Participation Interests, the date specified as such in the notice delivered with respect thereto pursuant to paragraph 2.9(d)(i) of the Receivables Purchase Agreement;

“**Additional Purchase Date**” shall mean (a) with respect to New Accounts, the date on which any such Accounts are designated as New Accounts pursuant to subsection 2.9(c) of the Receivables Purchase Agreement, (b) with respect to Lump Sale Accounts, the date on which any such Lump Sale Accounts are to be included as Accounts, and (c) with respect to Participation Interests, the date on which such Participation Interests are to be included as part of the Purchased Assets pursuant to subsection 2.9(a) of the Receivables Purchase Agreement;

“**Additional Seller**” shall have the meaning specified in subsection 2.9(f) of the Receivables Purchase Agreement;

“**Administration Agreement**” means the amended and restated administration agreement dated as of September 20, 2005 between BNY Trust (as successor to Montreal Trust Company of Canada), as trustee of the Trust, and Capital One Bank (Canada Branch), as the same may be amended, supplemented or restated from time to time;

“**Administration Fee**” means the fee payable by the Trust to the Administrative Agent pursuant to section 5.4 of the Administration Agreement;

“**Administrative Agent**” means Capital One, in its capacity as administrative agent under the Administration Agreement, and its assigns, and any successor administrative agent appointed under the Administration Agreement;

“**Affiliate**” shall mean, with respect to any specified person, any other person controlling or controlled by or under common control with such specified person. For the purposes of this definition, “**control**” shall mean the power to direct the management and policies of a person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “**controlling**” and “**controlled**” have meanings correlative to the foregoing;

“**Aggregate Series Percentage**” shall mean, with respect to Principal Receivables, Defaulted Receivables and Finance Charge Receivables, on any date of determination, the sum of the Series Percentages for such categories of Receivables for all outstanding Series on such date of determination; *provided, however*, that the Aggregate Series Percentage shall not exceed 100%;

“**Allocated Amount**” shall mean, with respect to any Series and for any date, an amount equal to the allocated amount defined in the related Supplement;

“**Allocation Date**” shall mean the fifteenth day of each calendar month, or, if such day is not a Business Day, the next succeeding Business Day;

“**Allocation Percentage**” shall mean, with respect to any Series, the allocation percentage specified in the related Supplement;

“**Amortization Event**” shall have the meaning specified in section 8.1 of the Trust Indenture;

“**annualized**”, when used in relation to a rate or amount, means the annual equivalent of such rate or amount produced by multiplying such rate or amount by the actual number of days in the applicable year divided by the actual number of days in the applicable Monthly Period;

“**Applicants**” shall have the meaning specified in section 2.8 of the Trust Indenture;

“**Appointment Date**” shall have the meaning specified in section 8.2 of the Trust Indenture;

“**Assigned Assets**” shall have the meaning specified in section 3.5 of the Receivables Purchase Agreement;

“**Assignment**” means the assignment made as of the Original Execution Date between Capital One and the Trust, and each other assignment in respect of Additional Accounts, in each case substantially in the form of Exhibit B to the Receivables Purchase Agreement;

“**Assumed Obligations**” shall have the meaning specified in section 3.5 of the Receivables Purchase Agreement;

“**Assuming Entity**” shall have the meaning specified in section 3.5 of the Receivables Purchase Agreement;

“**Assumption Agreement**” shall have the meaning specified in section 3.5 of the Receivables Purchase Agreement;

“**Average Allocated Amount**” shall have, for any Series, the meaning specified in the relevant Supplement for such Series;

“**BNY Trust**” shall mean BNY Trust Company of Canada, a trust company incorporated pursuant to the laws of Canada, and its successors and assigns, and any successor trustee of the Trust appointed as provided for in the Settlement Deed;

“**Book-Based Notes**” shall mean beneficial interests in the Indebtedness, ownership and transfers of which shall be made through book entries by a Clearing Agency as described in section 2.10 of the Trust Indenture;

“**Business Day**” shall mean any day other than a Saturday, a Sunday or a day on which banks or trust companies in Toronto, Ontario or Richmond, Virginia are authorized or obligated by law, executive order or governmental decree to be closed;

“**Capital One**” shall mean Capital One Bank (Canada Branch), a branch of Capital One Bank, a Virginia banking corporation, licensed under the laws of Canada, and its successors;

“**Capital One Note**” shall mean, if the Seller elects to have the Capital One Indebtedness represented by a Note, the debt note executed by the Trust and authenticated by or on behalf of the Indenture Trustee, substantially in the form of Exhibit A to the Trust Indenture and issued by the Trust to evidence the Capital One Indebtedness in accordance with sections 2.1 and 2.2 of the Trust Indenture;

“**Capital One Indebtedness**” shall mean the indebtedness of the Trust to Capital One created pursuant to the Trust Indenture and any Supplement, including the right of Capital One to receive payment of the unpaid balance of the purchase price for the Purchased Assets determined in accordance with the Receivables Purchase Agreement, the Trust Indenture and any Supplement, which Capital One Indebtedness at the option of Capital One, may be evidenced by the Capital One Note;

“**Cash Advance Fees**” shall mean fees or charges for cash advances, as specified in the Lending Agreement applicable to each Account;

“**Class**” shall mean, with respect to any Series, any one of the classes of Series Indebtedness of that Series;

“**Clearing Agency**” shall have the meaning specified in the Act;

“**Clearing Agency Participant**” shall mean a broker, dealer, bank, other financial institution or other person for whom from time to time a Clearing Agency effects book-based transfers and pledges of securities deposited with the Clearing Agency;

“**Closing Date**” shall mean, with respect to any Series, the closing date specified in the related Supplement;

“**Collection Account**” shall have the meaning specified in subsection 3.3(a) of the Trust Indenture;

“**Collections**” shall mean (a) all payments by or on behalf of Obligors (including Insurance Proceeds, billed annual membership fees, billed Miscellaneous Up-Front Fees and from Funds Collateral) received in respect of the Receivables, in the form of cash, cheques, wire transfers,

electronic transfers, automated teller machine transfers or any other form of payment in accordance with the related Lending Agreement in effect from time to time and (b) with respect to any Monthly Period, (i) a portion, determined pursuant to subsection 2.8(c) of the Receivables Purchase Agreement of the Interchange paid to the Seller through “MasterCard” or “VISA” with respect to such Monthly Period, (ii) all Recoveries received during such Monthly Period, (iii) all payments of annual membership fees (including in the case of the first Monthly Period the unamortized portion of the annual membership fees relating to the period prior to the Trust Cut-Off Date, determined in accordance with subsection 5.4(c) of the Trust Indenture) with respect to the Accounts during such Monthly Period, and (iv) all payments of Miscellaneous Up-Front Fees with respect to the Accounts during such Monthly Period. If and as specified in any Supplement, Collections shall include amounts received with respect to Participation Interests;¹

“**Controlled Amortization Period**” shall mean, for any Series, the period, if any, specified as such in the related Supplement;

“**Corporate Trust Office**” shall have the meaning specified in section 9.14 of the Trust Indenture;

“**Date of Processing**” shall mean, with respect to any transaction, the date on which such transaction is first recorded on the Servicer’s computer file of revolving credit card accounts (without regard to the effective date of such recording);

“**DBRS**” shall mean Dominion Bond Rating Service Limited, or its successor;

“**Default**” shall mean any event or occurrence that is, or with notice or the lapse of time or both would become, an Event of Default;

“**Defaulted Amount**” shall mean, with respect to any Monthly Period, an amount (which shall not be less than zero) equal to (a) the amount of Principal Receivables which became Defaulted Receivables in such Monthly Period, minus (b) the sum of (i) the amount of any Defaulted Receivables included in any Account the Receivables in which the Trust has reassigned or assigned to the Seller or the Servicer in accordance with the terms of the Receivables Purchase Agreement or the Trust Indenture during such Monthly Period, excluding, for greater certainty, the amount of any Defaulted Receivables automatically transferred, set over or otherwise conveyed to the Seller by the Trust pursuant to Section 2.10 of the Receivables Purchase Agreement, and (ii) the excess, if any, for the immediately preceding Monthly Period of the sum computed pursuant to this clause (b) for such Monthly Period over the amount of Principal Receivables which became Defaulted Receivables in such Monthly Period;

“**Defaulted Receivables**” shall mean, with respect to any Monthly Period, all Principal Receivables in any Account which are charged off as uncollectible in such Monthly Period in accordance with the Lending Guidelines and the Servicer’s customary and usual servicing procedures for servicing revolving credit card and other revolving credit account receivables comparable to the Receivables other than due to any adjustment payment, *provided, however*, that any Principal Receivable in respect of which a payment thereunder has remained due and payable for a period of 180 days shall be deemed to be a Defaulted Receivable. For purposes of this definition, a Principal Receivable in

¹ Capital One is an authorized user of the MasterCard trademark owned by MasterCard International Inc.

any Account shall become a Defaulted Receivable on the day on which such Principal Receivable is recorded as charged off on the Servicer's computer master file of revolving credit accounts;

"Defaulted Receivables Collateral" shall have the meaning specified in section 2.10 of the Receivables Purchase Agreement

"Deposit Account" shall mean an Eligible Deposit Account at the Depository into which Funds are deposited by or on behalf of the related Obligor under the Security Agreement pursuant to the related Deposit Documents, together with all money and other properties on deposit therein or credited thereto, and all interest, dividends earnings, income and other distributions and proceeds from time to time received, receivable or otherwise distributed to or in respect thereof;

"Deposit Documents" shall mean, the Security Agreement, the Supplemental Deposit Agreement and all other documents, books, credit files, records, and other information (including computer programs, tapes, discs, punch cards, data processing software and related property and rights) maintained with respect to the Deposit Account and the Funds related to a Secured Account;

"Depository" shall mean an Eligible Institution selected by Capital One, that is organized under the laws of Canada or any of the provinces or territories thereof (or any domestic branch of a foreign bank), which at all times is a member of Canada Deposit Insurance Corporation;

"Determination Date" shall mean the third Business Day preceding each Allocation Date;

"Discount Option Receivables" shall have the meaning specified in section 2.13 of the Receivables Purchase Agreement;

"Discount Option Receivables Collections" shall mean on any Date of Processing on and after the date on which the Seller's exercise of its discount option pursuant to section 2.13 of the Receivables Purchase Agreement takes effect, the product of (a) a fraction the numerator of which is the amount of the Discount Option Receivables and the denominator of which is the sum of the Principal Receivables (other than the Discount Option Receivables) and the Discount Option Receivables in each case (for both numerator and denominator) at the end of the prior Monthly Period, and (b) Collections of Principal Receivables that arise in the Accounts on such day on or after the date such option is exercised that would otherwise be Principal Receivables;

"Discount Percentage" shall mean the percentage, which may be a fixed percentage or a variable percentage based on a formula, of the amount of Receivables arising in the relevant Account that would otherwise constitute Principal Receivables to be treated as Finance Charge Receivables designated by the Seller in accordance with the terms and conditions of the Receivables Purchase Agreement (a) in the case of Discount Receivables, in the applicable assignment of Receivables in Additional Accounts or by letter delivered to the Trust or the Indenture Trustee or, (b) in the case of Discount Option Receivables, in the notice provided by the Seller pursuant to subsection 2.13(a) of the Receivables Purchase Agreement;

"Discount Receivables" shall mean, as of any applicable Additional Cut-Off Date, the amount of Principal Receivables in Additional Accounts designated by the Seller to be treated as Finance Charge Receivables; *provided, however*, that the Seller may not make any such designation unless (a) the Rating Agency Condition shall have been satisfied for such designation, and (b) the Seller

shall have delivered to the Trust and to the Indenture Trustee, and to any Series Enhancer or other person entitled thereto pursuant to the relevant Supplement, an Officer's Certificate of the Seller certifying that the Seller reasonably believes that such designation will not, based on the facts known to such officer at the time of such certification, after due inquiry, then cause an Amortization Event or a Series Amortization Event, or any event that, after the giving of notice or the lapse of time or both, would result in the occurrence of an Amortization Event or a Series Amortization Event;

"Document Delivery Date" shall mean the first Series Issuance Date in the case of Initial Accounts and the day that is on or prior to the tenth Business Day after the Additional Purchase Date in the case of Additional Accounts added or Participation Interests transferred to the Trust;

"Early Amortization Period" shall mean, with respect to any Series, the period beginning at the close of business on the Business Day immediately preceding the day on which an Amortization Event or a Series Amortization Event occurs or is deemed to have occurred with respect to such Series, and ending upon the earlier to occur of (a) the payment in full to the Series Indebtedness Holders of such Series of all amounts to which they are entitled pursuant to the Trust Indenture and the relevant Supplement, and (b) the Stated Maturity Date with respect to such Series;

"Eligible Account" shall mean a revolving credit card account owned by the Seller, in the case of the Initial Accounts, or the Seller or any Additional Seller, in the case of Additional Accounts, which, as of the Trust Cut-Off Date, in the case of an Initial Account or, as of the Additional Cut-Off Date, in the case of an Additional Account:

- (a) is in existence and maintained with and by (or on behalf of) the Seller, in the case of the Initial Accounts, or the Seller or any Additional Seller, in the case of Additional Accounts;
- (b) is payable in Canadian dollars;
- (c) in the case of the Initial Accounts or New Accounts, has an Obligor who has provided, as his or her most recent billing address, an address located in Canada;
- (d) has an Obligor who is not identified by the Seller, or the applicable Additional Seller, in its computer files as being involved in, or the subject of, a voluntary or involuntary bankruptcy proceeding;
- (e) is not identified as an Account with respect to which the related card or cheques, if any, has been reported to the Seller as having been lost or stolen;
- (f) is not, and does not have any Receivables which are sold, pledged, assigned or otherwise conveyed to any other person, other than the Trust;
- (g) if the Additional Account is a Secured Account, the holder has entered into a Security Agreement with the Seller and posted the required amount of Funds Collateral;
- (h) in the case of the Initial Accounts or New Accounts, is a revolving "MasterCard®" or "Visa®" credit card account;

- (i) except as provided below, does not have any Receivables which are Defaulted Receivables;
- (j) does not have any Receivables which are identified by the Seller or the related Obligor as being incurred as a result of the fraudulent use of the related card or cheques, if any; and
- (k) is not an account with respect to which the related Obligor has requested the discontinuance of responsibility therefor;

provided that, Eligible Accounts may include accounts, the receivables of which have been written off; provided that (i) the balance of all receivables included in all such accounts is reflected on and in the books and records of the Seller (and shall be treated for purposes of the Receivables Purchase Agreement) as “zero”, and (ii) the charging privileges with respect to all such accounts have been cancelled in accordance with the Lending Guidelines and shall not be reinstated by the Seller or the Servicer and no new Receivables may be created thereunder;

“**Eligible Deposit Account**” shall mean either (a) a segregated trust account with an Eligible Institution, or (b) a segregated trust account with the corporate trust department of a depository institution organized under the laws of Canada or a province thereof and authorized to act as a trustee for funds deposited in such account, so long as any of the securities of such depository institution shall have a credit rating from the Rating Agencies in one of their generic credit rating categories which signifies investment grade;

“**Eligible Institution**” shall mean a bank, trust company or loan company chartered or licensed under the laws of Canada or of any province thereof which at all times has (a) a long-term unsecured debt rating of (i) AA (low) or better from DBRS, (ii) A2 or better from Moody’s, and (iii) AA- or better from Standard & Poor’s, (b) a short-term unsecured debt rating of (i) R-1 (middle) or better from DBRS, (ii) P-1 or better from Moody’s and (iii) A-1+ or better from Standard or Poor’s, or (c) its obligations with respect to the relevant matter guaranteed by an institution with either of the ratings referred to in (a) or (b), provided that each Rating Agency has received written notice that such institution has such obligations guaranteed by an Eligible Institution. Notwithstanding subsections (a), (b) and (c) hereof, any institution which satisfies the Rating Agency Condition for a particular purpose shall be considered an Eligible Institution for such purpose. If so qualified, the Indenture Trustee or the Servicer may be considered an Eligible Institution for the purposes of this definition;

“**Eligible Investments**” shall mean, except as specified to the contrary in any Supplement, book-based securities, negotiable instruments, investments or securities represented by instruments in bearer or registered form which evidence:

- (a) direct obligations of, and obligations fully guaranteed as to timely payment by, the Government of Canada;
- (b) demand deposits, term deposits or certificates of deposit (having original maturities of no more than 365 days) of banks, trust companies or loan companies chartered or licensed under the laws of Canada or any province thereof provided that at the time of the Trust’s investment or contractual commitment to invest therein, the short-term

debt rating of such bank, trust company or loan company shall have the rating of (i) R-1 (middle) or better from DBRS, (ii) P-1 or better from Moody's and (iii) A-1+ or better from Standard & Poor's;

- (c) commercial paper (having remaining maturities of no more than 30 days) having, at the time of the Trust's investment or contractual commitment to invest therein, the rating of (i) R-1 (middle) or better from DBRS, (ii) P-1 or better from Moody's and (iii) A-1+ or better from Standard & Poor's;
- (d) call loans to, notes issued by or bankers' acceptances (having original maturities of no more than 365 days) accepted by any bank, trust company or loan company referred to in (b) above;
- (e) investments in money market funds having, at the time of the Trust's investment therein, a rating in the highest rating category of DBRS and Moody's and a rating of A-1+ from Standard & Poor's;
- (f) term deposits with an entity, the commercial paper of which has the rating of (i) R-1 (middle) or better from DBRS, (ii) P-1 or better from Moody's and (iii) A-1+ or better from Standard & Poor's; and
- (g) any other investments of a type or rating that satisfies the Rating Agency Condition;

provided, however, that the aggregate amount that may be invested at any time in any securities listed in paragraphs (b) through (g) above shall not exceed the greater of (A) \$1 million, and (B) 20% of the then total amount of Collections invested in Eligible Investments. If so qualified by the ratings listed in paragraphs (b) through (g) above, securities of the Seller and the Indenture Trustee may be considered Eligible Investments for the purposes of this definition;

“Eligible Receivable” shall mean each Receivable:

- (a) which has arisen under an Eligible Account;
- (b) which was created in compliance in all material respects with the Lending Guidelines and all applicable Requirements of Law, the failure to comply with which would have a material adverse effect on the interests of the Series Indebtedness Holders (without regard to the availability of any Series Enhancement), and pursuant to a Lending Agreement which complies in all material respects with all applicable Requirements of Law, the failure to comply with which would have a material adverse effect on the interests of the Series Indebtedness Holders (without regard to the availability of any Series Enhancement);
- (c) with respect to which all material consents, licences, approvals or authorizations of, or registrations or declarations with, any Governmental Authority required to be obtained, effected or given in connection with the creation of such Receivable or the execution, delivery, creation and performance by the Seller or by the original credit card issuer, if not the Seller, of the related Lending Agreement, have been duly obtained, effected or given and are in full force and effect;

- (d) as to which immediately prior to and, in the case of the title of the Trust, at the time of, the transfer of such Receivable to the Trust, the Seller and the Trust, as applicable, will have good and marketable title thereto free and clear of all Liens;
- (e) which has been or will, upon its creation, be the subject of a valid transfer and assignment from the Seller to the Trust of all the Seller's right, title and interest therein (including any proceeds thereof) effective until the termination of the Trust;
- (f) which, at and after the time of transfer to the Trust, is the legal, valid and binding payment obligation of the Obligor thereon enforceable against such Obligor in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally from time to time and except as such enforceability may be limited by general principles of equity;
- (g) which, at the time of transfer to the Trust, has not been waived or modified except for a Receivable which has been waived or modified in accordance with the Lending Guidelines and which waiver or modification is reflected in the Seller's computer file of revolving credit card accounts;
- (h) which, at the time of transfer to the Trust, is not subject to any right of rescission, set-off, counterclaim or any other defence (including defences arising out of violations of consumer protection laws) of the Obligor, other than defences arising out of applicable bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally from time to time and except as such enforceability may be limited by general principles of equity;
- (i) as to which, at the time of transfer to the Trust, the Seller has not taken any action which would impair, nor omitted to take any action the omission of which would impair, at the time of transfer to the Trust, in any material respect, the ownership rights of the Trust, and the rights of the Series Indebtedness Holders, therein;
- (j) which constitutes either an "account", "claim" or "book-debt" under and as defined in the PPSA; and
- (k) the Obligor of which, at the time of transfer, is not a resident of the Province of Quebec, unless otherwise agreed to by the Trust and each Rating Agency;

"Eligible Servicer" shall mean the Indenture Trustee, Capital One or an entity which, at the time of its appointment as Servicer, (a) is servicing a portfolio of revolving credit card accounts, (b) is legally qualified and has the capacity to service the Accounts, (c) is qualified to use the software that is then being used to service the Accounts or obtains the right to use or has its own software which is adequate to perform its duties under this Agreement, (d) has a net worth of at least \$50,000,000 as of the end of its most recent fiscal quarter, and (e) has a long-term unsecured debt rating of (i) BBB (low) or better from DBRS, (ii) Baa3 or better from Moody's or (iii) BBB- or better from Standard & Poor's or, in the absence of such ratings, is approved by the Trust, the Indenture Trustee and each Rating Agency;

“**Enhancement Agreement**” shall mean any agreement, instrument or document governing the terms of any Series Enhancement or pursuant to which any Series Enhancement is issued or outstanding;

“**Event of Default**” shall have the meaning specified in Section 8.3 of the Trust Indenture;

“**Excess Allocation Series**” shall mean a Series that, pursuant to the Supplement thereof, is entitled to receive certain excess Collections of Finance Charge Receivables, as more specifically set forth in such Supplement;

“**Excess Finance Charges**” shall have the meaning specified in section 3.7 of the Trust Indenture;

“**Excess Funding Account**” shall have the meaning specified in subsection 3.4(a) of the Trust Indenture;

“**Excess Funding Amount**” shall mean the principal balance of the funds on deposit in the Excess Funding Account;

“**Excess Shared Principal Collections**” shall mean the excess of the Shared Principal Collections over the aggregate amount of Principal Shortfalls for all Series, as defined in each related Supplement, that are Principal Sharing Series for such Allocation Date;

“**Finance Charge Collections**” shall mean, for any Monthly Period, the sum of (a) the aggregate amount of Collections of Finance Charge Receivables received during such Monthly Period, (b) all interest and other investment earnings on funds on deposit in the Collection Account and in the Excess Funding Account as provided for in subsections 3.3(d) and 3.4(d) of the Trust Indenture, and (c) any other amounts specified in the Receivables Purchase Agreement, the Trust Indenture or, with respect to any Series, the related Supplement, to be treated as Finance Charge Collections;

“**Finance Charge Receivables**” shall mean, with respect to the Accounts and any Monthly Period, the sum of all amounts billed to the Obligor on any Account at the beginning of such Monthly Period in respect of (a) Periodic Rate Finance Charges, (b) Cash Advance Fees, (c) Late Charge Fees, (d) Overlimit Fees, (e) Returned Cheque Charges, (f) Discount Option Receivables, if any, (g) Insurance Premiums and (h) all other incidental and miscellaneous fees and charges (other than annual membership fees and Miscellaneous Up-Front Fees) billed on the Accounts from time to time. Collections of Finance Charge Receivables with respect to any Monthly Period shall include (i) a portion, determined pursuant to subsection 2.8(c) of the Receivables Purchase Agreement, of the Interchange paid to the Seller through “MasterCard” with respect to such Monthly Period, (ii) all Recoveries received during such Monthly Period, but excluding any Unamortized Recoveries held in the Collection Account, (iii) a portion, determined pursuant to subsection 5.4(c)(i) of the Trust Indenture, of annual membership fees amortized (rather than billed) with respect to the Accounts during such Monthly Period, (iv) the portion, determined pursuant to subsection 5.4(d) of the Trust Indenture, of Discount Receivables to be deposited in the Collection Account for such Monthly Period, and (v) the portion, determined pursuant to subsection 5.4(f)(i) of the Trust Indenture of Miscellaneous Up-Front Fees amortized (rather than billed) with respect to the Accounts during such Monthly Period;

“**Finance Charge Shortfalls**” shall have the meaning specified in section 3.7 of the Trust Indenture;

“**Fixed Allocation Percentage**” shall mean, with respect to any Series, the fixed allocation percentage specified in the related Supplement;

“**Floating Allocation Percentage**” shall mean, with respect to any Series, the floating allocation percentage specified in the related Supplement;

“**Funds**” shall mean the money, instruments and other properties on deposit in the related Deposit Account, which Funds have been pledged and assigned by the related Obligor to the Seller under the Security Agreement in respect of a Secured Account;

“**Funds Collateral**” shall mean to the extent allocable to a Receivable under a Secured Account which Receivable has been sold to the Trust under this Agreement, (a) the Deposit Account and the Funds, (b) each Deposit Document, including all monies due or to become due to the Seller under or in connection with such related Deposit Document, and all rights, remedies, powers, privileges, benefits and claims of the Seller under or with respect to such related Deposit Document (whether arising pursuant to the terms of such related Deposit Document or otherwise available at law or in equity); (c) all guarantees, indemnities, warranties, insurance policies and proceeds and premium refunds and other arrangements of whatever character from time to time under or with respect to the Funds, the Secured Account, the Deposit Account or the Deposit Documents; (d) all other security interests or liens from time to time purporting to secure an Obligor’s obligations under or with respect to the Secured Account; and (e) all substitutions for and proceeds of any of the foregoing;

“**Governmental Authority**” shall mean the Government of Canada, any province or other political subdivision of Canada and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government;

“**Group**” shall mean, with respect to any Series, the group of Series, if any, in which the related Supplement specifies such Series is to be included;

“**Indebtedness**” shall mean all Series Indebtedness and the Seller Indebtedness, which Indebtedness may be evidenced by any one of the debt notes (including any other form of note permitted by the Trust Indenture and issued pursuant to a Supplement) issued and executed by the Trust and authenticated by or on behalf of the Indenture Trustee;

“**Indebtedness Holder**” shall mean any Series Indebtedness Holder or any Seller Indebtedness Holder;

“**Indenture Trustee**” shall mean Computershare Trust Company of Canada, the indenture trustee under the Trust Indenture, and any successor indenture trustee appointed as therein provided;

“**Ineligible Receivables**” shall have the meaning specified in section 2.5 of the Receivables Purchase Agreement;

“**Initial Account**” shall mean each “MasterCard” revolving credit card account established pursuant to a Lending Agreement between the Seller and any person, which account is identified in the computer file or microfiche list delivered to the Trust by the Seller on or prior to the initial Series Issuance Date pursuant to section 2.1 of the Receivables Purchase Agreement;

“**Insolvency Event**” shall have the meaning specified in subsection 8.1 of the Trust Indenture;

“**Insolvency Proceeds**” shall have the meaning specified in section 8.2 of the Trust Indenture;

“**Insurance Premiums**” means the premiums payable by Obligor in respect of any payment protection insurance purchased by Obligor in respect of the Receivables owed by them;

“**Insurance Proceeds**” shall mean any amounts received pursuant to any credit life insurance policies, credit disability or unemployment insurance policies covering any Obligor with respect to Receivables under such Obligor’s Account;

“**Interchange**” shall mean interchange fees payable to the Seller or any Additional Seller, in its capacity as credit card issuer, by financial institutions through MasterCard or any other similar entity or organization, including VISA, with respect to any other type of revolving credit card accounts included as Accounts (except as otherwise provided in the initial Assignment with respect to any such other type of Accounts), in connection with cardholder charges for goods and services;

“**Late Charge Fees**” shall have the meaning specified in the Lending Agreement applicable to each Account for late payment fees or similar terms with respect to such Account;

“**Lending Agreement**” shall mean, with respect to an Account, the agreements (including Deposit Documents in the case of Secured Accounts) between the Seller and the related Obligor, governing the terms and conditions of such Account, as such agreements may be amended, modified or otherwise changed from time to time in conformance with all Requirements of Law, the failure to comply with which would have a material adverse effect on the interests of the Series Indebtedness Holders under the Receivables Purchase Agreement, the Trust Indenture or any Supplement, and as distributed (including any amendments and revisions thereto) to holders of such Accounts;

“**Lending Guidelines**” shall mean the Seller’s established policies and procedures relating to the operation of its credit card business which are applicable to its entire portfolio of “MasterCard” and other revolving accounts and are consistent with reasonably prudent practice, including the established policies and procedures for determining the creditworthiness of credit card or other revolving credit account customers, and the extension of credit to credit card and other revolving credit account customers and relating to the maintenance of credit card and other revolving credit accounts and collection of receivables with respect thereto, as such policies and procedures may be amended, modified, or otherwise changed from time to time in conformance with all Requirements of Law, the failure to comply with which would have a material adverse effect on the interests of the Series Indebtedness Holders under the Receivables Purchase Agreement, the Trust Indenture or any Supplement;

“**Lien**” shall mean any mortgage, deed of trust, pledge, hypothecation, assignment (whether absolute or intended as security), deposit arrangement, encumbrance, lien (statutory or other), preference, priority or other Security Interest or preferential arrangement of any kind or nature whatsoever, including any conditional sale or other title retention agreement and any financing lease having substantially the same economic effect as any of the foregoing; *provided, however*, that any assignment permitted by section 3.2 of the Receivables Purchase Agreement, the assignment of Receivables by the Seller pursuant to the Receivables Purchase Agreement and the lien created by

the Trust Indenture by the Trust in favour of the Indenture Trustee shall be deemed not to constitute a Lien;

“**Lump Sale**” shall mean the designation of additional Eligible Accounts to be included as Accounts the receivables in which are to be sold to the Trust or of Participation Interests to be sold to the Trust pursuant to subsection 2.9(a) or (b) of the Receivables Purchase Agreement;

“**Lump Sale Account**” shall mean each credit card account established pursuant to a Lending Agreement, which account is designated pursuant to subsection 2.9(a) or (b) of the Receivables Purchase Agreement to be included as an Account and is identified in the computer file or microfiche list delivered to the Trust by the Seller pursuant to section 2.1 of the Receivables Purchase Agreement and may include Secured Accounts;

“**MasterCard**” shall mean MasterCard International Inc.;

“**Miscellaneous Up-Front Fees**” shall mean, the up-front fees, as specified in the Lending Agreement applicable to each Account, which are amortized by the Seller over a 12 month period.

“**Monthly Period**” shall mean, with respect to each Allocation Date, the calendar month preceding such Allocation Date;

“**Monthly Servicing Fee**” shall mean, with respect to any Series, the monthly servicing fee specified in the related Supplement;

“**Moody’s**” shall mean Moody’s Investors Service, Inc., or its successor;

“**New Account**” shall mean any revolving “MasterCard” or “VISA” credit card account originated after the Trust Cut-Off Date by the Seller pursuant to a Lending Agreement in the ordinary course of the Seller’s business, which account is designated pursuant to subsection 2.9(c) of the Receivables Purchase Agreement to be included as an Account and is identified in the computer file or microfiche list delivered to the Trust by the Seller pursuant to section 2.1 of the Receivables Purchase Agreement and may include Secured Accounts;

“**New Issuance**” shall mean an issuance by the Trust of any Series or Class of Series Indebtedness pursuant to subsection 2.3(a) of the Trust Indenture;

“**Note**” shall mean any one of the Series Notes (if any) or the Seller Notes (if any);

“**Note Owner**” shall mean, with respect to a Book-Based Note, the person who is the owner of such Book-Based Note, as reflected on the books of the Clearing Agency, or on the books of a person maintaining an account with such Clearing Agency (as a direct or an indirect participant, in accordance with the rules of such Clearing Agency);

“**Note Rate**” shall mean, with respect to each Series (or, if a Series has more than one Class, each Class), the interest rate specified for such Series (or Class) in the related Supplement;

“**Obligor**” shall mean, with respect to any Account, the person or persons obligated to make payments with respect to such Account, including any guarantor thereof;

“**Officer’s Certificate**” shall mean, unless expressly provided otherwise, in the case of (a) a certificate to be delivered by the Seller to the person(s) entitled thereto pursuant to the terms of any of the Receivables Purchase Agreement, the Trust Indenture or any Supplement, a certificate signed by the President, any Vice-President, the Treasurer or Assistant Treasurer of the Seller, or (b) a certificate to be delivered by the Servicer where the Servicer is a Successor Servicer, a certificate signed the Servicer, as the case may be, or by the President, any Vice-President or the financial controller (or an officer holding an office with equivalent or more senior responsibilities) of a Successor Servicer other than the Indenture Trustee or, if the Indenture Trustee is the Successor Servicer, by the Regional Manager, any Vice-President or Assistant Vice-President of the corporate trust department of the Indenture Trustee;

“**Opinion of Counsel**” shall mean a written opinion of counsel, who may be counsel for, or an employee of, the person providing the opinion and who shall be reasonably acceptable to the person entitled to receive the opinion pursuant to the terms hereof;

“**Optional Amortization Date**” shall have, with respect to any Series, the meaning specified in the related Supplement;

“**Optional Amortization Notice**” shall have, with respect to any Series, the meaning specified in the related Supplement;

“**Original Execution Date**” shall mean June 22, 1998;

“**Overlimit Fees**” shall mean, with respect to an Account, any fees payable by the applicable Obligor under the related Lending Agreement if the credit or lending limit pertaining to such Obligor is exceeded;

“**Participation Interests**” shall have the meaning specified in subsection 2.9(a) of the Receivables Purchase Agreement;

“**Paying Agent**” shall mean any paying agent and co-paying agent appointed pursuant to section 2.7 of the Trust Indenture;

“**Payment Rate**” for any Monthly Period, shall mean a fraction, the numerator of which is the Collections for such Monthly Period and the denominator of which is the Receivables on the last day of the preceding Monthly Period;

“**Performance Origination Payment**” shall mean those amounts payable to the Seller pursuant to the provisions of the Trust Indenture and any Supplement in respect of a portion of the purchase price for the Purchase Assets as set out in subsection 2.1(b)(ii) of the Receivables Purchase Agreement;

“**Periodic Rate**” shall mean the periodic interest rate or rates determined in the manner described in the Lending Agreement applicable to each Account;

“**Periodic Rate Finance Charges**” shall mean the interest charged to Obligors pursuant to the Lending Agreements;

“**Permitted Transferee**” shall have, with respect to any Series, the meaning specified in the Supplement for such Series;

“**person**” shall include individuals, partnerships, joint ventures, associations, trusts, unincorporated organizations, governments, governmental bodies, corporations and other entities of similar nature;

“**PPSA**” shall mean the *Personal Property Security Act* (Ontario), as amended from time to time, and, for all purposes except section 1.11 of the Receivables Purchase Agreement and the Trust Indenture, shall include the personal property security legislation or assignment of book debts legislation or any similar legislation (including the Civil Code of Quebec and any uniform commercial code legislation) in any jurisdiction other than Ontario where an assignment, financing statement or continuation statement is required to be registered in order to preserve, protect and perfect the Trust’s right, title and interest in the Trust Assets or the Indenture Trustee’s right, title and interest in the Secured Property;

“**Principal Amortization Period**” shall mean, with respect to any Series, the principal amortization period specified in the related Supplement;

“**Principal Receivables**” shall mean all amounts, other than amounts which represent Finance Charge Receivables, billed to the Obligors on any Account in respect of (a) the purchase of goods and services and (b) cash advances, but shall not include Defaulted Receivables, amounts billed as annual membership fees or Miscellaneous Up-Front Fees; *provided, however*, that after the date that the Seller exercises its discount option pursuant to section 2.13 of the Receivables Purchase Agreement, Principal Receivables on any Date of Processing thereafter shall mean Principal Receivables as otherwise determined pursuant to this definition minus the amount of any Discount Option Receivables. Principal Receivables shall also include the principal portion of Participation Interests as shall be determined pursuant to, and only if so provided in, the applicable Supplement for any Series and an amendment as provided for in section 2.9 of the Receivables Purchase Agreement. In calculating the aggregate amount of Principal Receivables on any day, the amount of Principal Receivables shall be reduced by the aggregate amount of credit balances in the Accounts on such day. Any Principal Receivables which the Seller is unable to transfer as provided in section 2.11 of the Receivables Purchase Agreement shall not be included in calculating the aggregate amount of Principal Receivables, except to the extent so provided in said section 2.11;

“**Principal Sharing Series**” shall mean a Series that, pursuant to the Supplement therefor, is entitled to receive Shared Principal Collections;

“**Principal Shortfalls**” shall have the meaning specified in section 3.6 of the Trust Indenture;

“**Principal Terms**” shall mean, with respect to any Series:

- (a) the name or designation of such Series;
- (b) the initial principal amount (or method for calculating such amount);
- (c) the Note Rate (or method for the determination thereof) and the manner, if any, in which such rate may be adjusted from time to time;

- (d) the payment date or dates, including interest payment dates, and the date or dates from which such interest shall accrue and the manner, if any, in which such payment dates, including interest payment dates, may be reset from time to time;
- (e) the method for allocating Collections to the Series Indebtedness Holders of such Series;
- (f) the designation of any Series Accounts and the terms governing the operation of any such Series Accounts;
- (g) the Servicing Fee Rate and its method of calculation;
- (h) the issuer and terms of any form of Series Enhancement with respect thereto;
- (i) the terms on which the Series Indebtedness of such Series may be exchanged for Series Indebtedness of another Series, repurchased or remarketed to other investors;
- (j) the Purchase Termination Date applicable thereto;
- (k) the number of Classes of Series Indebtedness of such Series and, if such Series consists of more than one Class, the rights and priorities of each such Class;
- (l) the priority of such Series with respect to any other Series;
- (m) whether such Series will be part of a Group;
- (n) the extent, if any, to which the Series Indebtedness of such Series will be issuable in temporary or permanent global form (and, in such case, the depository for such global note or notes, the terms and conditions, if any, upon which such global notes may be exchanged, in whole or in part, for Registered Notes, and the manner in which any interest payable on a temporary or global note shall be paid);
- (o) whether the Series Indebtedness of such Series may be issued as bearer notes and any limitations imposed thereon;
- (p) the Rating Agency or Agencies, if any, rating such Series;
- (q) the name of the Clearing Agency, if any;
- (r) the Series Allocated Amount for such Series;
- (s) any deposit into any account maintained for the benefit of the Series Indebtedness Holders;
- (t) whether or not such Series is a Principal Sharing Series;
- (u) any other terms of such Series;
- (v) the Stated Maturity Date applicable thereto; and

- (w) the Expected Final Payment Date (as defined in the related Supplement), if any, applicable thereto;

“**Purchased Assets**” shall have the meaning specified in section 2.1 of the Receivables Purchase Agreement;

“**Purchase Termination Date**” shall mean, with respect to any Series, the purchase termination date specified in the related Supplement;

“**Rating Agency**” shall mean, with respect to each outstanding Series (or if a Series has more than one Class, each Class), each statistical rating agency selected by the Seller by notice given to the Trust to rate the Series Indebtedness of such Series (or Class);

“**Rating Agency Condition**” shall mean, with respect to any action, that each Rating Agency shall have notified the Seller, the Servicer, the Trust and the Indenture Trustee in writing that such action will not result in a reduction or withdrawal of the rating of any outstanding Series or Class with respect to which it is a Rating Agency;

“**Reassignment**” shall have the meaning specified in section 2.10 of the Receivables Purchase Agreement;

“**Reassignment Notice**” shall have the meaning specified in paragraph 2.5(a)(i) of the Receivables Purchase Agreement;

“**Receivables**” shall mean all amounts shown on the Servicer’s records as amounts payable by Obligors on any Account from time to time, including amounts payable for Principal Receivables and amounts payable for Finance Charge Receivables; *provided, however*, that such amounts shall not be included as, or deemed to be, Receivables on and after the day on which any such Receivables become Defaulted Receivables; *provided, further*, that for purposes of determining the amount of Principal Receivables in the Trust and the deduction of the principal amount of (a) Ineligible Receivables from such total amount of Principal Receivables as required by subsection 2.5(b) of the Receivables Purchase Agreement and section 5.3 of the Trust Indenture, and (b) Defaulted Receivables from such total amount of Principal Receivables as required by section 2.10 of the Receivables Purchase Agreement, the initial proviso shall not apply;

“**Receivables Purchase Agreement**” shall mean the amended and restated receivables purchase agreement made as of September 20, 2005 between the Seller, the Trust and the Indenture Trustee pursuant to which the Trust purchased and agreed to purchase from the Seller the Purchased Assets, as the same may be amended, supplemented or restated from time to time;

“**Record Date**” shall mean, with respect to any Allocation Date, the last day of the calendar month immediately preceding such Allocation Date, unless otherwise provided, with respect to a Series, in the related Supplement;

“**Recoveries**” shall mean all amounts, excluding Insurance Proceeds, received by the Servicer with respect to Receivables which have previously become Defaulted Receivables, plus the proceeds of any sale or securitization of such Defaulted Receivables (plus any related Finance Charge Receivables), plus any residual payments from any such securitization, but excluding any interest

and principal payable to the investors in any such securitization and any servicing fees or other fees payable with respect to any such securitization of such Defaulted Receivables and the related Finance Charge Receivables;

“**Redemption Date**” shall have the meaning specified in section 2.10(a) of the Receivables Purchase Agreement;

“**Redeemed Accounts**” shall have the meaning specified in section 2.10 of the Receivables Purchase Agreement;

“**Redeemed Participation Interests**” shall have the meaning specified in section 2.10 of the Receivables Purchase Agreement;

“**Register**” shall mean the register maintained pursuant to section 2.4(a) of the Trust Indenture providing for the registration of Indebtedness and transfers and exchanges thereof;

“**Registered Note**” shall have the meaning specified in section 2.1 of the Trust Indenture;

“**Related Account**” shall mean any MasterCard or, if applicable, Visa account or accounts having the following characteristics: (a) such Related Account was established in compliance with the Lending Guidelines pursuant to a Lending Agreement, (b) the Obligor or Obligors with respect to such Related Account are the same person or persons as the Obligor or Obligors of an Account, (c) such Related Account is originated (i) as result of the credit card with respect to an Account being lost or stolen, (ii) as a result of the Obligor requesting a change in the applicable billing cycle, (iii) as a result of the Obligor requesting the discontinuance of the responsibility with respect to an Account, (iv) as result of the Obligor requesting a product change, or (v) for any other reason permitted by the Lending Guidelines, and (d) such Related Account can be traced or identified by reference to or by way of the computer or other records of the Seller;

“**Required Designation Date**” shall have the meaning specified in subsection 2.9(a) of the Receivables Purchase Agreement;

“**Required Principal Balance**” shall mean, on any date, the aggregate amount of the Series Allocated Amounts for each Series outstanding on such date;

“**Required Seller’s Allocated Amount**” shall mean, with respect to any date, an amount equal to the product of the Required Seller’s Percentage and the aggregate amount of Principal Receivables in the Trust;

“**Required Seller’s Percentage**” shall mean 5%; *provided, however*, that the Seller may reduce the Required Seller’s Percentage upon (a) 30 days’ prior notice to the Trust, the Indenture Trustee and each Rating Agency, and each Series Enhancer or other person entitled to receive such notice pursuant to any applicable Supplement, (b) the satisfaction of the Rating Agency Condition in respect of such reduction, and (c) delivery to the Trust, the Indenture Trustee, each such Series Enhancer and each such other person of an Officer’s Certificate of the Seller stating that the Seller reasonably believes that such reduction will not, based on the facts known to such officer at the time of such certification, then cause an Amortization Event or a Series Amortization Event, or any event that, after the giving of notice or the lapse of time, would constitute an Amortization Event or a

Series Amortization Event, to occur with respect to any Series; *provided further* that the Required Seller's Percentage shall not at any time be less than the Specified Percentage;

"Requirements of Law" shall mean any law, treaty, rule or regulation, or determination of an arbitrator or Governmental Authority, whether federal, provincial or local (including any consumer protection law), and, when used with respect to any person, the certificate of incorporation and by-laws or other charter, constating or governing documents of such person;

"Responsible Officer" shall mean, when used with respect to the Trust, any Manager, any Vice-President or Assistant Vice-President or Trust Officer with authority with respect to the corporate trust department of BNY Trust or, when used with respect to the Indenture Trustee, any Manager, any Vice President or Assistant Vice President with authority with respect to the corporate trust department of the Indenture Trustee or, in either case, any other officer of BNY Trust or the Indenture Trustee, as the case may be, customarily performing functions similar to those performed by the persons who at the time shall be such officers or to whom any corporate trust matter is referred at the relevant corporate trust department because of such officer's knowledge of and familiarity with the particular subject;

"Returned Cheque Charges" shall mean the charges specified in the Lending Agreement payable for returned payment cheques drawn on an Account;

"Secured Account" shall mean an Account owned by the Seller under which the obligations of the Obligor, including any Receivables therein, are secured by Funds Collateral;

"Secured Property" shall have the meaning specified in section 4.1 of the Trust Indenture;

"Security Agreement" shall mean, with respect to a Secured Account, the security agreement between the Seller and the related Obligor pursuant to which such Obligor grants a Security Interest in the Funds, the Deposit Account and any other Funds Collateral to secure its obligations under such Secured Account, as amended, supplemented or otherwise modified from time to time;

"Security Interest" shall mean any mortgage, charge, deed of trust, pledge, hypothec, assignment (whether absolute or intended as security), deposit arrangement, encumbrance, lien (statutory or other), preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever, including any conditional sale or other title retention agreement and any financing lease having substantially the same economic effect as any of the foregoing;

"Seller" shall mean Capital One together with any Additional Seller;

"Seller Indebtedness" shall mean, collectively, the Capital One Indebtedness and any Supplemental Indebtedness, which Seller Indebtedness may be evidenced by one or more Seller Notes;

"Seller Indebtedness Holder" shall mean any person in whose name any of the Seller Indebtedness is registered;

"Seller Note" shall mean, collectively, the Capital One Note, if any, and any outstanding Supplemental Notes;

“**Seller’s Allocated Amount**” shall mean at any time of determination an amount equal to the total amount of Principal Receivables and the principal amount on deposit in the Excess Funding Account at such time minus the aggregate Allocated Amounts for all outstanding Series at such time;

“**Seller’s Allocation**” shall have the meaning specified in subsection 3.2(b) of the Trust Indenture;

“**Seller’s Allocation Percentage**” shall mean, on any date of determination, when used with respect to Principal Receivables, Finance Charge Receivables and Defaulted Receivables, a percentage equal to 100% minus the Aggregate Series Percentage with respect to such categories of Receivables;

“**Series**” shall mean any series of Series Indebtedness established and issued pursuant to a Supplement;

“**Series Account**” shall mean any deposit, trust, escrow or similar account maintained in the name of the Trust and designated to reflect the security interest granted therein by the Trust to the Indenture Trustee pursuant to the terms of the Trust Indenture and as specified in any Supplement;

“**Series Allocated Amount**” shall mean, for any Series as of any date of determination, an amount equal to the numerator of the applicable Allocation Percentage in respect of the allocation of collections of Principal Receivables on such date determined in accordance with the related Supplement;

“**Series Amortization Event**” shall mean any event designated as a Series Amortization Event in any Supplement;

“**Series Enhancement**” shall mean the rights and benefits provided to the Series Indebtedness Holders of a particular Series (or, if a Series has more than one Class, a particular Class of the Series) pursuant to any letter of credit, surety bond, cash collateral account, spread account, guaranteed rate agreement, maturity liquidity facility, tax protection agreement, interest rate swap agreement or other similar arrangement. The subordination of any Series (or Class) to another Series (or Class) shall be deemed to be a Series Enhancement;

“**Series Enhancer**” shall mean the person or persons providing any Series Enhancement, other than the Series Indebtedness Holders of each Series (or, if a Series has more than one Class, each Class) which is subordinated to another Series (or Class);

“**Series Indebtedness**” shall mean, for any Series or Class, any indebtedness of the Trust to the Series Indebtedness Holders of such Series or Class created pursuant to the Trust Indenture and the related Supplement, which Series Indebtedness may be evidenced by one or more Series Notes;

“**Series Indebtedness Holders**” shall mean any person in whose name any Series Indebtedness is registered;

“**Series Indebtedness Holders’ Allocation**” shall have the meaning specified in subsection 3.2(a) of the Trust Indenture;

“**Series Issuance Date**” shall mean, with respect to any Series, the date on which the Series Indebtedness of such Series is to be originally established and issued in accordance with section 2.3 of the Trust Indenture and the related Supplement;

“**Series Notes**” shall mean, for any Series, if the relevant Supplement for such Series provides that related Series Indebtedness is to be represented by Notes, the debt notes executed by the Trust and authenticated by or on behalf of the Indenture Trustee, substantially in the form annexed to the relevant Supplement and issued by the Trust to evidence such Series Indebtedness in accordance with sections 2.1 and 2.2 of the Trust Indenture;

“**Series Percentage**” shall mean, on any date of determination and with respect to any Series, unless otherwise provided in the related Supplement, when used with respect to Principal Receivables, the Allocation Percentage for such Series, and when used with respect to Finance Charge Receivables and Defaulted Receivables, the Floating Allocation Percentage for such Series;

“**Service Transfer**” shall have the meaning specified in section 7.1 of the Trust Indenture;

“**Servicer**” shall mean Capital One, in its capacity as servicer pursuant to the Trust Indenture and, after any Service Transfer, the Successor Servicer;

“**Servicer Default**” shall have the meaning specified in section 7.1 of the Trust Indenture;

“**Servicing Fee**” shall have the meaning specified in section 5.2 of the Trust Indenture;

“**Servicing Fee Rate**” shall mean, with respect to any Series, the servicing fee rate specified in the related Supplement;

“**Servicing Officer**” shall mean any officer of the Servicer or an attorney-in-fact of the Servicer who in either case is involved in, or responsible for, the administration and servicing of the Receivables and whose name appears on a list of servicing officers furnished to the Trust and the Indenture Trustee by the Servicer, as such list may from time to time be amended;

“**Settlement Deed**” means the amended and restated settlement deed made as of April 8, 2003 between Associated Assets Acquisition Inc., as settlor, and BNY Trust (the successor to Montreal Trust Company of Canada as trustee of the Trust), pursuant to which Algonquin Credit Card Trust (formerly, Capital One Credit Card Master Trust) has been established, as the same may be amended, supplemented or restated from time to time;

“**Shared Principal Collections**” shall have the meaning specified in section 3.6 of the Trust Indenture;

“**Specified Percentage**” shall mean 2%;

“**Standard & Poor’s**” shall mean Standard & Poor’s Ratings Services, a division of the McGraw-Hill Group of Companies, Inc., or its successor;

“**Stated Maturity Date**” shall have, for any Series, the meaning specified in the relevant Supplement for such Series;

“**Subordinated Excess Principal Series**” shall mean each Series specified in the related Supplement to be a Subordinated Excess Principal Series;

“**Subordinated Excess Principal Shortfall**” shall have the meaning specified in the Supplement applicable to any Subordinated Excess Principal Series;

“**Successor Servicer**” shall have the meaning specified in subsection 7.2(a) of the Trust Indenture;

“**Supplement**” shall mean, with respect to any Series, a Supplement to the Trust Indenture, executed and delivered in connection with the establishment and original issuance of the Series Indebtedness of such Series pursuant to section 2.3 of the Trust Indenture, as the same may be amended, supplemented or restated from time to time;

“**Supplemental Deposit Agreement**” shall mean, with respect to a Secured Account, an agreement with respect to the Deposit Account at the Depository, as amended, supplemented or otherwise modified from time to time;

“**Supplemental Indebtedness**” shall have the meaning specified in subsection 2.3(e) of the Trust Indenture, which Supplemental Indebtedness may be evidenced by a Supplemental Note;

“**Supplemental Indebtedness Holder**” shall mean the person in whose name any Supplemental Indebtedness is registered;

“**Supplemental Note**” shall have the meaning specified in subsection 2.3(e) of the Trust Indenture;

“**Tax**” means any withholding, stamp, income, business, general corporation, large corporations, property, capital, excise, customs, goods and services, sales, consumption, value-added or other tax, duty, impost, fee, levy, assessment or other governmental charge, and any related penalties or interest;

“**Termination Notice**” shall have the meaning specified in section 7.1 of the Trust Indenture;

“**Termination Proceeds**” shall have the meaning specified in section 10.2(c) of the Trust Indenture;

“**Transaction Documents**” shall mean, for any Series of Notes, the Receivable Purchase Agreement, the Settlement Deed, the Trust Indenture, the related Supplement and such other documents and certificates delivered in connection therewith;

“**Transfer Agent and Registrar**” shall have the meaning specified in section 2.4 of the Trust Indenture;

“**Transfer Date**” shall mean the Business Day immediately preceding each Allocation Date;

“**Transfer Deposit Amount**” shall mean, with respect to any Allocation Date, the amount, if any, deposited into the Collection Account on such Allocation Date in connection with the reassignment or assignment of a Receivable pursuant to section 5.3 of the Trust Indenture;

“**Transfer Form**” shall have the meaning specified in subsection 2.4(a) of the Trust Indenture;

“**Transfer Restriction Event**” shall have the meaning specified in section 2.11 of the Receivables Purchase Agreement;

“**Trust**” shall mean BNY Trust in its capacity as trustee of Algonquin Credit Card Trust (formerly, Capital One Credit Card Master Trust).

“**Trust Assets**” shall mean the Purchased Assets and all monies on deposit in the Collection Account, the Excess Funding Account, the Series Accounts and any Series Enhancement;

“**Trust Cut-Off Date**” shall mean June 12, 1998;

“**Trust Indenture**” shall mean the amended and restated trust indenture made as of September 20, 2005 between Capital One, the Trust and the Indenture Trustee, as the same may be amended, supplemented or restated from time to time;

“**Unamortized Membership Fees**” shall have the meaning specified in subsection 5.4(c) of the Trust Indenture;

“**Unamortized Miscellaneous Up-Front Fees**” shall have the meaning specified in subsection 5.4(f) of the Trust Indenture;

“**Unamortized Recoveries**” shall have the meaning specified in subsection 5.4(e) of the Trust Indenture; and

“**VISA**” shall mean Visa International Service Corporation.

Exhibit A
to
Receivables Purchase Agreement

Form of Assignment of Receivables in Additional Accounts
(as required by subsection 2.9(g) of the
Receivables Purchase Agreement)

ASSIGNMENT OF RECEIVABLES IN ADDITIONAL ACCOUNTS

This Agreement made as of ●, ●.

B E T W E E N:

CAPITAL ONE BANK (Canada Branch), a branch of Capital One Bank, a Virginia banking corporation, licensed under the laws of Canada,

(hereinafter sometimes referred to as “**Capital One**” or the “**Seller**”),

- and -

BNY TRUST COMPANY OF CANADA, a trust company incorporated under the laws of Canada and licensed to carry on business in each of the provinces of Canada, in its capacity as trustee of **ALGONQUIN CREDIT CARD TRUST** (formerly Capital One Credit Card Master Trust)

(in such capacity, hereinafter referred to as the “**Trust**”)

WHEREAS the Seller, the Trust and Computershare Trust Company of Canada are parties to an amended and restated receivables purchase agreement made as of September 20, 2005 (as amended, supplemented, modified, restated or replaced from time to time, the “**Receivables Purchase Agreement**”);

AND WHEREAS, pursuant to the Receivables Purchase Agreement, the Seller wishes to designate Additional Accounts to be treated as Accounts and to convey the Receivables in such Additional Accounts, whether now existing or hereafter created, to the Trust (as each such term is defined in the Receivables Purchase Agreement);

AND WHEREAS the Trust is willing to purchase the Receivables arising in such Additional Accounts subject to the terms and conditions hereof and the Receivables Purchase Agreement;

NOW THEREFORE, the Seller and the Trust hereby agree as follows:

1. **Defined Terms.** All capitalized terms used herein shall have the meanings ascribed to them, respectively, in the Receivables Purchase Agreement unless otherwise defined herein.

“**Additional Purchase Date**” shall mean, with respect to the Designated Additional Accounts designated hereby, the date hereof.

“**Additional Cut-Off Date**” shall mean, with respect to the Designated Additional Accounts,

•, •.

“**Designated Additional Accounts**” shall mean the Additional Accounts identified in Section 2.

2. **Designation of Additional Accounts.** Attached as Schedule 1 hereto is a computer file or microfiche list containing a true and complete list identifying the Additional Accounts and the Receivables arising in the Additional Accounts, specifying for each such Account, as of the Additional Cut-Off Date, its account number, the aggregate amount of Principal Receivables outstanding in such Account and the aggregate amount of Receivables outstanding in such Account, which computer file or microfiche list shall supplement Schedule 2 to the Receivables Purchase Agreement.

3. **Conveyance of Receivables.**

(a) Subject to the terms and conditions hereof and the Receivables Purchase Agreement, the Seller hereby sells, transfers, assigns and conveys to the Trust (on a fully serviced basis as set forth in the Trust Indenture), and the Trust hereby purchases from the Seller, all of the Seller’s right, title and interest in, to and under (i) the Receivables existing in the Designated Additional Accounts at the close of business on the Additional Cut-Off Date, and, thereafter, on the day they are created, the Receivables in the Designated Additional Accounts subsequently created from time to time until the time specified in section 5.1 of the Receivables Purchase Agreement, (ii) all Funds Collateral securing any such Receivables and the related Designated Additional Accounts, (iii) all monies due or to become due and all amounts received with respect thereto and (iv) all proceeds of the foregoing, including Insurance Proceeds, Recoveries and the right to receive Interchange (collectively, the “**Additional Purchased Assets**”). The foregoing does not constitute and is not intended to result in the creation or assumption by the Trust of any obligation of the Seller, any Additional Seller or any other person in connection with the Accounts, the Receivables or under any agreement or instrument relating thereto, including any obligation to Obligors, merchant banks, acquiring banks or other financial institutions, MasterCard or any other credit card company, including VISA, or insurers.

(b) In connection with such sale, the Seller agrees to record and file, at its own expense, assignments, financing statements or continuation statements (and financing change statements or other documents when applicable) with respect to the Receivables now existing and hereafter created in the Designated Additional Accounts meeting the applicable Requirements of Law in such manner and in such jurisdictions as are necessary to protect, perfect and maintain the protection and perfection of the sale and assignment of the Receivables to the Trust, and to deliver a file-stamped or duplicate copy of each such assignment, financing statement or continuation statement or other evidence of such filing to the Trust on or prior to the Document Delivery Date.

- (c) In connection with such sale, the Seller further agrees, at its own expense, on the Additional Purchase Date, to indicate in the appropriate computer files or other records of the Seller that Receivables arising in the Designated Additional Accounts have been conveyed to the Trust pursuant to this Assignment and the Receivables Purchase Agreement.
- (d) The Seller and the Trust intend and agree that the transfer of the Additional Purchased Assets from the Seller to the Trust pursuant to this Assignment constitutes an absolute sale, assignment, conveyance and transfer of the Additional Purchased Assets, including for accounting purposes.

4. **Receipt of Computer File or Microfiche.** The Trust hereby acknowledges that, prior to or simultaneously with the execution and delivery of this Assignment, the Seller delivered to the Trust the computer file or microfiche list described in Section 2 of this Assignment.

5. **Representations and Warranties of the Seller.** The Seller hereby represents and warrants to the Trust as of the Additional Purchase Date:

- (a) the Seller is a branch of Capital One Bank, a Virginia banking corporation, licensed under the laws of Canada and has, in all material respects, full power and authority to own its properties and conduct its credit card business as presently owned and conducted by it, and to execute, deliver and perform its obligations under this Assignment;
- (b) the Seller is duly qualified to do business, is in good standing and has obtained all necessary licenses and approvals in each jurisdiction in which failure to so qualify or to obtain such licences and approvals would render any Lending Agreement relating to a Designated Additional Account or any Receivable arising in such Account unenforceable by the Seller or the Trust or would have a material adverse effect on the Series Indebtedness Holders or the Additional Purchased Assets; *provided, however,* that no representation or warranty is made with respect to any qualifications, licences, or approvals which the Trust would have to obtain to do business in any jurisdiction in which the Trust seeks to enforce directly any such Account or Receivable;
- (c) the execution and delivery of this Assignment and the performance by the Seller of its obligations hereunder, have been duly authorized by the Seller by all necessary corporate action on the part of the Seller;
- (d) the execution and delivery by the Seller of this Assignment, the performance by the Seller of its obligations hereunder and the fulfilment of the terms hereof applicable to the Seller will not (i) conflict with or violate the constating documents of the Seller, or any Requirements of Law applicable to the Seller, or (ii) conflict with, or result in any breach of any of the material terms and provisions of, or constitute (with or without notice or lapse of time or both) a material default under, any indenture, contract, agreement, mortgage, deed of trust or other instrument to which the Seller is a party or by which it or its properties are bound;

- (e) there are no proceedings or investigations pending or, to the best knowledge of the Seller, threatened against the Seller before any Governmental Authority (i) asserting the invalidity of this Assignment, (ii) seeking to prevent the consummation of any of the transactions contemplated by this Assignment, (iii) seeking any determination or ruling that, in the reasonable judgment of the Seller, would materially and adversely affect the performance by the Seller of its obligations under this Assignment, or (iv) seeking any determination or ruling that would materially adversely affect the validity or enforceability of this Assignment;
- (f) all authorizations, consents, orders and approvals of, or registrations or declarations with, any person or any Governmental Authority required to be obtained, effected or given by the Seller in connection with the execution and delivery by the Seller of this Assignment and the performance of the transactions contemplated by this Assignment (including the conveyance of the Additional Purchased Assets to the Trust) have been duly obtained, effected or given and are in full force and effect;
- (g) this Assignment constitutes a legal, valid and binding obligation of the Seller and is enforceable against the Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally from time to time in effect and except as such enforceability may be limited by general principles of equity;
- (h) Schedule 2 to the Receivables Purchase Agreement, as supplemented pursuant to Section 2 of this Assignment, is an accurate and complete listing in all material respects of all of the Designated Additional Accounts as of the Additional Cut-Off Date and the information contained therein with respect to the identity of the Designated Additional Accounts and the Receivables arising therein is true and correct in all material respects as of the Additional Cut-Off Date;
- (i) each Receivable conveyed to the Trust hereunder is free and clear of any Liens;
- (j) this Assignment constitutes a valid sale, transfer and assignment to the Trust of all of the Seller's right, title and interest in, to and under the Receivables arising in the Designated Additional Accounts conveyed hereunder and the proceeds thereunder which, (i) in the case of such Receivables arising in the Designated Additional Accounts during the period from the applicable Additional Cut-Off Date to the applicable Additional Purchase Date, is enforceable upon the applicable Additional Purchase Date and (ii) in the case of Receivables subsequently arising in the Designated Additional Accounts, is enforceable upon the date such Receivables are created. Upon the filing of the assignments, financing statements and continuation statements (and other documents where applicable) required under the PPSA and, in the case of Receivables hereafter created and the proceeds thereof, upon the creation thereof, the Trust shall have a first priority perfected ownership interest in all such Receivables and the proceeds thereof;
- (k) on the Additional Cut-Off Date, each Designated Additional Account is an Eligible Account [**and is not a non-consumer Account**];

- (l) on the Additional Cut-Off Date, each Receivable arising in a Designated Additional Account is an Eligible Receivable;
- (m) as of the date of the creation of any new Receivable arising in a Designated Additional Account, such Receivable is an Eligible Receivable;
- (n) no selection procedures reasonably believed by the Seller to be materially adverse to the interests of the Series Indebtedness Holders (without regard to the availability of any Series Enhancement) have been used in selecting the Designated Additional Accounts;
- (o) neither the Seller nor the Obligors in respect of any Receivable owing in respect of the Designated Additional Accounts will be required to withhold or pay any amount with respect to Tax as a result of payments required to be made to the Trust under or by virtue of this Assignment;
- (p) as of each of the Additional Cut-Off Date and the Additional Purchase Date, no Insolvency Event with respect to the Seller has occurred and the transfer of the Receivables arising in the Designated Additional Accounts to the Trust has not been made in contemplation of the occurrence thereof; and
- (q) the sale to the Trust of the Receivables arising in the Designated Additional Accounts will not result in the occurrence of an Amortization Event, a Series Amortization Event or an Event of Default, or in any event that, after the giving of notice or lapse of time or both, will result in the occurrence of an Amortization Event, a Series Amortization Event or an Event of Default.

6. **Delivery of Officer's Certificate.** The Seller has delivered to the Trust an Officer's Certificate certifying that each of the conditions set forth in subsection 2.9(d) of the Receivables Purchase Agreement relating to the designation of Additional Accounts and the sale of the Receivables arising in Additional Accounts, whether existing at the close of business on the Additional Purchase Date or thereafter created, has been satisfied on or prior to the Additional Purchase Date. The Trust may conclusively rely on such Officer's Certificate, shall have no duty to make enquiries with regard to matters set forth therein and shall incur no liability in so relying.

7. **Limitation of Liability and Capacity.**

- (a) The obligations or liabilities of the Trust pursuant to this Assignment shall be satisfied only out of the Trust Assets, and recourse against the Trust shall be limited to the Trust Assets and no resort shall be had to the other property or assets of either the Trust or BNY Trust or of any of its shareholders, directors, officers, employees or agents or any beneficiaries of Algonquin Credit Card Trust (other than the Trust Assets).
- (b) BNY Trust is entering into this Assignment on behalf of Algonquin Credit Card Trust solely in BNY Trust's capacity as trustee of Algonquin Credit Card Trust and this Assignment shall enure to the benefit of and be binding upon the permitted

successors of BNY Trust solely in its capacity as trustee of Algonquin Credit Card Trust.

8. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and each of the parties hereby attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

IN WITNESS WHEREOF, Capital One, in its capacity as Seller, and the Trust have caused this Assignment to be duly executed by their respective officers as of the date and first year above written.

CAPITAL ONE BANK (CANADA BRANCH), in its capacity as Seller

By: _____
Name: •
Title: •

BNY TRUST COMPANY OF CANADA, in its capacity as trustee of **ALGONQUIN CREDIT CARD TRUST**

By: _____
Name:
Title:

Schedule 1

- Attached -

Exhibit B
to
Receivables Purchase Agreement

**Form of Reassignment of Receivables in Redeemed Accounts
and Redeemed Participation Interests
(as required by subsection 2.10 of the
Receivables Purchase Agreement)**

REASSIGNMENT NO. • OF RECEIVABLES made as of • • •

B E T W E E N:

CAPITAL ONE BANK (CANADA BRANCH), a branch of Capital One Bank, a Virginia banking corporation licensed under the laws of Canada,

(hereinafter sometimes referred to as “**Capital One**” or the “**Seller**”),

- and -

BNY TRUST COMPANY OF CANADA, a trust company incorporated under the laws of Canada and licensed to carry on business in each of the provinces of Canada, in its capacity as trustee of **ALGONQUIN CREDIT CARD TRUST**,

(in such capacity, hereinafter referred to as the “**Trust**”).

WHEREAS the Seller, the Trust and Computershare Trust Company of Canada, in its capacity as indenture trustee (the “**Indenture Trustee**”), are parties to an amended and restated receivables purchase agreement made as of September 20, 2005 (the “**Receivables Purchase Agreement**”) pursuant to which the Seller sold to the Trust and the Trust purchased from the Seller the Purchased Assets (including the Receivables on a fully serviced basis);

AND WHEREAS the Seller, the Trust and the Indenture Trustee are parties to an amended and restated trust indenture made as of September 20, 2005 (the “**Trust Indenture**”) pursuant to which the Trust issued to the Seller the Seller Indebtedness;

AND WHEREAS in accordance with the terms of the Receivables Purchase Agreement and the Trust Indenture, the Seller is entitled to redeem a portion of the principal amount of the Seller Indebtedness in consideration for the reconveyance by the Trust to the Seller of all of the Trust’s right, title and interest in, to and under the Receivables from certain designated Accounts of the Seller (the “**Redeemed Accounts**”) or Participation Interests conveyed to the Trust by the Seller (“**Redeemed Participation Interests**”), whether now existing or hereafter created;

AND WHEREAS the Seller wishes to exercise the right of redemption referred to in the foregoing recital and the Trust is willing to reconvey the Receivables or Participation Interests arising in the Redeemed Accounts or in the Redeemed Participation Interests subject to the terms and conditions hereof;

NOW THEREFORE, the Seller and the Trust hereby agree as follows:

1. **Defined Terms:** All terms defined in the Receivables Purchase Agreement and used herein shall have such defined meanings when used herein, unless otherwise defined herein.

“**Designated Redeemed Accounts**” shall mean the Redeemed Accounts identified in Section 2 of this Reassignment.

“**Designated Redeemed Participation Interests**” shall mean the Redeemed Participation Interests identified in Section 2 of this Reassignment.

“**Redemption Date**” shall mean, with respect to the Designated Redeemed Accounts and the Designated Redeemed Participation Interests designated hereby, the date hereof.

“**Redemption Notice Date**” shall mean, with respect to the Designated Redeemed Accounts, • • •.

2. **Designation of Redeemed Accounts and Redeemed Participation Interests.** □

Attached as Schedule 1 hereto is a computer file or microfiche list containing a true and complete schedule identifying the Accounts, the Receivables arising in which are being reassigned from the Trust to the Seller (the “Designated Redeemed Accounts”) and the Participation Interests which are being reassigned from the Trust to the Seller (the “Designated Redeemed Participation Interests”), specifying, as of the Redemption Notice Date, (i) for each such Designated Redeemed Account, its account number and the aggregate amount of Principal Receivables outstanding in such Designated Redeemed Account and (ii) the aggregate amount of such Designated Redeemed Participation Interests, which computer file or microfiche list shall supplement Schedule 2 to the Receivables Purchase Agreement.

3. **Conveyance of Receivables or Participation Interests.**

(a) Subject to the terms and conditions hereof and the Receivables Purchase Agreement, the Trust hereby sells, transfers, assigns and conveys to the Seller, and the Seller hereby purchases from the Trust, all right, title and interest of the Trust in, to and under the Receivables or Participation Interests existing in the Designated Redeemed Accounts or Designated Redeemed Participation Interests, respectively, at the close of business on the Redemption Date and, thereafter, on the day they are created, the Receivables or Participation Interests in the Designated Redeemed Accounts or Designated Redeemed Participation Interests subsequently created from time to time, and all monies due or to become due and all amounts received with respect thereto and all proceeds thereof, including the right to receive Interchange (collectively, the “**Redeemed Assets**”).

(b) In connection with such sale, the Trust agrees to execute and deliver to the Seller prior to or simultaneously with the execution and delivery of this Reassignment, a termination or discharge statement, as applicable, with respect to the Receivables or Participation Interests existing at the close of business on the Redemption Date and thereafter created in the Designated Redeemed Accounts or Designated Redeemed Participation Interests reassigned hereby (which may be a single termination or discharge statement with respect to all such Receivables or Participation Interests) evidencing the sale by the Trust of its right, title and interest in the Receivables or Participation Interests in the Designated Redeemed Accounts or Designated Redeemed Participation Interests, respectively, and meeting the Requirements of Law, in such manner and such jurisdictions as are necessary to evidence the same.

4. **Receipt of Computer File or Microfiche.** The Trust hereby acknowledges that, prior to or simultaneously with the execution and delivery of this Reassignment, the Seller delivered to the Trust the computer file or microfiche list described in Section 2 of this Reassignment.

5. **Representations and Warranties of the Seller.** The Seller hereby represents and warrants to the Trust as of the Redemption Date:

- (a) this Reassignment constitutes a legal, valid and binding obligation of the Seller enforceable against the Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally from time to time in effect and except as such enforceability may be limited by general principles of equity; and
- (b) Schedule 2 to the Receivables Purchase Agreement, as supplemented pursuant to Section 2 of this Reassignment, is an accurate and complete listing in all material respects of all of the Designated Redeemed Accounts and Designated Redeemed Participation Interests as of the Redemption Notice Date and the information contained therein with respect to the identity of the Designated Redeemed Accounts and Designated Redeemed Participation Interests and the Receivables and Participation Interests arising therein is true and correct in all material respects as of the Redemption Notice Date.

6. **Conditions Precedent.** The obligation of the Trust to sell to the Seller the Redeemed Accounts or the Redeemed Participation Interests is subject to the satisfaction, on or prior to the Redemption Date, of the following conditions precedent:

- (a) each of the representations and warranties made by the Seller in Section 5 of this Reassignment shall be true and correct as of the Redemption Date;
- (b) each of the conditions set forth in Section 2.10 of the Receivables Purchase Agreement relating to the sale of Receivables or Participation Interests arising in the Designated Redeemed Accounts or Designated Redeemed Participation Interests, whether existing at the close of business on the Redemption Date or thereafter created, has been satisfied; and
- (c) the Seller shall deliver to the Trust an Officer's Certificate certifying that each of the conditions set forth in Section 2.10 of the Receivables Purchase Agreement relating to the designation of Redeemed Accounts or Redeemed Participation Interests and the reconveying of the Receivables or Participation Interests arising in such Redeemed Accounts or Redeemed Participation Interests, whether existing at the close of business on the Redemption Date or thereafter created, has been satisfied on or prior to the Redemption Date. The Trust may conclusively rely on such Officer's Certificate, shall have no duty to make enquiries with regard to matters set forth therein and shall incur no liability in so relying.

7. **Governing Law.** This Reassignment shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable

therein and each of the parties hereby attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

IN WITNESS WHEREOF, Capital One, in its capacity as Seller and the Trust have caused this Reassignment to be duly executed by their respective officers as of the day and year first above written.

CAPITAL ONE BANK (CANADA BRANCH), in its capacity as Seller

By: _____
Name:
Title:

By: _____
Name:
Title:

BNY TRUST COMPANY OF CANADA, in its capacity as trustee of **ALGONQUIN CREDIT CARD TRUST**

By: _____
Name:
Title:

Exhibit C-1
to
Receivables Purchase Agreement

Form of Opinion of Counsel with Respect to Amendments
(Provisions to be included in Opinion of Counsel
to be delivered pursuant to paragraph 6.2(c)(i)
of the Receivables Purchase Agreement)

FORM OF OPINION OF COUNSEL WITH RESPECT TO AMENDMENTS

The opinions set forth below may be subject to all the qualifications, assumptions, limitations and exceptions taken or made in the Opinion of Counsel delivered on any applicable Series Issuance Date:

1. Capital One Bank is a duly incorporated banking corporation under the laws of the Commonwealth of Virginia; Capital One has been duly formed as a branch of Capital One Bank under the laws of Canada and each of Capital One Bank and Capital One has, in all material respects, full power to own its assets and operate its business, and had at all relevant times and now has, the power to acquire, own and service the Receivables transferred to the Trust;
2. Capital One Bank has the corporate power and capacity to execute and deliver the amendment (the “**Amendment**”) to the Receivables Purchase Agreement annexed hereto as Schedule A to which Capital One is a party and to consummate the transactions contemplated therein and perform its obligations thereunder.
3. The Amendment has been duly authorized by all necessary corporate action on the part of Capital One Bank and has been duly executed and delivered by Capital One Bank under the name of its branch, Capital One, and constitutes a legal, valid and binding obligation of Capital One enforceable against Capital One by the Trust and the Indenture Trustee in accordance with its terms.

**Exhibit C-2
to
Receivables Purchase Agreement**

**Form of Opinion of Counsel with Respect to Sale of Receivables
Arising in Additional Accounts or Participation Interests
(Provisions to be included in Opinion of Counsel
to be delivered pursuant to paragraph 6.2(c)(ii)
of the Receivables Purchase Agreement)**

**FORM OF OPINION OF COUNSEL WITH RESPECT TO SALE OF RECEIVABLES
ARISING IN ADDITIONAL ACCOUNTS OR PARTICIPATION INTERESTS**

The opinions set forth below may be subject to all the qualifications, assumptions, limitations and exceptions taken or made in the Opinion of Counsel delivered on any applicable Series Issuance Date:

The Bank

1. The Bank is an “authorized foreign bank” (as such term is defined in the *Bank Act* (Canada)) which has established a branch in Canada under the name “Capital One Bank (Canada Branch)”.
2. Each of the Transfer Documents constitutes a legal, valid and binding obligation of the Bank, enforceable against the Bank in accordance with its terms.
3. The execution and delivery by the Bank of each of the Transfer Documents and the performance by it of its obligations thereunder do not:
 - (a) require any recording, filing or registration with, consent, authorization or approval of, or notice or other action to, with or by, any governmental authority or regulatory body (a “Governmental Authority”) in the Province or under the federal laws of Canada applicable therein, other than the registrations under the PPSA which are described in paragraph 7 below; or
 - (b) violate, result in a breach of, or constitute a default under any statute, regulation or other law of the Province or of Canada applicable therein which is applicable to the Bank.
4. The sale of the Additional Purchased Assets by the Bank to the Trust is not subject to the *Bulk Sales Act* (Ontario).
5. Attached hereto as Schedule A is a report showing the results of the searches conducted in the public offices and registries in the Province under the statutes specified therein against the names “Capital One Bank (Canada Branch)” and “Capital One Bank”, which search results are current as of the respective currency dates indicated therein (which we note may not be the date of this opinion). Such statutes are the only statutes of the Province and the only federal statutes of Canada applicable therein where transfers of, or security interests in, assets similar in nature to the Additional Purchased Assets would ordinarily or customarily be the subject of a recording, filing or registration in order to create, preserve, perfect and protect such transfers or security interests. The only recordings, filings or registrations disclosed by such searches are set forth in such Schedule A.
6. The Credit Card Agreements contain no restrictions and require no consent or notice, with respect to the sale of the Additional Purchased Assets by the Bank to the Trust.
7. A financing statement with respect to the Transfer Documents was registered under the PPSA. The details of the registration made under the PPSA are set out in the attached

Schedule B. Except as provided in the attached Schedule C, no renewal or amendment of such registration is required under the laws of the Province. No other recordings, filings or registrations of or with respect to the Transfer Documents are necessary on the date hereof under the laws of the Province or the federal laws of Canada applicable therein to create, preserve, perfect or protect the interest of the Trust in, to and under the Additional Purchased Assets.

Transfer of Assets

8. The Transfer Documents validly and effectively transfer to the Trust all of the right, title and interest of the Bank in, to and under the Additional Purchased Assets, with no further formalities being required, other than as specified in paragraph 7 above.

Taxes

9. The consideration payable by the Trust to the Bank on the purchase by the Trust of the Additional Purchased Assets is not subject to any withholding, stamp, excise, goods and services, sales or other transfer tax.

Liquidation and Winding-Up

You have also asked us to consider whether, under the laws of the Province and the federal laws of Canada applicable therein, creditors of the Bank or a receiver or liquidator of the Bank (collectively, "Creditors") could look successfully to the Additional Purchased Assets to satisfy a claim against the Bank after the sale thereof by the Bank to the Trust pursuant to the Transfer Documents.

Based upon the terms and provisions of the Documents, such other matters as we have considered relevant in connection herewith, other relevant aspects of the transactions provided for in the Documents, our understanding set forth below and relevant jurisprudence, we are of the opinion that:

- (a) Creditors may assert their rights only against assets in which the Bank has a beneficial ownership interest. The Bank has not retained any interest in the Additional Purchased Assets. In an insolvency of the Bank, the Additional Purchased Assets would not form part of the property of the Bank subject to liquidation under the *Winding-up and Restructuring Act* (Canada) (the "WRA"), the *Canada Deposit Insurance Corporation Act* (the "CDIC Act"), or the *Bank Act* (Canada) (the "Bank Act"). The Bank is a separate legal entity from the Trust and, absent any agreement to the contrary, the Trust would not be legally responsible for the obligations of the Bank. As such, Creditors could not look successfully to the Additional Purchased Assets to satisfy a claim which they may have against the Bank, whether before or after the insolvency of the Bank or in any proceeding instituted by or against the Bank under the WRA, the CDIC Act or the Bank Act; and
- (b) notwithstanding the insolvency of the Bank or any proceeding instituted by or against the Bank under the WRA, the CDIC Act or the Bank Act after the transfer by the Bank to the Trust of the Additional Purchased Assets, the Trust would not be required to pay any amounts to the Bank to acquire the Additional Purchased Assets

except as required by the Documents or any documents or instruments delivered in connection therewith.

The Trust will be entitled to enforce its rights in respect of the Additional Purchased Assets notwithstanding the insolvency of the Bank or any proceeding instituted by or against the Bank under the WRA, the CDIC Act or the Bank Act after the transfer of the Additional Purchased Assets, however, in the case of amounts payable under the Additional Purchased Assets which have not been collected,

- (i) the enforcement of the Trust's rights to such payments may be affected by a stay in respect of the Bank under the Insolvency Statutes (as such term is defined below) until a court of competent jurisdiction has determined the issue of whether the transactions contemplated by the Transfer Documents constitute an effective sale of the Additional Purchased Assets by the Bank to the Trust pursuant to the Transfer Documents,
- (ii) the costs associated with collecting the Trust Property during such stay could be charged against such Trust Property in priority to the Trust's interest therein, and
- (iii) the Trust may be required to notify the relevant Obligors of such sale and take proceedings against the Bank or others who obtain payment or possession of Trust Property or who are alleging a right to such payment or possession,

in which proceedings the Trust, based upon our opinions expressed above, would ultimately prevail.

For the purposes hereof, "Insolvency Statutes" means, collectively, the WRA, the CDIC Act, the Bank Act, the *Assignments and Preferences Act* (Ontario) and the *Fraudulent Conveyances Act* (Ontario). We express no opinion as to the extent to which any Insolvency Statute would be applicable to an insolvency proceeding in respect of the Bank.

To the extent relevant, certain transactions may be set aside in circumstances specified in the Insolvency Statutes, as follows:

- (a) a gratuitous contract, conveyance or contract without consideration or with a merely nominal consideration made within three months preceding the commencement of a winding-up proceeding;
- (b) a contract by which creditors are injured, obstructed or delayed, made by a company unable to meet its engagements with a person who knows of that inability or has probable cause for believing that such inability exists, or after that inability has become public and notorious;
- (c) a contract or conveyance for consideration by which creditors are injured or obstructed, made by a company unable to meet its engagements with a person ignorant of that inability and before that inability has become public and notorious, but within 30 days before the commencement of a winding-up proceeding;

- (d) a contract or conveyance made or act done by a company with intent fraudulently to impede, obstruct or delay creditors in their remedies or with intent to defraud creditors or any of them and so made, done and intended with the knowledge of the person contracting or acting with the company and that has the effect of impeding, obstructing or delaying creditors in their remedies or injuring any of them;
- (e) a sale, deposit, pledge or transfer made of any property by a company in contemplation of insolvency by way of security for payment to any creditor, or where any property, goods, effects or valuable security are given by way of payment by a company to any creditor whereby that creditor obtains or will obtain an unjust preference over other creditors;
- (f) a payment made within 30 days before the commencement of a winding-up proceeding by a company unable to meet its engagements in full, to a person who knows of that inability or has probable cause for believing that inability exists;
- (g) a transfer of property made with the intention of defeating, hindering, delaying, or defrauding creditors or others of their claims against the transferor; and
- (h) a confession of judgment, gift, conveyance, assignment or transfer, delivery over or payment by a person who is insolvent or who knows that he, she or it is on the eve of insolvency with intent to defeat, hinder, delay or prejudice creditors or with intent to give a creditor an unjust preference over other creditors.

It is our understanding that, based solely on the Seller Officer's Certificate and without independent inquiry, on the date hereof: (i) the Bank is not insolvent, or in insolvent circumstances, on the eve of insolvency, or unable to meet its engagements within the meaning of any of the Insolvency Statutes, and no act or proceeding has been taken or is pending in connection with the Bank for its, and the Bank has not received notice in respect of and is not in the course of, dissolution, liquidation, winding-up, or reorganization; (ii) the Bank will not be rendered insolvent within the meaning of any of the Insolvency Statutes by entering into any of the Documents to which it is party, or immediately after completion of the transactions contemplated by, the Documents; (iii) the Bank has entered into the Documents to which it is party in good faith and for the purpose of selling the Additional Purchased Assets to the Trust and receiving from the Trust the consideration therefor specified in the Transfer Documents and not for the purpose of defeating, hindering, delaying, defrauding, obstructing, injuring, impeding, prejudicing or oppressing the rights and claims of Creditors or others against the Bank or for any other purpose relating in any way to the claims of Creditors or others against the Bank and not in contemplation of insolvency; and (iv) the consideration paid and to be paid by the Trust for the Additional Purchased Assets pursuant to the Transfer Documents represents approximately the present fair market value of such assets. Although we have not made any independent inquiry as to the foregoing, such matters have been attested to in the Seller Officer's Certificate.

Based upon the foregoing factors, such other matters as we have considered relevant in this connection, other relevant aspects of the transactions provided for in the Transfer Documents, and relevant jurisprudence, we are of the opinion that the Transfer Documents and the transactions

provided for therein would not be overridden or set aside by a court upon the application of a Creditor pursuant to any of the Insolvency Statutes.

You have also asked us to consider whether, under the laws of the Province and the federal laws of Canada applicable therein, any creditor, trustee, liquidator or administrator of BNY would be able to look successfully to the Additional Purchased Assets, or the proceeds thereof in the event of the insolvency of BNY. Assuming that BNY deals with the Trust Property as trustee of Algonquin Credit Card Trust in accordance with provisions of the Settlement Deed, in our opinion, the Trust Property would not constitute property of BNY and would not be available to any such creditor, trustee, liquidator or administrator of BNY. However, a trustee, liquidator or administrator appointed with respect to BNY may be able to recover from the Trust Property a portion of its costs that are incurred until a replacement for BNY, as trustee of Algonquin Credit Card Trust is appointed or pending any proceeding commenced to determine the nature of the ownership of the Trust Property. Such costs may exceed the compensation provided for in the Settlement Deed.

Exhibit C-3
to
Receivables Purchase Agreement
Opinions of U.S. Counsel

EXHIBIT C-3

OPINIONS OF U.S. COUNSEL

The required opinions of U.S. counsel shall relate to the following:

(a) should the Federal Deposit Insurance Corporation ("FDIC") be appointed as conservator or receiver of Capital One Bank pursuant to Section 11(c) of the Federal Insurance Deposit Act ("FDIA"), as amended, then if the matter were properly briefed and presented to a federal court with jurisdiction over such conservatorship or receivership, the court would hold that (i) the FDIC could not reclaim, recover or recharacterize as property of the Bank or the receivership the Receivables arising in the applicable Designated Additional Accounts that have been transferred by the Seller to BNY Trust Company of Canada, as Trustee of Algonquin Credit Card Trust, pursuant to the Receivables Purchase Agreement and the applicable Assignment of Receivables in Additional Accounts and (ii) the FDIC could not avoid the Receivables Purchase Agreement and the applicable Assignment of Receivables in Additional Accounts;

(b) in the event of the insolvency of Capital One Bank and the appointment of the FDIC as receiver of Capital One, if the matter were properly briefed and presented, a Virginia court or a federal court sitting in Virginia would hold that the Virginia Receivership Laws would not cause the transfer to the Trust of the Additional Purchased Assets under the Receivables Purchase Agreement to constitute a transfer subject to avoidance by the FDIC;

(c) a Virginia court or a federal court sitting in Virginia would, under conflicts of law principles observed by the courts of Virginia, if properly presented with the issue, give effect to those provisions of the Receivables Purchase Agreement providing that the Receivables Purchase Agreement is to be governed by and construed in accordance with the laws of the Province of Ontario, Canada insofar as such provisions relate to the substantive laws of the Province of Ontario and to the validity, nature, interpretation and effect of the Receivables Purchase Agreement, except to the extent that (i) United States federal law applies, (ii) procedural (as opposed to substantive) laws are involved, or (iii) the applicable laws of the Province of Ontario violate a public policy of Virginia.; and

(d) a judgment (to the extent it grants or denies the recovery of a sum of money) rendered in the Province of Ontario, Canada that is a "foreign country money judgment" as defined in the Foreign Country Money – Judgments Recognition Act of Virginia, as codified in Section 8.01-465.7 of the Code of Virginia of 1950, as amended (the "Foreign Money Judgment Act"), and that is final and conclusive and enforceable where rendered is enforceable in Virginia in the same manner as the judgment of a sister state which is entitled to full faith and credit, even though an appeal therefrom is pending or is subject to appeal, except as provided in Sections 8.01-465.10 and 8.01-465.12 of the Foreign Money Judgment Act and except as may be limited by bankruptcy, insolvency, reorganization, receivership, conservatorship, liquidation, arrangement, fraudulent conveyance, moratorium or other laws relating to or affecting the enforcement of creditors' rights generally,

in each case in substantially the form of the opinions relating to such matters delivered by Orrick, Herrington and Sutcliffe LLP and McGuire Woods LLP on April 23, 2004.