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**AMENDED AND RESTATED TRUST INDENTURE**

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**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 - Capital One Note
- Exhibit B - Annual Servicer's Certificate
- Exhibit C - Securities Laws Indemnity Covenant
- Exhibit D - Confidentiality Agreement

**THIS AMENDED AND RESTATED TRUST INDENTURE** 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 -

**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 and territories of Canada,

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

**WHEREAS** the Trust is desirous of creating and issuing the Indebtedness, the issuance of which is provided for by this Agreement and of using the proceeds therefrom to purchase Receivables pursuant to the Receivables Purchase Agreement;

**AND WHEREAS** the Trust, under the laws relating thereto, is authorized to create and issue the Indebtedness to be issued as provided herein and in any Supplement;

**AND WHEREAS** the Trust shall grant a Security Interest in the Trust Assets to the Indenture Trustee as security for the obligations of the Trust in favour of the Indebtedness Holders and any Additional Creditor and the Trust Assets will be held by the Indenture Trustee on behalf of the Indebtedness Holders and any Additional Creditor as provided herein and in any Supplement;

**AND WHEREAS** a certificate issuance agreement made as of June 22, 1998 was entered into by Capital One Inc., as seller and servicer, 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 and by an assignment and amending agreement (the “**Assignment 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. and by an SFAS 140 amending agreement made as of October 31, 2001 between the Seller, the Original Trust, the Original Indenture Trustee and BMO Nesbitt Burns Inc. (as amended, collectively, the “**Original Certificate Issuance Agreement**”);

**AND WHEREAS** pursuant to the Assignment Agreement, Capital One Inc. assigned to the Seller its rights under the 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**”) and the Seller assumed all of the rights, liabilities and obligations of Capital One Inc. under the Assigned Agreements;

**AND WHEREAS** the Original Indenture Trustee resigned as indenture trustee under the Original Certificate Issuance Agreement and the Indenture Trustee was appointed as the replacement trustee thereunder 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** Montreal Trust Company of Canada (the successor by amalgamation to the Original Issuer Trustee and Montreal Trust Company of Canada) resigned as trustee of Algonquin Credit Card Trust and BNY Trust was appointed as successor trustee of Algonquin Credit Card Trust effective as of April 8, 2003;

**AND WHEREAS** the parties entered into an Amended and Restated Trust Indenture (the “**2003 Trust Indenture**”) made as of April 28, 2003, which amended and restated the Original Certificate Issuance Agreement;

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

**AND WHEREAS** the parties hereto desire to amend and restate the 2003 Trust Indenture, as amended by the 2003 Amendment, in accordance with this amended and restated trust indenture (the 2003 Trust Indenture, as amended by the 2003 Amendment, as amended and restated by this trust indenture, hereinafter referred to as this “**Agreement**”);

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the premises and the 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 sets out definitions for various capitalized terms used in this Agreement, the Receivables Purchase Agreement and any Supplement. Unless the context

otherwise requires, all such capitalized terms used in this Agreement and such other agreements (including the recitals hereto and thereto) will be interpreted in accordance with the definitions provided for in Schedule 1.

1.2 **Terms Defined in Supplements** With respect to any Series, all capitalized terms used herein and not otherwise defined in Schedule 1 shall, unless the context requires otherwise, have the meanings ascribed to them in the related Supplement.

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 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 at 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” means “including, without limitation”.

1.6 **Headings, Etc.** The division of this Agreement and any Supplement 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, any Supplement or the Indebtedness, howsoever evidenced. Unless something in the subject matter or context is inconsistent therewith, references herein or in any Supplement 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 or such Supplement, as the case may be, unless otherwise specified.

1.7 **Governing Law** This Agreement, any Supplement and the Indebtedness, howsoever evidenced, 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 or in any Supplement, whenever any payment to be made hereunder or under any Supplement shall be due, any period of time would begin or end, any calculation is to be made (other than a calculation of amounts payable on a Note under any Supplement) 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, any Supplement or any Indebtedness, howsoever evidenced, 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 and any Supplement 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 **Meaning of "Outstanding" for Certain Purposes** Each Note issued and certified in accordance with the terms of this Agreement will be deemed to be outstanding until it has been surrendered by the Note Owner to the Indenture Trustee and cancelled by the Indenture Trustee, or until payment for which money in the necessary amount has been deposited with the Indenture Trustee for the Note Owners; provided, however, where a new Note has been issued in substitution for a Note which has been mutilated, destroyed, lost or stolen, only the substituted Note will be counted for the purpose of determining the aggregate principal amount of Notes outstanding.

1.15 **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

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

- Exhibit A - Capital One Note
- Exhibit B - Annual Servicer's Certificate

- Exhibit C - Securities Laws Indemnity Covenant
- Exhibit D - Confidentiality Agreement

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

## ARTICLE 2 INDEBTEDNESS

### 2.1 **Indebtedness and Notes**

- (a) Indebtedness may be established and issued hereunder and under any Supplement upon the terms and subject to the conditions herein and therein provided. Each of the Seller, the Servicer, the Trust and the Indenture Trustee agree that the Trust, in accordance with the provisions of section 2.4, shall maintain a record of the Indebtedness, which record shall reflect all payments made to the Indebtedness Holders, and all amounts owing at any time to such Indebtedness Holders, and shall, in the absence of manifest error, constitute *prima facie* evidence of the amount of Indebtedness owed to or owned by each such Indebtedness Holder. The Trust shall, upon written request by the Indenture Trustee, the Seller, the Servicer or the Paying Agent, within five Business Days after receipt by the Trust of a request therefor, provide the Indenture Trustee, the Seller, the Servicer or the Paying Agent with a copy of such record of the Indebtedness. Except as otherwise provided in any Supplement, Series Indebtedness shall be issued in minimum denominations of \$1,000 and in integral multiples in excess thereof.
- (b) The Series Indebtedness of any Series or Class may be evidenced by Series Notes, or in such other form as may be determined from time to time by the Seller and the Trust, which Series Notes shall be in fully registered form (“**Registered Notes**”). Any such Series Notes shall be substantially in the form of the exhibits with respect thereto attached to the applicable Supplement. In the event that the Seller elects to have the Seller Indebtedness represented by a Seller Note, the Capital One Note, and any other Seller Note, shall be issued in registered form, substantially in the form of Exhibit A, and shall, upon issue, be executed by the Trust and authenticated by the Indenture Trustee as provided in section 2.2 for delivery to Capital One or, with respect to a Seller Note other than the Capital One Note, to the person who is owed the Supplemental Indebtedness represented thereby. The Capital One Note, if any, shall be a single note and shall evidence the Capital One Indebtedness, including the right of Capital One to receive payments in the amounts specified herein and in any Supplement. Each Note shall be executed by manual or facsimile signature on behalf of the Trust by its authorized officers. Notes bearing the manual or facsimile signature of an individual who was, at the time when such signature was affixed, authorized to sign on behalf of the Trust shall not be rendered invalid, notwithstanding that such individual ceased to be so authorized prior to the authentication and delivery of such Notes or does not hold such office at the date of such Notes. No Notes shall be entitled to any benefit under this Agreement, or be

valid for any purpose, unless there appears on such Note a certificate of authentication substantially in the form provided for herein executed by or on behalf of the Indenture Trustee by the manual signature of a duly authorized signatory, and such certificate upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder. All Registered Notes and Seller Notes shall be dated the date of their authentication. To the extent there is no dishonesty, bad faith, wilful misconduct, gross negligence or reckless disregard of a duty by the Indenture Trustee of an obligation or duty of the Indenture Trustee hereunder, the Indenture Trustee shall not be liable in connection with any delivery or non-delivery of any Notes under this Agreement.

2.2            **Authentication of Notes** Subject to subsection 2.3(c), the Trust shall execute and the Indenture Trustee shall authenticate and deliver, the Series Notes of each Series and Class that are issued upon the written order of the Trust against payment to the Trust of the purchase price therefor. The Trust shall execute, if applicable, the Capital One Note and the Indenture Trustee shall authenticate and deliver the Capital One Note or any other Seller Note to the Seller simultaneously with the sale to the Trust of the Purchased Assets under the Receivables Purchase Agreement.

2.3            **Certain Rights of the Seller and the Series Indebtedness Holders**

- (a) Subject to the terms and conditions hereof, the Seller shall have the right to redeem for cash a portion of the Seller Indebtedness from the proceeds of one or more new series of Series Indebtedness in an amount equal to the portion of the Seller Indebtedness in respect of which a redemption is requested. Upon payment of the proceeds from the issuance of any such new series of Series Indebtedness by the Trust to the Seller, or its designee, the principal amount of the Seller Indebtedness shall be reduced by the amount of the proceeds of such New Issuance.
- (b) The Series Indebtedness Holders of all outstanding Series shall be equally and ratably entitled as provided herein to the benefits of this Agreement without preference, priority or distinction, all in accordance with the terms and provisions of this Agreement and the applicable Supplement, unless otherwise provided with respect to any Series or Class of Series Indebtedness in the related Supplement.
- (c) On or before the Series Issuance Date relating to any new Series, the parties hereto will execute and deliver a Supplement which will specify the Principal Terms of such new Series. The terms of such Supplement may modify or amend the terms of this Agreement solely as applied to such new Series. The obligation of the Trust to issue the Series Indebtedness of such new Series and to execute and deliver the related Supplement is subject to the satisfaction of the following conditions:
  - (i) on or before the fifth Business Day immediately preceding the Series Issuance Date, the Seller shall have given the Trust, the Indenture Trustee, the Servicer and each Rating Agency notice of its intention to redeem a portion of the Seller Indebtedness and the Series Issuance Date;

- (ii) the Seller shall have executed and delivered to the Trust and the Indenture Trustee the related Supplement, in form satisfactory to the Trust;
- (iii) the Seller shall have delivered to the Trust and the Indenture Trustee any related Enhancement Agreement executed by each of the parties thereto, other than the Trust and the Indenture Trustee;
- (iv) the Rating Agency Condition shall have been satisfied with respect to such issuance;
- (v) such issuance will not result in the occurrence of an Event of Default, 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 Event of Default, an Amortization Event or a Series Amortization Event, and the Seller shall have delivered to the Trust and the Indenture Trustee an Officer's Certificate of the Seller, dated the Series Issuance 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 issuance will not result in the occurrence of an Event of Default, 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 Event of Default, an Amortization Event or a Series Amortization Event;
- (vi) in the event that an offering memorandum, prospectus or other similar document is required or is provided to prospective purchasers of the Series Indebtedness of such new Series, the Seller shall execute and deliver to the Trust the securities laws indemnity covenant, substantially in the form of Exhibit C; and
- (vii) the Seller shall have delivered to the Trust and the Indenture Trustee, and any Series Enhancer or any other person entitled thereto pursuant to the relevant Supplement, an Officer's Certificate of the Seller, dated the Series Issuance Date, certifying that the Seller's Allocated Amount shall not be less than the Specified Percentage of the total amount of Principal Receivables, in each case, as of the Series Issuance Date and after giving effect to such issuance.

Upon satisfaction of the above conditions and provided the issuance of the Series Indebtedness of such new Series will be accomplished in accordance with all Requirements of Law, the Trust shall execute the Supplement and issue the Series Indebtedness.

- (d) The adjustments to the amounts payable in respect of the Seller Indebtedness, whether as a result of a partial redemption thereof or as a result of the sale of additional Receivables to the Trust, and the adjustments 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 provided for in sections 2.5, 2.6, 2.9

and 2.10, as the case may be, of the Receivables Purchase Agreement shall be deemed to be incorporated herein by reference and to form a part hereof and of the terms of the Seller Indebtedness.

- (e) Except for transactions provided for under subsection 2.9(f) and sections 3.2 and 3.5 of the Receivables Purchase Agreement and sections 6.2 and 6.9 of this Agreement, Capital One may transfer, assign, convey or pledge all or part of the Seller Indebtedness to any other person (any such interest obtained by any such other person, a “**Supplemental Indebtedness**”), *provided* that (i) Capital One shall not be released from its obligations under this Agreement, the Receivables Purchase Agreement, any Supplement or, if applicable, any Indebtedness, howsoever evidenced, (ii) the Trust shall not be required to deal directly with any person other than Capital One with respect to the Seller Indebtedness, and (iii) the Rating Agency Condition shall have been satisfied with respect to such transfer, assignment, conveyance or pledge. Without limiting the generality of the foregoing, if the Seller Indebtedness is represented by the Capital One Note, Capital One may surrender the Capital One Note to the Trust in exchange for a newly issued Capital One Note and an additional Seller Note representing the interest of a person other than the Seller in the Seller Indebtedness (a “**Supplemental Note**”), the terms of which shall be defined in an amendment to this Agreement (which amendment shall be subject to section 11.1 to the extent that it amends any of the terms of this Agreement).
- (f) Any transfer, assignment, conveyance, pledge or exchange of all or part of the Seller Indebtedness or a Seller Note must be done in accordance with the terms and conditions of this Agreement and the applicable Requirements of Law.

#### 2.4 **Registration of Transfers and Exchanges**

- (a) The Trust shall cause to be kept at the office or agency to be maintained in accordance with the provisions of section 9.14 a register (the “**Register**”) in which, subject to such reasonable regulations as it may prescribe, a transfer agent and registrar (which may be the Indenture Trustee) (the “**Transfer Agent and Registrar**”) shall maintain a record of the Indebtedness Holders and the Indebtedness, respectively, owned by them and shall also provide for, to the extent necessary, the registration of any Registered Notes. Within such Register, the Transfer Agent and Registrar shall also maintain a record of all transfers and exchanges of Indebtedness as herein provided. The Indenture Trustee shall initially act as the Transfer Agent and Registrar.

If any Series Indebtedness is not evidenced by a Registered Note, the transfer of such Series Indebtedness will not be recorded in the Register until such time as the Indebtedness Holder delivers to the Transfer Agent and Registrar, at any office or agency of the Transfer Agent and Register maintained for such purpose, a written instrument of transfer in form satisfactory to the Transfer Agent and Registrar (a “**Transfer Form**”) duly executed by the Indebtedness Holder or the attorney in fact thereof duly authorized in writing. If any Series Indebtedness is evidenced by a Registered Note, the transfer of such Series Indebtedness will not be recorded on the

Register until such time as the Indebtedness Holder surrenders to the Transfer Agent and Registrar, at any office or agency of the Transfer Agency and Registrar maintained for such purpose, the Registered Note, together with a completed Transfer Form duly executed by the Indebtedness Holder or the attorney in fact thereof duly authorized in writing. Upon the surrender of such Registered Note and Transfer Form as aforesaid, one or more new Registered Notes, in authorized denominations of like aggregate principal amount, will be executed by the Trust, authenticated by the Indenture Trustee and delivered by the Transfer Agent and Registrar, in the name of the designated transferee or transferees.

At the option of the Indebtedness Holder, a Registered Note may be exchanged for one or more Registered Notes of authorized denominations (of the same Series and Class) of like aggregate principal amount, upon surrender of the Registered Note to be exchanged, together with a duly completed Transfer Form duly executed by the Indebtedness Holder or the attorney in fact thereof duly authorized in writing, to the Transfer Agent and Registrar at any office or agency of the Transfer Agent and Registrar maintained for such purpose. Upon the surrender of such Registered Note and Transfer Form as aforesaid, the Trust shall execute, the Indenture Trustee shall authenticate and the Transfer Agent and Registrar shall deliver the new Registered Notes to the Indebtedness Holder.

No service charge shall be charged to the Indebtedness Holders for any registration of transfer or exchange of Indebtedness, but the Transfer Agent and Registrar may require payment of a sum sufficient to cover any Tax or governmental charge that may be imposed in connection with any such transfer or exchange.

The preceding provisions of this subsection 2.4(a) notwithstanding, except as otherwise provided in the relevant Supplement, the Transfer Agent and Registrar shall not be required to register the transfer, or exchange, of any Series Indebtedness for a period of 15 days preceding the due date for any payment with respect to the Series Indebtedness.

All Registered Notes surrendered for registration of transfer or exchange or for payment shall be cancelled and disposed of in a manner satisfactory to the Trust.

The Trust shall execute and deliver to the Transfer Agent and Registrar, Notes in such amounts and at such times as are necessary to enable the Trust and the Indenture Trustee to fulfil their responsibilities under this Agreement and each Supplement.

- (b) The Transfer Agent and Registrar will maintain at its expense in the City of Toronto an office or agency where Indebtedness may be transferred or exchanged.

Whenever the Transfer Agent and Registrar is called upon to revise the Register to reflect a new Indebtedness Holder of Series Indebtedness, the Transfer Agent and Registrar shall promptly seek instructions from the Servicer regarding such transfer and shall be entitled to receive instructions signed by a Servicing Officer prior to

registering any such transfer. The Servicer hereby agrees to indemnify the Transfer Agent and Registrar, the Trust and the Indenture Trustee and to hold each of them harmless against any loss, liability or expense incurred without wilful misfeasance, gross negligence or bad faith on their part arising out of or in connection with actions taken or omitted to be taken by them in relation to any such instructions furnished pursuant to this subsection 2.4(b).

2.5 **Mutilated, Destroyed, Lost or Stolen Notes** If (a) any mutilated Note is surrendered to the Transfer Agent and Registrar or the Transfer Agent and Registrar receives evidence to its satisfaction of the destruction, loss or theft of any Note, and (b) there is delivered to the Transfer Agent and Registrar, the Trust and the Indenture Trustee such security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the Trust that such Note has been acquired by a *bona fide* purchaser, the Trust shall execute, the Indenture Trustee shall authenticate and the Transfer Agent and Registrar shall deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Note, a replacement Note of like tenor and aggregate principal amount. In connection with the issuance of any replacement Note under this section 2.5, the Trust or the Transfer Agent and Registrar may require the payment by the holder thereof of a sum sufficient to cover any Tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trust, the Indenture Trustee and the Transfer Agent and Registrar) connected therewith. Any replacement Note issued pursuant to this section 2.5 shall constitute complete and indefeasible evidence of the rights attaching to the lost, stolen or destroyed Note, as if originally issued, whether or not the lost, stolen or destroyed Note shall be found at any time.

2.6 **Persons Deemed Owners** The Trust, the Indenture Trustee, the Paying Agent, the Transfer Agent and Registrar and any agent of any of them appointed under a Supplement or otherwise may, prior to the due presentation of any Indebtedness for registration of transfer, treat the person in whose name any such Indebtedness is registered as the owner thereof for the purpose of receiving payments pursuant to the terms of the applicable Supplement and for all other purposes whatsoever and none of the Trust, the Indenture Trustee, the Paying Agent, the Transfer Agent and Registrar or any such agent shall be affected by any notice to the contrary. Notwithstanding the foregoing, in determining whether Series Indebtedness Holders holding the requisite percentage of Indebtedness have given any request, demand, authorization, direction, notice, consent, vote or waiver hereunder, the Series Indebtedness owned by any of the Seller, the Servicer or an Affiliate thereof, shall be disregarded and deemed not to be outstanding, except that, in determining whether the Trust and the Indenture Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent, vote or waiver, only the Series Indebtedness which the Trust or the Indenture Trustee, as the case may be, knows to be so owned shall be so disregarded. The Series Indebtedness so owned which has been pledged in good faith shall not be disregarded and may be regarded as outstanding if the pledgee establishes to the satisfaction of the Trust or the Indenture Trustee the pledgee's right so to act with respect thereto and that the pledgee is not the Seller, the Servicer or an Affiliate thereof.

2.7 **Appointment of Paying Agent** Unless otherwise provided in any Supplement, the Paying Agent shall make payments to Series Indebtedness Holders pursuant to the provisions of the applicable Supplement and shall report the amounts of such payments to the Trust and the Indenture Trustee. Any Paying Agent shall have the revocable power to withdraw funds from the Collection

Account or any applicable Series Account, as provided in the applicable Supplement, for the purpose of making the payments referred to above. The Servicer or the Trust, upon providing prior written notice to the other, may revoke such power and remove the Paying Agent if either of the Servicer or the Trust determines in its sole discretion that the Paying Agent shall have failed to perform its obligations under this Agreement or any Supplement in any material respect. The Indenture Trustee, and any co-paying agent chosen by the Indenture Trustee and acceptable to the Trust, shall initially act as the Paying Agent. The Indenture Trustee shall be permitted to resign as Paying Agent upon 30 days' prior written notice to the Trust. In the event that the Indenture Trustee shall no longer act as the Paying Agent, the Servicer shall appoint a successor, approved by the Trust in writing, to act as Paying Agent. The Trust shall cause each successor or additional Paying Agent to execute and deliver to the Trust an instrument in which such successor or additional Paying Agent shall agree with the Trust that (a) it will hold all sums, if any, held by it for payment to the Series Indebtedness Holders in trust for the benefit of the Series Indebtedness Holders entitled thereto until such sums shall be paid to such Series Indebtedness Holders, and (b) during the continuance of any Amortization Event, Series Amortization Event or Servicer Default, if requested by the Trust in writing, the Paying Agent will, in the case of an Amortization Event or Servicer Default, forthwith pay to the Trust all sums held in trust by such Paying Agent for payments in respect of the Series Indebtedness or, in the case of a Series Amortization Event under a Supplement, the Paying Agent will forthwith pay to the Trust all amounts held in trust by the Paying Agent for payments in respect of the Series Indebtedness Holders of the applicable Series. The Paying Agent shall return all unclaimed funds to the Trust and upon removal shall also return all funds in its possession to the Trust. The provisions of sections 9.1, 9.2, 9.3 and 9.5 shall apply, *mutatis mutandis*, to the Paying Agent. Any reference in this Agreement to the Paying Agent shall include any co-paying agent unless the context requires otherwise.

2.8            **Access to List of Registered Series Indebtedness Holders' Names and Addresses** The Trust will furnish or cause to be furnished by the Transfer Agent and Registrar to the Indenture Trustee, the Servicer or the Paying Agent, within five Business Days after receipt by the Trust of a request therefor, a list in such form as the Indenture Trustee, the Servicer or the Paying Agent may reasonably require, of the names and addresses of the Series Indebtedness Holders. If any one or more Series Indebtedness Holders of any Series or all outstanding Series, as the case may be, holding not less than 20% of the aggregate outstanding principal amount of the Series Indebtedness of such Series or of all outstanding Series, as applicable (the "**Applicants**"), applies to the Trust, and such application states that the Applicants desire to communicate with other Series Indebtedness Holders with respect to their rights under this Agreement or any Supplement or under the Series Indebtedness and is accompanied by a copy of the communication which such Applicants propose to transmit, then the Trust, after having received sufficient funds and/or having been adequately indemnified by such Applicants for its costs and expenses, shall provide or shall cause the Transfer Agent and Registrar to provide such Applicants with access during normal business hours to the most recent list of Series Indebtedness Holders of such Series or all outstanding Series, as applicable, within five Business Days after the receipt of such application. Such list shall be as of a date no more than 45 days prior to the date of receipt of such Applicants' request.

Every Series Indebtedness Holder, by receiving and holding Series Indebtedness, howsoever evidenced, agrees with the Trust that none of the Trust, the Indenture Trustee, the Transfer Agent and Registrar or any of their respective agents, shall be held accountable by reason of



the disclosure of any such information as to the names and addresses of the Series Indebtedness Holders hereunder, regardless of the sources from which such information was derived.

2.9 **Authenticating Agent**

- (a) To the extent any Indebtedness is evidenced by Notes, the Indenture Trustee may appoint one or more authenticating agents with respect to such Notes which agents shall be authorized to act on behalf of the Indenture Trustee in authenticating such Notes in connection with the issuance, delivery, registration of transfer, exchange or repayment of any such Notes. Whenever reference is made in this Agreement to the authentication of Notes by the Indenture Trustee or the Indenture Trustee's certificate of authentication, such reference shall be deemed to include authentication on behalf of the Indenture Trustee by an authenticating agent and certificate of authentication executed on behalf of the Indenture Trustee by an authenticating agent. Each authenticating agent must be acceptable to the Trust.
- (b) Any institution succeeding to the corporate agency business of an authenticating agent shall continue to be an authenticating agent without the execution or filing of any power or any further act on the part of the Indenture Trustee or such authenticating agent provided that notice of any such successor shall be given to the Trust. An authenticating agent may at any time resign by giving 30 days' written notice to the Trust, the Indenture Trustee and the Servicer. The Indenture Trustee may at any time terminate the agency of an authenticating agent by giving written notice of termination to such authenticating agent, the Trust and the Servicer. Upon receiving such a notice of resignation or upon such a termination, or in case at any time an authenticating agent shall cease to be acceptable to the Trust, the Indenture Trustee or the Servicer, the Indenture Trustee shall either assume the duties of the authenticating agent or promptly appoint a successor authenticating agent. Any successor authenticating agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor, with like effect as if originally named as an authenticating agent. No successor authenticating agent shall be appointed unless acceptable to the Trust and the Servicer. The Servicer agrees to pay to each authenticating agent from time to time reasonable compensation for its services under this section 2.9. The provisions of sections 9.1, 9.2 and 9.3 shall be applicable, *mutatis mutandis*, to any authenticating agent.
- (c) Pursuant to an appointment made under this section 2.9, the Notes may have endorsed thereon, in lieu of the Indenture Trustee's certificate of authentication, an alternate certificate of authentication in substantially the following form:

This is one of the Notes described in the Trust Indenture.

\_\_\_\_\_  
as Authenticating Agent

for the Indenture Trustee,

By

\_\_\_\_\_  
Authorized Officer

2.10 **Book-Based Notes** Unless otherwise specified in the applicable Supplement, with respect to any Series Indebtedness to be evidenced by Series Notes, such Series Notes, upon original issuance, shall be issued in the form of one or more typewritten Series Notes representing the Book-Based Notes, to be delivered to the Clearing Agency, by, or on behalf of, the Trust. Such Series Notes shall initially be registered on the Register in the name of the Clearing Agency or its nominee, and no Note Owner will receive a definitive certificate representing such Note Owner's interest in the Series Notes, except as provided in section 2.12. Unless and until definitive, fully Registered Notes have been issued to the applicable Note Owners pursuant to section 2.12 or as otherwise specified in the related Supplement:

- (a) the provisions of this section 2.10 shall be in full force and effect;
- (b) the Trust, the Indenture Trustee and the Servicer may deal with the Clearing Agency and the Clearing Agency Participants for all purposes (including the making of payments) as the authorized representatives of the respective Note Owners;
- (c) to the extent that the provisions of this section 2.10 conflict with any other provisions of this Agreement, the provisions of this section 2.10 shall control; and
- (d) the rights of the respective Note Owners shall be exercised only through the Clearing Agency and the Clearing Agency Participants and shall be limited to those established by applicable Requirements of Law and agreements between such Note Owners and the Clearing Agency and/or the Clearing Agency Participants. Unless and until Registered Notes are issued pursuant to section 2.12, the Clearing Agency will make book-based transfers among the Clearing Agency Participants and receive and transmit payments of principal and interest on the related Series Notes to such Clearing Agency Participants in accordance with the rules of such Clearing Agency.

For purposes of any provision of this Agreement requiring or permitting actions with the consent of, or at the direction of, Series Indebtedness Holders holding a requisite percentage of Series Indebtedness, such direction or consent may be given by Note Owners (acting through the Clearing Agency and the Clearing Agency Participants) owning such requisite percentage of Series Indebtedness.

2.11 **Notices to Clearing Agency** Whenever any notice or other communication is required to be given to Series Indebtedness Holders of any Series or Class with respect to which Book-Based Notes have been issued, unless and until Registered Notes shall have been issued to the applicable Note Owners, the Trust, the Indenture Trustee, the Seller and the Servicer shall give all such notices and communications to the applicable Clearing Agency.

2.12 **Availability of Notes** If Book-Based Notes have been issued with respect to any Series or Class and (a) the Trust, upon the direction of the Servicer, advises the Indenture Trustee that the Clearing Agency is no longer willing or able to discharge properly its responsibilities under any depository agreement with respect to such Series or Class and neither the Trust nor the Indenture Trustee is able to locate a qualified successor, (b) the Trust advises the Indenture Trustee that it elects to terminate the book-based system with respect to such Series or Class through the Clearing Agency, or (c) after the occurrence of a Servicer Default or an Event of Default, Series Indebtedness Holders of such Series or Class holding not less than 51% of the aggregate outstanding principal amount of the Series Indebtedness of such Series or Class advise the Trust, the Indenture Trustee and the Clearing Agency through the Clearing Agency Participants that the continuation of a book-based system with respect to the Series Notes of such Series or Class through the Clearing Agency is no longer in the best interests of the Note Owners of such Series Notes, then the Indenture Trustee shall notify all such Note Owners of such Series Notes, through the Clearing Agency, of the occurrence of any such event and of the availability of Registered Notes to Note Owners requesting the same. Upon surrender to the Indenture Trustee of any such Book-Based Notes by the Clearing Agency in transferable form, duly endorsed or accompanied by powers of attorney and accompanied by registration instructions from the Clearing Agency for registration, the Trust shall execute, and the Indenture Trustee shall authenticate and deliver, such Registered Notes. Neither the Trust nor the Indenture Trustee shall be liable for any delay in delivery of such instructions and may conclusively rely on, and shall be protected in relying on, such instructions. Upon the issuance of such Registered Notes, the Trust and the Indenture Trustee shall recognize the Note Owners of such Registered Notes as Series Indebtedness Holders hereunder.

2.13 **Meetings of Series Indebtedness Holders**

- (a) The Servicer, the Trust or the Indenture Trustee may at any time, and the Indenture Trustee shall on receipt of a written request signed by the Series Indebtedness Holders of a particular Series or Class or of all Series, as the case may be, holding not less than 25% of the aggregate outstanding principal amount of the Series Indebtedness of that Series or Class or of all Series, as the case may be, entitled to vote at the meeting, call a meeting of the Series Indebtedness Holders of that Series or Class or of all Series, as the case may be, to be held at such time and at such place as the Servicer, the Trust or the Indenture Trustee, as the case may be, shall determine, for the purpose of approving a modification of or amendment to, or obtaining a waiver of any covenant or condition set forth in, the Receivables Purchase Agreement, this Agreement, any Supplement or the Indebtedness, howsoever evidenced, or of taking any other action permitted to be taken by Series Indebtedness Holders hereunder or under any Supplement or of directing the Indenture Trustee, subject to compliance by the Series Indebtedness Holders with subsection 9.2(c), to take any action or give any direction to the Seller pursuant to the Receivables Purchase Agreement or this Agreement. Notice of any meeting of

Series Indebtedness Holders shall be given by the Servicer, the Trust or the Indenture Trustee, as the case may be, in accordance with section 11.4 and shall set forth the time and place of such meeting and in general terms the action proposed to be taken at such meeting, and the first mailing and publication shall not be less than 10 nor more than 180 days prior to the date fixed for the meeting. To be entitled to vote at any meeting of Series Indebtedness Holders a person shall be (i) a Series Indebtedness Holder of the applicable Series or Class, or (ii) appointed by an instrument in writing as proxy by an eligible Series Indebtedness Holder. The only persons who shall be entitled to be present or to speak at any meeting of Series Indebtedness Holders shall be the persons entitled to vote at such meeting and their counsel and any representatives of the Seller, the Servicer, the Trust and the Indenture Trustee and their respective counsel.

- (b) At a meeting of Series Indebtedness Holders, persons entitled to vote an amount of Series Indebtedness evidencing more than 50% of the aggregate outstanding principal amount of the Series Indebtedness of the applicable Series or Class or of all outstanding Series, as the case may be, shall constitute a quorum. No business shall be transacted in the absence of a quorum, unless a quorum is present when the meeting is called to order. In the absence of a quorum at any such meeting, the meeting may be adjourned for a period of not less than 10 days; in the absence of a quorum at any such adjourned meeting, such adjourned meeting may be further adjourned for a period of not less than 10 days; at the reconvening of any meeting further adjourned for lack of a quorum, the persons entitled to vote an amount of Series Indebtedness evidencing at least 25% of the aggregate outstanding principal amount of the Series Indebtedness of the applicable Series or Class or of all outstanding Series, as the case may be, shall constitute a quorum for the taking of any action set forth in the notice of the original meeting. Notice of the reconvening of any adjourned meeting shall be given as provided in subsection 2.13(a), except that such notice must be given not less than five days prior to the date on which the meeting is scheduled to be reconvened. Notice of the reconvening of an adjourned meeting shall state expressly the percentage of the aggregate principal amount of the outstanding applicable Series Indebtedness which shall constitute a quorum.
- (c) Any Series Indebtedness Holder who has executed an instrument in writing appointing a person as proxy shall be deemed to be present for the purposes of determining a quorum and shall be deemed to have voted. Subject to the provisions of section 11.1, any resolution passed or decision taken at any meeting of Series Indebtedness Holders duly held in accordance with this section 2.13 shall be binding on all of the Series Indebtedness Holders whether or not present or represented at the meeting.
- (d) The Indenture Trustee shall appoint a temporary chairman of the meeting. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of Series Indebtedness Holders holding more than 50% of the aggregate outstanding principal amount of the Series Indebtedness of the applicable Series or Class or of all outstanding Series, as the case may be, represented at the meeting. No vote shall be cast or counted at any meeting in respect of any Series Note challenged

as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote except as a Series Indebtedness Holder or proxy. Any meeting of Series Indebtedness Holders duly called at which a quorum is present may be adjourned from time to time, and the meeting may be held as so adjourned without further notice.

- (e) The vote upon any resolution submitted to any meeting of Series Indebtedness Holders shall be by written ballot on which shall be subscribed the name and signatures of the Series Indebtedness Holders or proxies and on which shall be inscribed the aggregate principal amount of Series Indebtedness, respectively, held or represented by them and, if such Series Indebtedness is evidenced by one or more Series Notes, the serial number or numbers of the Series Notes held or represented by them and the aggregate principal amount evidenced thereby. Wherever in this Agreement, any matter is stated as requiring the approval or action of Series Indebtedness Holders holding a specified percentage of the aggregate outstanding principal amount of the specified Series Indebtedness, such approval or action shall have been validly authorized to be done if approved by the affirmative votes of persons entitled to vote an amount of Series Indebtedness evidencing such specified percentage of the aggregate principal amount of such Series Indebtedness represented at a duly constituted meeting. Subject to the preceding sentence or as provided in a Supplement, every matter submitted to a meeting of Series Indebtedness Holders shall be decided by the affirmative votes of persons entitled to vote an amount of Series Indebtedness evidencing a majority of the aggregate principal amount of the Series Indebtedness of the applicable Series or Class of all outstanding Series, as the case may be, represented at the meeting. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Series Indebtedness Holders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was given as provided above. The record shall be signed and verified by the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Trust and the other to the Indenture Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

### **ARTICLE 3 RIGHTS OF INDEBTEDNESS HOLDERS, COLLECTIONS AND ALLOCATIONS**

3.1 **Rights of Indebtedness Holders to Principal and Interest** Indebtedness shall be issued by the Trust as provided for herein and in any Supplement.

3.2

**Allocations Among Secured Property**

- (a) The Secured Property shall be subject to the Security Interests in favour of the Indenture Trustee created pursuant to section 4.1 to secure the several obligations of the Trust hereunder and under any Supplement in favour of the Indebtedness Holders and any other person entitled thereto pursuant to the terms of any Supplement or Enhancement Agreement (each, an “**Additional Creditor**”). Collections and funds on deposit in the Collection Account and the Excess Funding Account shall be allocated in accordance with the terms hereof and any related Supplement and shall be held by the Indenture Trustee as security for the respective obligations of the Trust in favour of the Indebtedness Holders, and any Additional Creditor, and the Indenture Trustee shall hold the Secured Property on behalf of each such person. Funds on deposit in any Series Account established by the Indenture Trustee in respect of any Series pursuant to the related Supplement and funds available pursuant to any related Series Enhancement shall be allocated to and held by the Indenture Trustee on behalf of the Series Indebtedness Holders of such Series. Series Indebtedness Holders of a particular Series will be entitled to receive payments only to the extent of (i) the portion of Collections allocable to the Series Indebtedness Holders of such Series pursuant to this Agreement and such Supplement, (ii) funds on deposit in the Collection Account and the Excess Funding Account allocable to the Series Indebtedness Holders of such Series pursuant to this Agreement and such Supplement, (iii) funds on deposit in any related Series Account, and (iv) funds available pursuant to any related Series Enhancement, in each case, subject to the Security Interest held by the Indenture Trustee as security for the Trust’s obligations in favour of the Series Indebtedness Holders of such Series (collectively, the Secured Property held by the Indenture Trustee which has been allocated to and is held by the Indenture Trustee on behalf of the Series Indebtedness Holders of all Series is herein referred to as the “**Series Indebtedness Holders’ Allocation**”), it being understood that the Series Indebtedness Holders of any Series or Class shall not be entitled to receive payments from (A) the Seller’s Allocation, or (B) the portion of the Series Indebtedness Holders’ Allocation allocated in accordance with the terms hereof or any Supplement in favour of the Series Indebtedness Holders of any other Series or Class or any Additional Creditor. Series Indebtedness Holders of any Series or Class shall not be entitled to receive payment from (x) any Series Account, or (y) any Series Enhancement allocated to the Series Indebtedness Holders of any other Series or Class.
- (b) Subject to the provisions of any Supplement, all of the Secured Property not allocated pursuant to this Agreement or any Supplement in favour of the Series Indebtedness Holders or any Additional Creditor, including the right to receive Collections with respect to the Receivables and other amounts, shall be held by the Indenture Trustee on behalf of the Seller as security for the obligations of the Trust in favour of the Seller. The Seller shall be entitled to receive payment only from the Secured Property not allocated pursuant to this Agreement or any Supplement to the Series Indebtedness Holders or any Additional Creditor (such Secured Property which has not been allocated to secure the obligations of the Trust in favour of the Series Indebtedness Holders or any Additional Creditor is herein referred to as the

“**Seller’s Allocation**”); *provided, however*, that the Seller’s Allocation shall not include the right to receive any payment from the Collection Account, the Excess Funding Account, any Series Account or any Series Enhancement, except as specifically provided in this Agreement or any Supplement.

- (c) For greater certainty, references in sections 3.2(a) and (b) of this Agreement to an allocation to a person means that in the event that the Indenture Trustee exercises any rights in respect of the Secured Property, such person shall have an entitlement to the Secured Property in the order of priority set out in this Agreement and any applicable Supplement.

### 3.3 **Establishment of Collection Account**

- (a) The Servicer, for the benefit of the Trust and the Indenture Trustee, as their interests are specified in this Agreement, shall establish and maintain in the name of the Trust, an Eligible Deposit Account bearing a designation clearly indicating that the funds deposited therein are held subject to the Security Interests provided for in this Agreement in favour of the Indenture Trustee (the “**Collection Account**”). The Collection Account will initially be established with the Indenture Trustee and shall provide that the Indenture Trustee shall have no right of set-off with respect to amounts on deposit from time to time in such account. Subject to the Security Interests granted in favour of the Indenture Trustee hereunder, the Trust shall possess all right, title and interest in all funds on deposit from time to time in the Collection Account and in all proceeds thereof. Subject to the Security Interests granted in favour of the Indenture Trustee hereunder, the Collection Account shall be under the sole dominion and control of the Trust. Except as expressly provided in this Agreement, the Servicer agrees that it shall have no right of set off or lien against, and no right to otherwise deduct from, any funds held in the Collection Account for any amount owed to it (whether as Servicer, Seller, Administrative Agent or in any other capacity) by any person, including the Trust, the Indenture Trustee, any Indebtedness Holder or any Additional Creditor. If, at any time, the Collection Account ceases to be an Eligible Deposit Account, the Trust (or the Servicer on its behalf) shall within 10 Business Days (or such longer period, not to exceed 30 calendar days, as to which each Rating Agency may consent) establish a new Collection Account meeting the conditions specified above and transfer any cash and/or any investments to such new Collection Account and from the date such new Collection Account is established, it shall be the “**Collection Account**”.
- (b) Unless otherwise agreed by each Rating Agency, if at any time neither Capital One nor any Affiliate of Capital One is the Servicer, the Collection Account, if then maintained with Capital One or an Affiliate of Capital One, will be moved to an Eligible Institution from Capital One or such Affiliate, as the case may be.
- (c) Funds on deposit in the Collection Account (other than any Insolvency Proceeds or any amounts deposited pursuant to section 2.6 of the Receivables Purchase Agreement or sections 7.1 or 10.2 hereof) shall at the direction of the Servicer be invested by the Trust in Eligible Investments selected by the Servicer. All such

Eligible Investments shall be held by the Trust subject to the Security Interests granted by the Trust in favour of the Indenture Trustee hereunder. Funds on deposit in the Collection Account during any Monthly Period will be invested in Eligible Investments that will mature so that funds, in an amount sufficient to make the required payments on the Allocation Date, will be available at the opening of business on the Allocation Date following such Monthly Period. Funds deposited in the Collection Account on a Transfer Date with respect to the next following Allocation Date are not required to be invested overnight.

- (d) On each Allocation Date, all interest and other investment earnings (net of losses and investment expenses) on funds on deposit in the Collection Account shall be treated as Finance Charge Collections and applied as provided herein and in each Supplement.

#### 3.4 **Establishment of Excess Funding Account**

- (a) The Servicer, for the benefit of the Trust and the Indenture Trustee, as their interests are specified in this Agreement, shall establish and maintain in the name of the Trust another Eligible Deposit Account bearing a designation clearly indicating that the funds deposited therein are held subject to the security interests provided for in this Agreement in favour of the Indenture Trustee (the “**Excess Funding Account**”). The Excess Funding Account will initially be established with the Indenture Trustee and shall provide that the Indenture Trustee shall have no right of set-off with respect to amounts on deposit from time to time in such account. Subject to the Security Interests granted in favour of the Indenture Trustee hereunder, the Trust shall possess all right, title and interest in all funds on deposit from time to time in the Excess Funding Account and in all proceeds thereof. Subject to the Security Interests granted in favour of the Indenture Trustee hereunder, the Excess Funding Account shall be under the sole dominion and control of the Trust. Except as expressly provided in this Agreement, the Servicer agrees that it shall have no right of set off or lien against, and no right to otherwise deduct from, any funds held in the Excess Funding Account for any amount owed to it (whether as Seller, Servicer, Administrative Agent or in any other capacity) by any person, including the Trust, the Indenture Trustee, any Indebtedness Holder or any Additional Creditor. If, at any time, the Excess Funding Account ceases to be an Eligible Deposit Account, the Trust (or the Servicer on its behalf) shall within 10 Business Days (or such longer period, not to exceed 30 calendar days, as to which each Rating Agency may consent) establish a new Excess Funding Account meeting the conditions specified above, transfer any cash and/or any investments to such new Excess Funding Account and from the date such new Excess Funding Account is established, it shall be the “**Excess Funding Account**”.
- (b) Unless otherwise agreed by each Rating Agency, if at any time neither Capital One nor any Affiliate of Capital One is the Servicer, the Excess Funding Account, if then maintained with Capital One or an Affiliate of Capital One, will be moved to an Eligible Institution from Capital One or such Affiliate, as the case may be.



- (c) Funds on deposit in the Excess Funding Account shall at the direction of the Servicer be invested by the Trust in Eligible Investments selected by the Servicer. All such Eligible Investments shall be held by the Trust subject to the Security Interests granted by the Trust in favour of the Indenture Trustee hereunder. Funds on deposit in the Excess Funding Account during any Monthly Period will be invested in Eligible Investments that will mature so that funds, in an amount sufficient to make the required payments on the Allocation Date, will be available at the opening of business on the Allocation Date following such Monthly Period. Funds deposited in the Excess Funding Account on a Transfer Date with respect to the next following Allocation Date are not required to be invested overnight.
- (d) On each Allocation Date, all interest and other investment earnings (net of losses and investment expenses) on funds on deposit in the Excess Funding Account shall be treated as Finance Charge Collections with respect to the last day of the related Monthly Period. Funds on deposit in the Excess Funding Account will be withdrawn and paid to the Seller in respect of the Seller Indebtedness on any Business Day to the extent that (i) the Seller's Allocated Amount exceeds the Required Seller's Allocated Amount, and (ii) the aggregate amount of Principal Receivables exceeds the Required Principal Balance on such date, and in making any such withdrawal the Seller shall be deemed to have represented and warranted to the Trust that such is the case as at each such date of withdrawal; *provided, however*, that, if an Accumulation Period, Accelerated Amortization Period, Controlled Amortization Period, Principal Amortization Period, any period commencing on the date of an Optional Amortization Notice and ending on the related Optional Amortization Date or Early Amortization Period has commenced and is continuing with respect to one or more outstanding Series, then, notwithstanding the foregoing, the Seller shall not be entitled to the withdrawal and payment to it of any funds on deposit in the Excess Funding Account as provided above, and any funds on deposit in the Excess Funding Account on any Allocation Date shall be treated as Shared Principal Collections and shall be allocated and distributed in accordance with section 3.6 and the terms of the Supplements for the Principal Sharing Series.

### 3.5 **Collections and Allocations**

- (a) The Servicer will apply all funds on deposit in the Collection Account as described in this Article 3 and in each Supplement. Except as otherwise provided below, the Servicer shall deposit Collections into the Collection Account no later than the second Business Day following the Date of Processing of such Collections or, in the case of any Collections consisting of Interchange, not later than 12:00 noon (Toronto time) on each Allocation Date. Subject to the express terms of any Supplement, but notwithstanding anything else in this Agreement to the contrary, for so long as Capital One remains the Servicer and either (A) Capital One, or an Affiliate of Capital One providing a guarantee of the performance of the obligations of the Servicer hereunder, under the Receivables Purchase Agreement and under any Supplement (and in such case, each Rating Agency shall have received notice that such Affiliate will be providing a guarantee), maintains a short-term debt rating of not less than (i) A-1 by Standard & Poor's, (ii) P-1 by Moody's and (iii) R-1 (low), if

rated by DBRS or (B) Capital One, or an Affiliate of Capital One, has provided to the Trust a letter of credit covering commingling risk of the Servicer acceptable to each Rating Agency (as evidenced by a letter from each Rating Agency), the Servicer need not make the daily deposits of Collections into the Collection Account as provided in the preceding sentence, but may make a single deposit into the Collection Account in immediately available funds not later than 12:00 noon (Toronto time) on the Transfer Date immediately preceding the Allocation Date or, in the case of any Collections consisting of Interchange, not later than 12:00 noon (Toronto time) on each Allocation Date. Subject to the first proviso in subsection 3.6(a), but notwithstanding anything else in this Agreement to the contrary, with respect to any Monthly Period, whether the Servicer is required to make deposits of Collections pursuant to the first or the second preceding sentence, (A) the Servicer will be required to deposit Collections into the Collection Account in an amount equal to the sum of (x) the aggregate amount of Collections required to be deposited into any Series Account or, without duplication, distributed on or prior to the related Allocation Date to Series Indebtedness Holders or to any Additional Creditor pursuant to the terms of any Supplement, (y) the aggregate amount of the portion of Collections representing annual membership fees (including any annual membership fees received prior to the Trust Cut-Off Date) and Miscellaneous Up-Front Fees which will not have been amortized in accordance with subsection 5.4(c) or subsection 5.4(f) respectively with respect to the end of such Monthly Period, and (z) the aggregate amount of the portion of Collections representing Recoveries that will not have been amortized in accordance with subsection 5.4(e) with respect to the end of such Monthly Period, and (B) if at any time prior to such Allocation Date the amount of Collections deposited in the Collection Account exceeds the amount required to be deposited pursuant to (A) above, the Servicer will be permitted to withdraw the excess from the Collection Account.

- (b) Except as otherwise provided in any Supplement, (i) Finance Charge Collections will be allocated to the Series Indebtedness Holders' Allocation of a Series in an amount equal to the product of the amount of such Collections and the Floating Allocation Percentage of such Series, (ii) the Defaulted Amount will be allocated to the Series Indebtedness Holders' Allocation of a Series in an amount equal to the product of such Defaulted Amount and the Floating Allocation Percentage of such Series, and (iii) Collections of Principal Receivables will be allocated to the Series Indebtedness Holders' Allocation of such Series in an amount equal to the product of the amount of such Collections and the applicable Allocation Percentage of such Series as set out in the related Supplement. Collections of Receivables with respect to any Monthly Period will be allocated by the Servicer first to annual membership fees billed during the preceding Monthly Period, second to Miscellaneous Up-Front Fees, third to Finance Charge Receivables, to the extent of Finance Charge Receivables billed during the preceding Monthly Period, and then to Principal Receivables. Subject to subsection 3.5(c) and section 3.6, and except as otherwise provided in any Supplement, amounts not allocated to the Series Indebtedness Holders' Allocation of any Series will be allocated to the Seller's Allocation.

- (c) On the earlier of (i) the second Business Day after the Date of Processing and (ii) the day on which the Servicer actually deposits any Collections into the Collection Account or, in the case of any Collections consisting of Interchange, not later than 12:00 noon (Toronto time) on each Allocation Date, the Servicer will pay to the Seller (A) in respect of the yield on the Seller Indebtedness, the Seller's Allocation Percentage of Finance Charge Collections, net of an amount equal to the Seller's Allocation Percentage of the Defaulted Amount, which amount shall be treated as Collections of Principal Receivables for such Allocation Date allocated to the Seller's Allocation and (B) in respect of the principal component of the Seller Indebtedness, the Seller's Allocation Percentage of Collections of Principal Receivables; *provided, however*, that, in the case of Collections of Principal Receivables allocated to the Seller's Allocation and any Shared Principal Collections that would otherwise be paid to the Seller pursuant to subsection 3.6(a), such amounts shall be paid to the Seller only if (x) the Seller's Allocated Amount (determined after giving effect to any Principal Receivables transferred to the Trust on such date) exceeds the Required Seller's Allocated Amount, and (y) the aggregate amount of Principal Receivables exceeds the Required Principal Balance, otherwise such amounts shall be deposited into the Excess Funding Account. Collections consisting of annual membership fees, Miscellaneous Up-Front Fees, or Recoveries resulting from the sale or securitization of Defaulted Receivables (including the related Finance Charge Receivables) which have not yet been amortized in accordance with subsection 5.4(c)(ii), (e)(ii) or (f)(ii) and which are therefore not treated as Collections of Finance Charge Receivables or Principal Receivables, shall not be paid to the Seller or allocated to the Series Indebtedness Holders' Allocation.

The payments to be made to the Seller pursuant to this subsection 3.5(c) do not apply to deposits to the Collection Account or other amounts that do not represent Collections, payment of the purchase price for Receivables pursuant to section 7.1, proceeds from the sale, disposition or liquidation of Receivables pursuant to section 2.5 or 2.6 of the Receivables Purchase Agreement, Insolvency Proceeds under any Supplement or payment of the purchase price for the Series Indebtedness Holders' Allocation of a specific Series pursuant to the related Supplement.

- (d) The Principal Receivables in Additional Accounts added during any Monthly Period having an Additional Cut-Off Date as of any day during the preceding Monthly Period shall be treated as Principal Receivables outstanding on and after such Additional Cut-Off Date for purposes of calculating the Floating Allocation Percentage and Fixed Allocation Percentage for the Monthly Period in which such Additional Accounts are added. Any such recalculation of the Floating Allocation Percentage and Fixed Allocation Percentage for a Monthly Period shall be effective only on and after the Additional Purchase Date, but the Servicer shall determine the amounts of Collections and the Defaulted Amounts which would have been allocated to the Series Indebtedness Holders' Allocation of each Series for the portion of such Monthly Period preceding such Additional Purchase Date as if such recalculated Floating Allocation Percentage and Fixed Allocation Percentage had been in effect and shall adjust the amounts to be allocated for the remainder of such Monthly Period so that the amounts allocated to the Series Indebtedness Holders' Allocation

of each Series and the Seller's Allocation are equal to the amounts which would have been allocated to them if such recalculated percentages had been in effect for the entire Monthly Period.

### 3.6 **Shared Principal Collections**

- (a) On each Allocation Date, (i) the Servicer shall allocate Shared Principal Collections to each Principal Sharing Series, *pro rata*, in proportion to the Principal Shortfalls, if any, with respect to each such Series, and (ii) the Indenture Trustee, upon the direction of the Servicer, shall withdraw from the Collection Account or the Excess Funding Account and pay to the Seller in partial satisfaction of the cash purchase price for new Receivables generated in the Accounts as specified in section 2.1 of the Receivables Purchase Agreement and as contemplated by the Supplements, an amount equal to the excess, if any, of (A) the aggregate amount for all outstanding Collections of Principal Receivables which the related Supplements specify are to be treated as "**Shared Principal Collections**" for such Allocation Date over (B) the aggregate amount for all outstanding Series which the related Supplements specify are "**Principal Shortfalls**" or "**Subordinated Excess Principal Shortfalls**" for such Allocation Date; *provided, however*, that, such amount shall be paid to the Seller only if (x) the Seller's Allocated Amount for such Allocation Date (determined after giving effect to any Principal Receivables or Participation Interests transferred to the Trust on such date) exceeds the Required Seller's Allocated Amount, and (y) the aggregate amount of Principal Receivables exceeds the Required Principal Balance, otherwise such amount shall be deposited into the Excess Funding Account.
- (b) Excess Shared Principal Collections, if any, for each Allocation Date will be allocated to each Subordinated Excess Principal Series in an amount equal to the lesser of (i) the Subordinated Excess Principal Shortfall for such Series for such Allocation Date, and (ii) the product of (A) the Excess Shared Principal Collections for such Allocation Date, and (B) a fraction, the numerator of which is the Subordinated Excess Principal Shortfall for such Series for such Allocation Date and the denominator of which is the aggregate amount of Subordinated Excess Principal Shortfalls of all Subordinated Excess Principal Series.

3.7 **Excess Finance Charges** On each Allocation Date, (a) the Servicer shall allocate Excess Finance Charges to each Excess Allocation Series in a Group, *pro rata*, in proportion to the Finance Charge Shortfalls, if any, with respect to each such Series, and (b) the Servicer shall withdraw (or shall instruct the Indenture Trustee to withdraw) from the Collection Account and pay to the Seller in respect of the Performance Origination Payment an amount equal to the excess, if any, of (i) the aggregate amount for all outstanding Series in a Group of the amounts which the related Supplements specify are to be treated as "**Excess Finance Charges**" for such Allocation Date over (ii) the aggregate amount for all outstanding Series in such Group which the related Supplements specify are "**Finance Charge Shortfalls**" for such Allocation Date.

## ARTICLE 4 SECURITY

4.1 **Secured Property** To secure the due payment of all principal, interest and other monies for the time being and from time to time owing by the Trust in respect of this Agreement, the Indebtedness and all other sums, if any, from time to time due hereunder by the Trust or under any Supplement in respect thereof to the Indebtedness Holders or any Additional Creditor and the performance of the obligations of the Trust herein and in any Supplement contained, and in pursuance of each and every power and authority enabling it to do so, the Trust does hereby grant, deliver, assign, transfer, convey, demise, pledge and charge, as and by way of a first fixed and specific security interest, mortgage and charge and, to the extent not subject to the first fixed and specific security interest, mortgage and charge, a first floating security interest, mortgage and charge, to and in favour of the Indenture Trustee, of all of the Trust's right, title and interest in, to and under (a) the Trust Assets, (b) all of the contractual, equitable or other rights or choses in action of the Trust under the Receivables Purchase Agreement, this Agreement, any Supplement and any agreement entered into in connection herewith or therewith, including any Series Enhancement, and (c) all benefits, advantages, property or assets of whatsoever kind in any form derived or realized, directly or indirectly, pursuant to or from any dealings with the property, rights and assets described in (a) and (b) above or that indemnifies or compensates for any such property, rights and assets (the property, rights and assets described in (a), (b) and (c) above are herein collectively referred to as the "**Secured Property**").

The Trust agrees to record and file assignments, financing statements or continuation statements (and financing change statements or other documents where applicable) with respect to the Receivables now existing and hereafter created meeting the applicable Requirements of Law in such manner and in such jurisdictions as are necessary to protect and perfect, and to maintain the protection and perfection of, the Security Interest hereby granted by the Trust to the Indenture Trustee 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 Indenture Trustee on or prior to (i) the first Series Issuance Date, in the case of Receivables arising in the Initial Accounts, and (ii) if any additional filing is so necessary, (A) the first Allocation Date following the month in which the New Accounts were originated, in the case of Receivables arising in the New Accounts, and (B) the applicable Additional Purchase Date, in the case of Receivables arising in Lump Sale Accounts.

4.2 **Habendum** To have and to hold the Secured Property and all rights hereby conferred unto the Indenture Trustee, its successors and assigns, forever, but in trust nevertheless, for the equal and rateable benefit and security of the Indebtedness Holders and any Additional Creditors and for the uses and purposes and with the powers and authorities and subject to the terms and conditions set forth herein and in any Supplement.

4.3 **Security Interest Valid** The Security Interests made and created by or pursuant to this Agreement shall be and are hereby deemed to be effective, and value therefor given, as of and from the date of this Agreement, whether or not any of the money secured by this Agreement shall be advanced or received before or after or at the time of the issue of any Indebtedness or before or after or upon the date of this Agreement.

4.4 **Attachment** The Trust and the Indenture Trustee acknowledge and agree that the Security Interest hereby created has attached to the Secured Property in which the Trust has any interest on the date hereof, and, with respect to after-acquired property, forthwith at the time that the Trust shall acquire an interest therein.

4.5 **Confidentiality** The Indenture Trustee 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 from time to time except (a) as required by Requirements of Law applicable to the Indenture Trustee, (b) in connection with the performance of the Indenture Trustee's duties hereunder, or (c) in enforcing or preparing to enforce the rights of the Indenture Trustee hereunder on behalf of the Indebtedness Holders. The Indenture Trustee agrees to take such measures as shall reasonably be required 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 Indenture Trustee's security and confidentiality arrangements from time to time during normal business hours. The Indenture Trustee shall provide the Seller with notice 30 Business Days prior to any disclosure pursuant to this section 4.5 except where the provision of such 30 Business Days' notice would be materially adverse to the interests of the Series Indebtedness Holders.

4.6 **Representations and Warranties of the Trust Relating to the Trust** The Trust hereby represents and warrants to the Indenture Trustee as of the date of this Agreement and each Series Issuance Date that:

- (a) **Organization and Good Standing**. The Trust has been validly established pursuant to the Settlement Deed under the laws of the Province of Ontario and has, in all material respects, full power and authority to execute, deliver and perform its obligations under the Receivables Purchase Agreement, this Agreement and each Supplement and to execute and deliver to the Indenture Trustee the Indebtedness, howsoever evidenced.
- (b) **Due Qualification**. The Trust is duly qualified, is in good standing and has obtained all necessary licences and approvals in each jurisdiction in which the failure to so qualify or to obtain such licences and approvals would have a material adverse effect on the rights of the Indebtedness Holders (or the Indenture Trustee on behalf of the Indebtedness Holders) hereunder or under any Supplement.
- (c) **Due Authorization**. The execution and delivery of the Receivables Purchase Agreement, this Agreement and each Supplement by the Trust and the performance by the Trust of its obligations thereunder, have been duly authorized under the Settlement Deed and by all necessary corporate action on the part of BNY Trust.
- (d) **No Conflict**. The execution and delivery by the Trust of the Receivables Purchase Agreement, this Agreement and each Supplement, the performance of the transactions contemplated by the Receivables Purchase Agreement, this Agreement and each Supplement and the fulfilment of the terms hereof and thereof applicable to the Trust, will not conflict with or violate (i) the constating documents or by-laws of BNY Trust, the Settlement Deed or any Requirements of Law applicable to the Trust, 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 Trust 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 of the knowledge of the Trust, threatened against the Trust before any Governmental Authority (i) asserting the invalidity of the Receivables Purchase Agreement, this Agreement, any Supplement or any Indebtedness, (ii) seeking to prevent the issuance of any of the Indebtedness or the consummation of any of the transactions contemplated by the Receivables Purchase Agreement, this Agreement, any Supplement or any Indebtedness, (iii) seeking any determination or ruling that, in the reasonable judgement of the Trust, would materially and adversely effect the performance by the Trust of its obligations under the Receivables Purchase Agreement, this Agreement or any Supplement, or (iv) seeking any determination or ruling that would materially and adversely effect the validity or enforceability of the Receivables Purchase Agreement, this Agreement, any Supplement or any Indebtedness.
- (f) **All Consents.** All authorizations, consents, orders or approvals of or registrations or declarations of any person or any Governmental Authority required to be obtained, effected or given by the Trust in connection with the execution and delivery by the Trust of the Receivables Purchase Agreement, this Agreement, each Supplement and the performance of the transactions contemplated by the Receivables Purchase Agreement, this Agreement and each Supplement by the Trust have been duly obtained, effected or given and are in full force and effect.

#### 4.7 **Representations and Warranties of the Trust Relating to Agreements and the Secured Property**

- (a) **Representations and Warranties.** The Trust hereby represents and warrants to the Indenture Trustee as of the date of this Agreement, as of the date of each Supplement and as of each Series Issuance Date that:
  - (i) each of the Receivables Purchase Agreement, this Agreement and each Supplement constitutes a legal, valid and binding obligation of the Trust enforceable against the Trust in accordance with its terms, except as such enforceability may be limited by 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;
  - (ii) the Secured Property has been pledged, assigned and conveyed to the Indenture Trustee free and clear of any Lien whatsoever;
  - (iii) all authorizations, consents, orders or approvals of or registrations or declarations with any Governmental Authority required to be obtained, effected or given by the Trust in connection with the grant to the Indenture

Trustee of a Security Interest in the Secured Property have been duly obtained, effected or given and are in full force and effect;

- (iv) this Agreement constitutes the grant of a first priority perfected Security Interest by the Trust to the Indenture Trustee in the Secured Property which, in the case of the existing Secured Property and the proceeds thereof, is enforceable upon execution and delivery of this Agreement or, with respect to after-acquired property, as of the date such property is acquired, and which will be enforceable with respect to the Secured Property hereafter and thereafter created and the proceeds thereof upon such creation. Upon the filing of the assignments, financing statements and continuation statements (and other documents where applicable) and, in the case of after-acquired Secured Property and the proceeds thereof, upon its creation, the Indenture Trustee shall have a first priority perfected Security Interest in such property and proceeds; and
  - (v) except as otherwise expressly provided in this Agreement or any Supplement, no person claiming through or under the Trust has any claim to or interest in the Collection Account, Excess Funding Account, any Series Account or any Series Enhancement.
- (b) **Notice of Breach.** The representations and warranties set forth in section 4.6 and this section 4.7 shall survive the granting of the Security Interest herein provided for and the issuance of the Indebtedness for an indefinite period of time. Upon the Indenture Trustee acquiring actual knowledge of a breach of any of the representations and warranties set forth in section 4.6 or this section 4.7, the Indenture Trustee shall give notice to the Trust, each Rating Agency and each Series Enhancer within three Business Days following the acquiring of such actual knowledge.

4.8 **Covenants of the Trust.** The Trust hereby covenants in favour of the Indenture Trustee that:

- (a) **To Pay Principal and Interest.** The Trust will duly and punctually pay or cause to be paid to every Indebtedness Holder and Additional Creditor the principal and interest or other amounts to which each such person is entitled pursuant to the terms of, and subject to the conditions set forth in, this Agreement and the related Supplement.
- (b) **Trust Status.** The Trust will preserve and maintain its existence as a trust validly created under the laws of the Province of Ontario and all other rights, franchises and privileges therein contained, and qualify and remain qualified in each jurisdiction where the failure to preserve and maintain such existence, rights, franchises, privileges and qualifications would materially adversely effect the Trust's ability to perform its obligations hereunder.



- (c) **Compliance with Laws.** The Trust will comply in all material respects with all applicable Requirements of Laws with respect to it, its business and properties and the Secured Property, such compliance to include, without limitation, paying before the same becomes delinquent all Taxes, assessments and governmental charges and Liens upon it or its property except to the extent the same are contested in good faith and by appropriate proceedings.
- (d) **Security Interest.** Except for the grant to the Indenture Trustee of the Security Interest herein and in any related Supplement, the Trust will not sell, pledge, assign or transfer to any person, or grant, create, incur, assume or suffer to exist any Lien on, any of the Secured Property except as permitted hereby whether now existing or hereafter acquired, or any interest therein, and the Trust shall defend the Security Interest of the Indenture Trustee in, to and under the Secured Property whether now existing or hereafter acquired, against all claims of third parties claiming through or under the Trust or the Seller. The Trust will notify the Indenture Trustee, the Seller and each Series Enhancer promptly after becoming aware of any Lien on any of the Secured Property other than the granting of the Security Interest provided for herein. Notwithstanding any provision contained herein to the contrary, the Trust may grant a Lien on the Secured Property in favour of any Additional Creditor pursuant to the relevant Supplement or Enhancement Agreement provided that (A) such Lien shall be fully subordinated and postponed to the Security Interest in favour of the Indenture Trustee created pursuant to Section 4.1 to secure the several obligations of the Trust hereunder and under any Supplement in favour of the Series Indebtedness Holders of each Series or Class, and (B) the Rating Agency Condition has been satisfied with respect to the granting of such Lien or, in the case of a New Issuance, the Series Indebtedness of the related Series shall have been assigned the ratings required in connection with such New Issuance pursuant to the related Supplement and any related offering memorandum, prospectus, underwriting agreement or selling agency agreement.
- (e) **Compliance and Exercise of Rights.** The Trust will comply in all material respects with the obligations imposed upon it by the Receivables Purchase Agreement, this Agreement and any Supplement and shall exercise its rights hereunder and thereunder in accordance with the provisions hereof and therefor to ensure compliance by the Seller and the Servicer with their obligations hereunder and thereunder.
- (f) **Books and Records.** At all reasonable times but subject to section 4.5, the Trust will permit the Indenture Trustee, by its agents and attorneys, to examine all the books of account, records, reports and other papers of the Trust in its possession or to which it has access relating to the Secured Property and to make copies thereof and to take extracts therefrom.
- (g) **No Distributions.** Except as provided in section 3.2 of the Settlement Deed, the Trust will not make any distributions from the Trust Assets to beneficiaries of the Trust which distributions originate from the Secured Property so long as any amounts in respect of the Indebtedness remain outstanding.

- (h) **Schedule 2.** Upon receipt by the Trust from the Seller or the Servicer of an amendment to Schedule 2 to the Receivables Purchase Agreement, the Trust shall amend Schedule 2 hereto accordingly.
- (i) **Indenture Trustee May Perform Covenants.** If the Trust shall fail to perform any of its obligations in this Agreement or any Supplement, the Indenture Trustee may, in its sole discretion, unless otherwise provided herein or in any Supplement, determine not to notify the Indebtedness Holders or any Additional Creditor of such failure on the part of the Trust and may perform such of the said obligations capable of being performed by it, and, if any such covenant requires the payment or expenditure of money, the Indenture Trustee may make such payments or expenditures with its own funds, or with money borrowed by or advanced to it for such purpose, but shall be under no obligation to do so; *provided, however*, that no such performance or payment by the Indenture Trustee shall be deemed to release the Trust from its obligations in respect thereof.
- (j) **Amendment of Settlement Deed.** The Trust shall only amend the Settlement Deed subject to satisfaction of the Rating Agency Condition.
- (k) **Trustees' Fees.** The Trust covenants and agrees that it shall pay or cause to be paid in accordance with the provisions of the fee schedules dated April 15, 2003 and September 8, 2005 between the Trust and the Indenture Trustee (as such schedule may be amended from time to time) all fees and expenses of the Indenture Trustee as provided in such fee schedule. This covenant shall survive the resignation or removal of the Indenture Trustee and the termination of this Agreement.
- (l) **Indemnification of Indenture Trustee.** The Trust covenants and agrees to be liable, directly to the Indenture Trustee and any of its 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 the performance by the Indenture Trustee of its obligations contained in this Agreement or in the Receivables Purchase Agreement or any Supplement, 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, *provided* that no recovery by the Indenture Trustee under this section shall be had, to the extent that any such losses, claims, damages, costs, expenses or liabilities are payable by the Trust pursuant to the fee schedules dated April 15, 2003 and September 8, 2005 between the Trust and the Indenture Trustee (as such fee schedule may be amended from time to time). The indemnity contained in this subsection 4.8(l) shall survive the resignation or removal of the Trust or the Indenture Trustee and the termination of this Agreement.
- (m) **Notice of Events of Default.** The Trust agrees to give the Seller, the Indenture Trustee and the Rating Agencies (with respect to any Series or Class of Notes, as

applicable, rated by such Rating Agency) prompt written notice of each Event of Default hereunder.

#### 4.9 **Consents and Acknowledgements**

- (a) The Indenture Trustee, the Seller and, by the purchase and acceptance of the Indebtedness, the Indebtedness Holders, hereby:
  - (i) acknowledge the terms and conditions of the Receivables Purchase Agreement, including the provisions relating to the deposit and withdrawal of monies from the Collection Account and the Excess Funding Account, the reassignment of Receivables by the Trust to the Seller and the limitations on remedies available to the Trust in respect of the Seller's obligation to accept reassignment of the Receivables and to make the deposits, if any, required to be made in the Collection Account and the Excess Funding Account; and
  - (ii) consent to the reassignments and conveyances of Trust Assets to the Seller pursuant to the Receivables Purchase Agreement and to the Servicer hereunder and to the deposits and withdrawals of monies into and from the Collection Account, the Excess Funding Account and the Series Accounts and to the other dealings with the Secured Property, in each case, in accordance with the terms of the Receivables Purchase Agreement, this Agreement, any Supplement and any Enhancement Agreement.
- (b) Immediately before any reassignment or conveyance of a Receivable pursuant to the Receivables Purchase Agreement, this Agreement and any Supplement, the Indenture Trustee shall automatically and without further action be deemed to have released and discharged its Security Interest in the Receivable or Receivables and all amounts due or to become due and all amounts received with respect thereto and all proceeds thereof.
- (c) The Indenture Trustee shall do and perform, from time to time, any and all acts and execute any and all further instruments required or reasonably requested by the Trust, the Seller or the Servicer more fully to effect the purposes of this section 4.9, including the execution of any releases, discharges or reassignments reasonably necessary therefor.

4.10 **Power of Attorney** By the purchase and the acceptance of the Series Indebtedness, the Series Indebtedness Holders agree that the Indenture Trustee shall have the power of attorney of the Series Indebtedness Holders for the purpose of entering into a deed of hypothec creating a Security Interest on the Secured Property under the laws of the Province of Quebec.

### **ARTICLE 5 ADMINISTRATION AND SERVICING OF SECURED PROPERTY**

#### 5.1 **Appointment and Other Matters Relating to the Servicer**

- (a) The Trust hereby appoints Capital One, and Capital One (having sold to the Trust the Receivables on a fully-serviced basis) agrees to act, as the Servicer pursuant to this Agreement and any Supplement and the Indenture Trustee, on behalf of the Indebtedness Holders, and the Indebtedness Holders by their purchase and acceptance of the Indebtedness, consent to Capital One acting as Servicer.
- (b) The Servicer shall service and administer the Accounts, Receivables and any Participation Interests, shall collect payments due under the Receivables and any Participation Interests and shall charge-off as uncollectible Receivables, all in accordance with its customary and usual servicing procedures for servicing credit card receivables comparable to the Receivables and in accordance with the Lending Guidelines relating to the Accounts. The Servicer shall have full power, authority and obligation, acting alone or through any party properly designated by it hereunder, to do any and all things in connection with such servicing and administration which it may deem necessary or desirable. Without limiting the generality of the foregoing and subject to section 7.1, the Servicer or its designee is hereby authorized and empowered (i) to make withdrawals and payments, or to instruct the Trust or the Paying Agent to make withdrawals and payments, from the Collection Account, the Excess Funding Account and any Series Account, and to take any other action required or permitted to be taken by the Servicer under the Receivables Purchase Agreement, this Agreement or any Supplement, and (ii) to take any action required or permitted under any Series Enhancement, as set forth in this Agreement or any Supplement. Without limiting the generality of the foregoing and subject to section 7.1, the Servicer or its designee is hereby authorized and empowered to make any filings, reports, notices, applications and registrations with, and to seek any consents or authorizations from, any securities regulatory authority on behalf of the Trust as may be necessary or advisable to comply with any securities laws or reporting requirements. The Trust shall furnish the Servicer, upon request, with any documents necessary or appropriate to enable the Servicer to carry out its servicing and administrative duties hereunder.
- (c) The Servicer shall not be obligated to use separate servicing procedures, offices, employees or accounts for servicing the Receivables from the procedures, offices, employees and accounts used by the Servicer in connection with servicing other credit card receivables.
- (d) The Servicer shall comply with and perform its servicing obligations with respect to the Accounts and Receivables in accordance with the Lending Agreements relating to the Accounts and the Lending Guidelines and all applicable rules and regulations of MasterCard and any other similar entity or organization, including VISA, relating to any other type of credit card accounts included as Accounts, except insofar as any failure to so comply or perform would not materially and adversely affect the Trust, the Indebtedness Holders or any Series Enhancer.

5.2            **Servicing Compensation** The Trust is acquiring the Receivables from the Seller on a fully-serviced basis, accordingly, for so long as Capital One (or any Affiliate of Capital One) is the Servicer, Capital One (or any such Affiliate) shall perform its servicing activities hereunder and

under the Receivables Purchase Agreement and any Supplement for no compensation other than the consideration payable to it as Seller from time to time pursuant to section 2.1 of the Receivables Purchase Agreement and the amount of such consideration shall include all applicable Taxes. As full compensation for its servicing activities hereunder and as reimbursement for any expense incurred by it in connection therewith, any Successor Servicer shall be entitled to receive a servicing fee (the “**Servicing Fee**”) with respect to each Monthly Period, payable monthly on the related Allocation Date, in an amount equal to one-twelfth of the product of (a) the weighted average of the Servicing Fee Rates with respect to each outstanding Series (based upon the Servicing Fee Rate for each Series and the Allocated Amount (or such other amount as specified in the related Supplement) of such Series, in each case as of the last day of the prior Monthly Period) and (b) the amount of Principal Receivables on the last day of the prior Monthly Period. The share of the Servicing Fee allocable to the Noteholders of a particular Series with respect to any Monthly Period (the “**Monthly Servicing Fee**”) will be determined in accordance with the relevant Supplement. The portion of the Servicing Fee with respect to any Monthly Period not so allocated to the Series Indebtedness Holders of any particular Series shall be paid by the Seller Indebtedness Holder on the related Allocation Date. Any Servicing Fee allocable to, but not paid by, Series Indebtedness Holders shall be paid by the Seller. In no event shall the Trust, BNY Trust (as trustee of the Trust or in its individual capacity), the Indenture Trustee, the Series Indebtedness Holders of any Series or any Series Enhancer be liable for the share of the Servicing Fee with respect to any Monthly Period to be paid by the Seller Indebtedness Holder or the Seller, as applicable, nor shall any amounts to be paid by the Seller pursuant to this Section 5.2 be payable from the Purchased Assets.

5.3 **Representations, Warranties and Covenants of the Servicer** Capital One, as the initial Servicer, hereby makes, and any Successor Servicer by its appointment hereunder shall make, on each Series Issuance Date (and on the date of any such appointment), the following representations, warranties and covenants to the Trust and the Indenture Trustee:

- (a) **Organization and Good Standing**. The Servicer 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 property and conduct its consumer credit card business as presently owned and conducted, and to execute, deliver and perform all of its obligations under the Receivables Purchase Agreement, this Agreement and each Supplement.
- (b) **Due Qualification**. The Servicer is duly qualified to do business, is in good standing as a foreign bank (or is exempt from such requirements) and has obtained all necessary licences and approvals in each jurisdiction in which the servicing of the Receivables and any Participation Interests as required by this Agreement or any Supplement requires such qualification except where the failure to so qualify or obtain licences or approvals would not have a material adverse affect on its ability to perform its obligations as Servicer under this Agreement or any Supplement.
- (c) **Due Authorization**. The execution, delivery, and performance of the Receivables Purchase Agreement, this Agreement and each Supplement, and the other agreements and instruments executed or to be executed by the Servicer as contemplated hereby or thereby, have been duly authorized by the Servicer by all necessary action on the part of the Servicer.

- (d) **Binding Obligation.** The Receivables Purchase Agreement, this Agreement and each Supplement constitute legal, valid and binding obligations of the Servicer, enforceable in accordance with their terms, except as such enforceability may be limited by 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.
- (e) **No Conflict.** The execution and delivery of the Receivables Purchase Agreement, this Agreement and each Supplement by the Servicer, and the performance of the transactions contemplated by the Receivables Purchase Agreement, this Agreement and each Supplement and the fulfilment of the terms hereof and thereof applicable to the Servicer, will not (i) conflict with or violate the constating documents of the Servicer, or any Requirements of Law applicable to the Servicer or (ii) conflict with, violate 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 Servicer is a party or by which it or its properties are bound.
- (f) **No Proceedings.** There are no proceedings or investigations pending or, to the best knowledge of the Servicer, threatened against the Servicer before any Governmental Authority seeking to prevent the consummation of any of the transactions contemplated by the Receivables Purchase Agreement, this Agreement or any Supplement or seeking any determination or ruling that, in the reasonable judgment of the Servicer, would materially and adversely affect the performance by the Servicer of its obligations under the Receivables Purchase Agreement, this Agreement or any Supplement.
- (g) **Compliance with Requirements of Law.** The Servicer shall duly satisfy all obligations on its part to be fulfilled under or in connection with each Receivable and the related Account, will maintain in effect all qualifications required under Requirements of Law in order to service properly each Receivable and the related Account and will comply in all material respects with all other Requirements of Law in connection with servicing each Receivable and the related Account the failure to comply with which would have a material adverse effect on the Series Indebtedness Holders.
- (h) **No Rescission or Cancellation.** The Servicer shall not permit any rescission or cancellation of any Receivable except as ordered by a court of competent jurisdiction or other Governmental Authority or in accordance with the Lending Guidelines.
- (i) **Protection of Trust's and Indenture Trustee's Rights.** The Servicer shall take no action which, nor omit to take any action the omission of which, would impair the rights of the Trust, the Indenture Trustee or the Indebtedness Holders in any Receivable or the related Account or the rights of any Series Enhancer, nor shall it reschedule, revise or defer payments due on any Receivable except in the ordinary course of its business and in accordance with the Lending Guidelines.

- (j) **Receivables Not To Be Evidenced by Instruments.** The Servicer will take no action to cause or permit any Receivable to be evidenced by any instrument and if any Receivable is so evidenced it shall be deemed to be an Ineligible Receivable and shall be reassigned or assigned to the Servicer as provided in subsection 2.5(b) of the Receivables Purchase Agreement; *provided, however*, that Receivables evidenced by notes taken from Obligor's in the ordinary course of the Servicer's collection efforts shall not be deemed to be Ineligible Receivables solely as a result thereof.
- (k) **All Consents.** All authorizations, consents, orders or approvals of or registrations or declarations with any Governmental Authority required to be obtained, effected or given by the Servicer in connection with the execution and delivery of the Receivables Purchase Agreement, this Agreement and each Supplement by the Servicer and the performance of the transactions contemplated by the Receivables Purchase Agreement, this Agreement and each Supplement by the Servicer, have been duly obtained, effected or given and are in full force and effect.

If (i) any of the representations, warranties or covenants of the Servicer contained in subsection 5.3(g), (h) or (i) with respect to any Receivable or the related Account is breached, and such breach has a material adverse effect on the Trust's interest in such 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 by the Trust and the Rating Agency) of the earlier to occur of the discovery of such event by the Servicer, or receipt by the Servicer of notice of such event given by the Trust, or (ii) the Servicer fails to duly observe or perform the covenants and agreements of the Servicer contained in subsection 5.3(j), then:

- A. if Capital One is the Servicer, the relevant Receivables shall be dealt with in the manner set out in section 2.5 of the Receivables Purchase Agreement as if they were Ineligible Receivables (including the requirement, if applicable, to reduce 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 and to make deposits into the Excess Funding Account), *mutatis mutandis*; and
- B. if (x) Capital One is not the Servicer, and (y) the Trust provides written notice to the Servicer and Capital One of its desire to assign the relevant Receivables to the Servicer, subject to the right of first refusal granted to Capital One in (C) below, the Trust shall convey and assign to the Servicer or its designee, and the Servicer or its designee shall purchase from the Trust, all of the Trust's right, title and interest in and to such Receivables on the first Allocation Date following the Monthly Period in which such notice was received by the Seller on the following terms and conditions:
- (1) the Servicer shall pay for such Receivables by depositing, not later than 12:00 noon (Toronto time) on such Allocation Date into the Collection

Account in immediately available funds, an amount equal to the face amount of such Receivables (minus the amount of any Discount Option Receivables or Discount Receivables which remain outstanding);

- (2) on such Allocation Date, the Trust shall convey and assign to the Servicer or its designee, and the Servicer or its designee shall purchase from the Trust, all the Trust's right, title and interest in and to such Receivables and all proceeds thereof, without any further action, recourse, representation or warranty; and
- (3) the Trust shall execute such documents and instruments, and take such other actions, as shall reasonably be required by the Servicer to effect the assignment and conveyance by the Trust to the Servicer of such Receivables;
  - C. if, within five Business Days of receipt by Capital One of the notice referred to in (B) above, Capital One provides written notice to the Trust and the Servicer of its desire to purchase the relevant Receivables, the Trust shall assign to Capital One or its designee, and Capital One or its designee shall purchase from the Trust, all of the Trust's right, title and interest in and to such Receivables on the terms set out in (B)(1) through (3) above, *mutatis mutandis*;
  - D. any amounts deposited into the Collection Account pursuant to this section 5.3 shall be considered a Transfer Deposit Amount and shall be applied in accordance with Article 3 and the terms of each Supplement; and
  - E. satisfaction by the Servicer or Capital One of its obligations contained in this section 5.3 shall constitute the sole remedy available to the Trust in respect of the events giving rise to such obligations, except as provided in section 6.4.

#### 5.4 **Reports and Records for the Trust and Indenture Trustee**

- (a) **Daily Records**. On each Business Day, the Servicer shall make or cause to be made available at the office of the Servicer for inspection by the Trust or the Indenture Trustee upon request a record setting forth (i) the Collections processed by the Servicer on the second preceding Business Day in respect of each Account, and (ii) the amount of Receivables as of the close of business on the second preceding Business Day in each Account. The Servicer shall at all times maintain its computer files with respect to the Accounts in such a manner so that the Accounts may be specifically identified and shall make available to the Trust or the Indenture Trustee at the office of the Servicer on any Business Day any computer programs necessary to make such identification; provided, however, that neither the Trust nor the Indenture Trustee shall be under any duty to make such inspections.
- (b) **Monthly Servicer's Certificate**. Not later than the third Business Day preceding each Allocation Date, the Servicer shall, with respect to each outstanding Series,



deliver to the Trust, the Indenture Trustee, the Paying Agent, each Rating Agency, each Series Enhancer or other person entitled thereto pursuant to the relevant Supplement, a certificate of a Servicing Officer in substantially the form set forth in the related Supplement.

- (c) **Annual Membership Fees.** On or prior to each Determination Date, the Servicer shall deliver to the Indenture Trustee a certificate of a Servicing Officer setting forth (or shall set forth in the Monthly Servicer's Certificate delivered pursuant to the related Supplement) (i) the amount of annual membership fees to be included as Collections of Finance Charge Receivables with respect to the preceding Monthly Period, which shall be equal to the amount of annual membership fees billed during the preceding 12 Monthly Periods (or during the equivalent monthly periods occurring prior to the first Monthly Period) divided by 12 and, (ii) the portion of such annual membership fees ("**Unamortized Membership Fees**") which have not been amortized and therefore not treated as Collections of Finance Charge Receivables with respect to the preceding Monthly Period.
- (d) **Discount Receivables.** On or prior to each Determination Date, the Servicer shall deliver to the Indenture Trustee a certificate of a Servicing Officer setting forth (or shall set forth in the Monthly Servicer's Certificate delivered pursuant to the related Supplement) (i) the amount of Discount Receivables to be included as Collections of Finance Charge Receivables with respect to the preceding Monthly Period, as calculated in accordance with the formula set forth in the applicable Assignment of Receivables in Additional Accounts or by letter delivered to the Trust and the Indenture Trustee, and (ii) the portion of such Discount Receivables which have not been treated as Collections of Finance Charge Receivables with respect to the preceding Monthly Period.
- (e) **Certain Recoveries.** On or prior to each Determination Date, the Servicer shall deliver to the Indenture Trustee a certificate of a Servicing Officer setting forth (or shall set forth in the Monthly Servicer's Certificate delivered pursuant to the related Supplement) (i) the amount of Recoveries equal to the net proceeds of any sale or initial securitization (excluding any residual payments from such securitization) of Defaulted Receivables (including the related Finance Charge Receivables) to be included as Collections of Finance Charge Receivables with respect to the preceding Monthly Period, which shall be equal to the amount of any such Recoveries received during the preceding three Monthly Periods divided by three, and (ii) the portion of any such Recoveries ("**Unamortized Recoveries**") which have not been treated as Collections of Finance Charge Receivables with respect to the preceding Monthly Period; *provided, however*, that if Excess Finance Charges are less than Finance Charge Shortfalls for such preceding Monthly Period, Unamortized Recoveries equal to the lesser of (a) the amount of the difference between Excess Finance Charges and Finance Charge Shortfalls for such preceding Monthly Period, and (b) the amount of the Unamortized Recoveries for such preceding Monthly Period, shall be included as Collections of Finance Charge Receivables for such preceding Monthly Period.

- (f) **Miscellaneous Up-Front Fees.** Prior to each Determination Date, the Servicer shall deliver to the Indenture Trustee a certificate of a Servicing Officer setting forth (or shall set forth in the Monthly Servicer's Certificate delivered pursuant to the related Supplement) (i) the amount of Miscellaneous Up-Front Fees to be included as Collections of Finance Charge Receivables with respect to the preceding Monthly Period, which shall be equal to the amount of Miscellaneous Up-Front Fees billed during the preceding 12 Monthly Periods (or during the equivalent monthly periods occurring prior to the first Monthly Period) divided by 12 and (ii) the portion of such Miscellaneous Up-Front Fees ("**Unamortized Miscellaneous Up-Front Fees**") which have not been amortized and therefore not treated as Collections of Finance Charge Receivables with respect to the preceding Monthly Period.

5.5 **Annual Certificate of Servicer** The Servicer shall deliver to the Trust, the Indenture Trustee and each Rating Agency, each Series Enhancer or other person entitled thereto pursuant to the relevant Supplement, on or before May 31 of each calendar year, beginning with May 31, 1999, an Officer's Certificate substantially in the form of Exhibit B.

5.6 **Annual Servicing Report of Independent Chartered Accountants; Copies of Reports Available**

- (a) On or before May 31 of each calendar year, beginning with May 31, 1999, the Servicer shall cause a firm of nationally recognized independent chartered accountants (who may also render other services to the Servicer or the Seller) to furnish a report (addressed to the Servicer and the Indenture Trustee) to the Trust, the Indenture Trustee, the Servicer and each Rating Agency, and to each Series Enhancer or other person entitled thereto pursuant to the relevant Supplement, to the effect that they have examined certain documents and records relating to the servicing of the Accounts and the Receivables under this Agreement and each Supplement, compared the information contained in the Servicer's certificates delivered pursuant to subsection 5.4(b) during the period covered by such report with such documents and records and that, on the basis of such examination, such accountants are of the opinion that the servicing has been conducted in compliance with the terms and conditions as set forth in sections 3.5, 3.6, 3.7, 5.2, 5.4, 5.8 and 6.8 of this Agreement and the applicable provisions of each Supplement, except for such exceptions as they believe to be immaterial and such other exceptions as shall be set forth in such statement.
- (b) On or before May 31 of each calendar year, beginning with May 31, 1999, the Servicer shall cause a firm of nationally recognized independent chartered accountants (who may also render other services to the Servicer or Seller) to furnish a report (addressed to the Servicer and the Indenture Trustee) to the Trust, the Indenture Trustee, the Servicer and each Rating Agency, and to each Series Enhancer or any other person entitled thereto pursuant to the relevant Supplement, to the effect that they have compared the mathematical calculations of each amount set forth in the Servicer's certificates delivered pursuant to subsection 5.4(b) during the period covered by such report with the Servicer's computer reports which were the source of such amounts and that on the basis of such comparison, such accountants are of

the opinion that such amounts are in agreement, except for such exceptions as they believe to be immaterial and such other exceptions as shall be set forth in such statement.

- (c) A copy of each certificate and report provided pursuant to subsection 5.4(b) or section 5.5 or 5.6 may be obtained by any Series Indebtedness Holder by a request to the Indenture Trustee addressed to the Corporate Trust Office of the Indenture Trustee.

5.7 **Notices to Capital One** In the event that Capital One is no longer acting as Servicer, any Successor Servicer shall also deliver to Capital One each certificate and report required to be provided pursuant to subsection 5.4(b) or section 5.5 or 5.6.

5.8 **Adjustments**

- (a) If the Servicer adjusts downward the amount of any Receivable because of a rebate, refund, unauthorized charge or billing error to a cardholder, because such Receivable was created in respect of merchandise which was refused or returned by a cardholder, or if the Servicer otherwise adjusts downward the amount of any Receivable in accordance with the Lending Guidelines without receiving Collections therefor or without charging off such amount as uncollectible, then, in any such case, the amount owing hereunder in respect of the Seller Indebtedness shall be reduced by the portion of the rebate, refund, unauthorized charge, erroneous billing or downward adjustment which are Principal Receivables and the amount of Principal Receivables used to calculate (i) the Seller's Allocated Amount and the Seller's Allocation Percentage, and (ii) the Floating Allocation Percentage and the Fixed Allocation Percentage applicable to any Series, will be reduced by the amount of the reduction. Similarly, the amount payable hereunder in respect of the Seller Indebtedness and the amount of Principal Receivables used to calculate (A) the Seller's Allocated Amount and the Seller's Allocation Percentage, and (B) the Floating Allocation Percentage and the Fixed Allocation Percentage applicable to any Series, will be reduced by the amount of any Receivable which was discovered as having been created through a fraudulent or counterfeit charge or with respect to which the covenant contained in subsection 2.7(b) of the Receivables Purchase Agreement was breached. Any adjustment required pursuant to either of the two preceding sentences shall be made on or prior to the end of the Monthly Period in which such adjustment obligation arises. If, 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 the close of business on the fifth succeeding Business Day following any such adjustment, the Seller shall make a deposit into the Excess Funding Account in immediately available funds in an amount equal to the greater of (x) the amount by which the Seller's Allocated Amount would be less than the Required Seller's Allocated Amount, and (y) 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).

- (b) If (i) the Servicer makes a deposit into the Collection Account in respect of a Collection of a Receivable and such Collection was received by the Servicer in the form of a cheque which is not honoured for any reason, or (ii) the Servicer makes a mistake with respect to the amount of any Collection and deposits an amount that is less than or more than the actual amount of such Collection, the Servicer shall appropriately adjust the amount subsequently deposited into the Collection Account to reflect such dishonoured cheque or mistake. Any Receivable in respect of which a dishonoured cheque is received shall be deemed not to have been paid. Notwithstanding the first two sentences of this subsection 5.8(b), no adjustments shall be made pursuant to this subsection 5.8(b) that will change any amount previously reported pursuant to subsection 5.4(b).

## **ARTICLE 6 OTHER MATTERS RELATING TO THE SERVICER**

6.1 **Liability of the Servicer** The Servicer shall be liable under this Article 6 only to the extent of the obligations specifically undertaken by the Servicer in its capacity as Servicer.

6.2 **Merger or Consolidation of, or Assumption of the Obligations of, the Servicer** Subject to the provisions of this Agreement and any related Supplement, the Servicer shall not consolidate or amalgamate with or merge into any other corporation or convey or transfer its properties and assets substantially as an entirety to any person or enter into a statutory arrangement with similar effect, unless:

- (a) the corporation formed by such consolidation, amalgamation, arrangement or into which the Servicer is merged or the person which acquires by conveyance or transfer the properties and assets of the Servicer substantially as an entirety shall be (i) an Eligible Servicer, and (ii) if the Servicer is not the surviving entity, a bank or corporation organized and existing under the laws of Canada, the United States of America or a province or state thereof. If the Servicer is not the surviving entity, such bank or corporation shall expressly assume, by an agreement supplemental hereto, executed and delivered to the Trust and the Indenture Trustee, in form satisfactory to the Trust and the Indenture Trustee, the performance of every covenant and obligation of the Servicer hereunder and under the Receivables Purchase Agreement and any Supplement;
- (b) the Servicer has delivered to the Trust, the Indenture Trustee and each Series Enhancer an Officer's Certificate and an Opinion of Counsel each stating that such consolidation, amalgamation arrangement, merger, conveyance or transfer complies with this section 6.2 and that all conditions precedent herein provided for relating to such transaction have been complied with;
- (c) the Rating Agency Condition shall have been satisfied with respect to such assignment and succession; and

- (d) the corporation formed by such consolidation, amalgamation arrangement or into which the Servicer is merged or the person which acquires by conveyance or transfer the properties and assets of the Servicer substantially as an entirety shall be an Eligible Servicer.

6.3 **Limitation on Liability of the Servicer and Others** Except as provided in section 6.4, neither the Servicer nor any of the employees, officers, directors or agents of the Servicer in its capacity as Servicer shall be under any liability to the Trust, the Indenture Trustee, any employees, officers, directors or agents of the Trust or the Indenture Trustee, the Indebtedness Holders, any Additional Creditor or any other person for any action taken or for refraining from the taking of any action in good faith in its capacity as Servicer pursuant to this Agreement; *provided, however,* that this provision shall not protect the Servicer or any such person against any liability which would otherwise be imposed by reason of dishonesty, bad faith, wilful misconduct or gross negligence, either in the performance of duties or the disregard of obligations and duties hereunder. The Servicer and any director, officer, employee or agent of the Servicer may rely in good faith on any document of any kind *prima facie* properly executed and submitted by any person (other than the Servicer) respecting any matters arising hereunder and under the Receivables Purchase Agreement and any Supplement. The Servicer shall not be under any obligation to appear in, prosecute or defend any legal action which is not incidental to its duties as Servicer in accordance with this Agreement, the Receivables Purchase Agreement or any Supplement and which in its reasonable judgment may involve it in any expense or liability. The Servicer may, in its sole discretion, undertake any such legal action which it may deem necessary or desirable to maximize Collections or as is otherwise of benefit to the Trust with respect to this Agreement and the rights and duties of the parties hereto and to the Receivables Purchase Agreement and any Supplement.

6.4 **Servicer Indemnification of the Trust and the Indenture Trustee** The Servicer shall indemnify and hold harmless the Trust, the Indenture Trustee and their respective employees, officers, directors and agents from and against any and all actions, losses, claims, damages, costs, expenses and liabilities arising out of or based upon a breach of any representation, warranty or covenant made or given by the Servicer in this Agreement, or any Supplement, including 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 such actions, losses, claims, damages, costs, expenses or liabilities arise out of the dishonesty, bad faith, wilful misconduct, gross negligence or reckless disregard of a duty by an indemnified person. The indemnity contained in this section 6.4 shall survive the resignation or removal of the Servicer, the resignation or removal of the Trust or the Indenture Trustee or the termination of this Agreement; *provided, however,* that the Servicer shall only be obligated to indemnify an indemnified party under this section 6.4 in respect of such actions, losses, claims, damages, costs, expenses and liabilities where the events giving rise thereto arose while the Servicer acted as Servicer under this Agreement. No indemnification required to be paid by the Servicer under this section 6.4 shall be paid out of the Trust Assets.

6.5 **The Servicer Not To Resign** Other than in accordance with section 3.5 of the Receivables Purchase Agreement and section 6.9 hereof, the Servicer shall not resign from the obligations and duties hereby imposed on it except (a) upon determination that (i) the performance of its duties hereunder is no longer permissible under applicable Requirements of Law, and (ii) there is no reasonable action which the Servicer could take to make the performance of its duties hereunder

permissible under applicable Requirements of Law, or (b) upon the assumption, by an agreement supplemental hereto, executed and delivered to the Trust and the Indenture Trustee, in form satisfactory to the Trust and the Indenture Trustee, of the obligations and duties of the Servicer hereunder by any of its Affiliates and that qualifies as an Eligible Servicer. Any determination permitting the resignation of the Servicer shall be evidenced as to (a) above by an Opinion of Counsel to such effect delivered to the Trust and the Indenture Trustee. No resignation shall become effective until the Indenture Trustee or a Successor Servicer shall have assumed the responsibilities and obligations of the Servicer in accordance with section 7.2 hereof. If, within 120 days of the date of the determination that the Servicer may no longer act as Servicer under (a) above, the Indenture Trustee is unable to appoint a Successor Servicer, the Indenture Trustee shall serve as Successor Servicer. Notwithstanding the foregoing, the Indenture Trustee shall, if it is legally unable so to act, petition a court of competent jurisdiction to appoint any established institution having a net worth of not less than \$50,000,000 and whose regular business includes the servicing of credit card accounts as the Successor Servicer hereunder. Upon the appointment of a Successor Servicer, the Indenture Trustee shall give prompt written notice thereof to the Trust and each Rating Agency, and each Series Enhancer or other person entitled thereto pursuant to any related Supplement.

6.6 **Access to Certain Documentation and Information Regarding the Receivables**

The Servicer shall provide to the Trust and the Indenture Trustee access to the documentation regarding the Accounts and the Receivables where required in connection with preparing for the enforcement of or enforcing the rights of the Trust under the Receivables Purchase Agreement, hereunder or under any Supplement or where required in connection with preparing for the enforcement of or enforcing the rights granted to the Indenture Trustee hereunder, such access being afforded without charge but only (a) upon reasonable request, (b) during normal business hours, (c) subject to the Servicer's normal security and confidentiality procedures, and (d) at reasonably accessible offices in Canada or the United States of America designated by the Servicer. Nothing in this section 6.6 shall derogate from the obligation of the Trust, the Indenture Trustee and the Servicer to observe any applicable Requirements of Law prohibiting disclosure of information regarding the Obligors and the failure of the Servicer to provide access as provided in this section 6.6 as a result of such obligation shall not constitute a breach of this section 6.6.

6.7 **Delegation of Duties** In the ordinary course of business, the Servicer may at any time delegate any of its duties hereunder to any person that agrees to conduct such duties in accordance with the Lending Guidelines and this Agreement; *provided, however*, that in the case of any significant delegation to a person other than an Affiliate of the Seller at least 30 days' prior written notice of such delegation shall be given to the Trust, the Indenture Trustee and each Rating Agency, and each Series Enhancer or other person entitled thereto pursuant to any applicable Supplement. Any such delegation shall not relieve the Servicer of its liability and responsibility with respect to such duties, and shall not constitute a resignation within the meaning of section 6.5.

6.8 **Examination of Records** The Servicer shall indicate generally in its computer files or other records that the Receivables arising in the Accounts are owned by the Trust. The Servicer shall, prior to the sale or transfer to a third party of any receivable held in its custody, examine its computer and other records to determine that such receivable is not a Receivable.

6.9 **Assumption of Capital One's Obligations** Notwithstanding the provisions of section 6.2, Capital One may assign, convey and transfer all or any portion of its consumer revolving

credit card accounts and other revolving credit accounts and the receivables arising thereunder, which may include all or any portion of the Accounts and Capital One's interest in the Receivables, if any, arising thereunder, its interest in the Participation Interests, if any, and the Capital One Indebtedness, or any portion thereof (collectively, the "**Assigned Assets**"), together to the extent applicable, with all servicing functions and other obligations under this Agreement, the Receivables Purchase Agreement or any Supplement or 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 Indebtedness Holders, upon satisfaction of the following conditions:

- (a) the Assuming Entity shall be an Eligible Servicer;
- (b) 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 Accounts owned by the Assuming Entity and the Receivables arising under 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;
- (c) each Series Enhancer, if any, or other person designated under any applicable Supplement, shall have consented to such transfer and assumption;
- (d) Capital One or the Assuming Entity shall have delivered to the Trust and the Indenture Trustee copies of financing statements and continuation statements covering such Accounts or other appropriate evidence, satisfactory to the Trust and its counsel, of the perfection and priority, or the continuing perfection and priority, of the Trust's interest in the Receivables arising herein;
- (e) the Rating Agency Condition shall have been satisfied in connection with such transfer and assumption; and
- (f) the Trust and the Indenture Trustee shall have received an Opinion of Counsel with respect to (b) and (d) above and any other relevant matters in form and substance satisfactory to the Trust and the Indenture Trustee, acting reasonably.

Upon such transfer to and assumption by the Assuming Entity, Capital One shall, if applicable, surrender the Capital One Note to the Transfer Agent and Registrar for registration of transfer and

the Transfer Agent and Registrar shall issue a Supplemental Note in the name of the Assuming Entity and, if applicable, a new Capital One Note to Capital One in the amount of the reduced Capital One Indebtedness. 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 7 SERVICER DEFAULTS**

7.1 **Servicer Defaults** If any one of the following events (a “**Servicer Default**”) shall occur and be continuing:

- (a) any failure by the Servicer to make any payment, transfer or deposit or to give instructions or to give notice to the Trust to make such payment, transfer or deposit on or before the date occurring five Business Days after the date such payment, transfer or deposit or such instruction or notice is required to be made or given, as the case may be, under the terms of the Receivables Purchase Agreement, this Agreement or any Supplement;
- (b) failure on the part of the Servicer duly to observe or perform in any material respect any other covenants or agreements of the Servicer set forth in the Receivables Purchase Agreement, this Agreement or any Supplement which has a material adverse effect on the Series Indebtedness Holders of any Series (which determination shall be made without regard to whether funds are then available pursuant to any Series Enhancement) and which continues unremedied for a period of 60 days after the date on which notice of such failure, requiring the same to be remedied, shall have been given to the Servicer and each Rating Agency by the Trust, or to the Servicer and the Trust by the Indenture Trustee, or Series Indebtedness Holders holding not less than 50% of the aggregate outstanding principal amount of all Series Indebtedness (or, with respect to any such failure that does not relate to all Series, 50% of the aggregate outstanding principal amount of the Series Indebtedness of all Series to which such failure relates);
- (c) any representation, warranty or certification made by the Servicer in this Agreement or any Supplement or in any certificate delivered pursuant hereto or thereto shall prove to have been incorrect when made, which has a material adverse effect on the Series Indebtedness Holders of any Series (which determination shall be made without regard to whether funds are then available pursuant to any Series Enhancement) and which material adverse effect continues for a period of 60 days after the date on which notice thereof, requiring the same to be remedied, shall have been given to the Servicer and each Rating Agency by the Trust, or to the Servicer and the Trust by the Indenture Trustee or Series Indebtedness Holders holding not less than 50% of the aggregate outstanding principal amount of all Series Indebtedness (or, with respect to any such representation, warranty or certification that does not relate to all Series, 50% of the aggregate outstanding principal amount of the Series Indebtedness of all Series to which such representation, warranty or certification relates); or



- (d) the Servicer shall consent to the appointment of a trustee, administrator, receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings of or relating to the Servicer or of or relating to all or substantially all its property, or a decree or order of a court or agency or supervisory authority having jurisdiction in the premises for the appointment of a trustee, administrator, receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings, or the winding-up or liquidation of its affairs, shall have been entered against the Servicer and such decree or order shall have remained in force undischarged or unstayed for a period of 60 days, or the Servicer shall admit in writing its inability to pay its debts generally as they become due, file a petition proposal, plan or arrangement to take advantage of any applicable insolvency or reorganization statute, make any assignment for the benefit of its creditors or voluntarily suspend payment of its obligations,

then, in the event of any Servicer Default, so long as the Servicer Default shall not have been remedied, the Indenture Trustee may, or, upon notice from Series Indebtedness Holders holding more than 50% of the aggregate outstanding principal amount of all Series Indebtedness, the Indenture Trustee shall, by providing notice to the Servicer, the Trust, each Rating Agency and any Series Enhancer (a “**Termination Notice**”), terminate all but not less than all of the rights and obligations of the Servicer as Servicer under this Agreement and in and to the Receivables and the proceeds thereof; provided, however, that if, within 60 days of receipt of a Termination Notice, the Indenture Trustee does not receive, in accordance with subsection 7.2(c), any bids from Eligible Servicers to act as a Successor Servicer and receives an Officer’s Certificate of the Seller to the effect that the Servicer cannot in good faith cure the Servicer Default which gave rise to the Termination Notice, the Indenture Trustee shall have the right to cause and direct the Trust to, and if so directed the Trust shall, sell the Receivables to any person for a cash purchase price payable on an Allocation Date and on such other terms and conditions as such person may offer to the Trust provided that, prior to completing any such sale of Receivables, the Trust shall have first provided the Seller with written notice of the terms and conditions under which such person has offered to purchase the Receivables (including a copy of the offer from such person). The purchase price for such sold Receivables shall be allocated and paid by the Trust or the Indenture Trustee to the Series Indebtedness Holders in accordance with Article 3 and the terms of each Supplement.

After receipt by the Servicer of a Termination Notice, and on the date that a Successor Servicer is appointed by the Indenture Trustee pursuant to section 7.2, all authority and power of the Servicer under this Agreement shall pass to, and be vested in, the Successor Servicer (a “**Service Transfer**”), and, without limitation, the Indenture Trustee is hereby authorized and empowered (upon the failure of the Servicer to cooperate) to execute and deliver, on behalf of the Servicer, as attorney-in-fact or otherwise, all documents and other instruments upon the failure of the Servicer to execute or deliver such documents or instruments, and to do and accomplish all other acts or things necessary or appropriate to effect the purposes of such Service Transfer. The Servicer agrees to cooperate with the Indenture Trustee and such Successor Servicer in effecting the termination of the responsibilities and rights of the Servicer to conduct servicing hereunder, including the transfer to such Successor Servicer of all authority of the Servicer to service the Receivables provided for under this Agreement, including all authority over all Collections which shall on the date of transfer be held by the Servicer for deposit, or which have been deposited by the Servicer, in the Collection Account, or which shall thereafter be received with respect to the

Receivables, and in assisting the Successor Servicer. The Servicer shall as soon as reasonably practicable, and in any event within 20 Business Days, transfer its electronic records relating to the Receivables to the Successor Servicer in such electronic form as the Successor Servicer may reasonably request and shall promptly transfer to the Successor Servicer all other records, correspondence and documents necessary for the continued servicing of the Receivables in the manner and at such times as the Successor Servicer shall reasonably request. To the extent that compliance with this section 7.1 shall require the Servicer to disclose to the Successor Servicer information of any kind which the Servicer reasonably deems to be confidential, the Successor Servicer shall be required to enter into such customary confidentiality agreements (a form of which is attached as Exhibit D) as the Servicer shall deem necessary to protect its interest, acting reasonably.

Notwithstanding the foregoing, a delay in or failure of performance referred to in subsection 7.1(a) above for a period of five Business Days after the applicable grace period or under subsection 7.1(b) or (c) above for a period of 60 Business Days after the applicable grace period, shall not constitute a Servicer Default if such delay or failure could not be prevented by the exercise of reasonable diligence by the Servicer and such delay or failure was caused by an act of God or the public enemy, acts of declared or undeclared war, public disorder, rebellion or sabotage, epidemics, landslides, lightning, fire, hurricanes, earthquakes, floods or similar causes. The preceding sentence shall not relieve the Servicer from using all reasonable commercial efforts to perform its obligations in a timely manner in accordance with the terms of this Agreement and the Servicer shall provide the Trust, the Indenture Trustee, the Seller, any Series Enhancer and the Series Indebtedness Holders with an Officer's Certificate giving prompt notice of such failure or delay by it, together with a description of its efforts to perform any such obligations.

## 7.2 **Indenture Trustee To Act; Appointment of Successor**

- (a) On and after the receipt by the Servicer of a Termination Notice pursuant to section 7.1, the Servicer shall continue to perform all servicing functions under this Agreement until the date specified in the Termination Notice or otherwise specified by the Indenture Trustee or until a date mutually agreed upon by the Servicer and the Indenture Trustee. The Indenture Trustee shall as soon as possible after the giving of a Termination Notice appoint an Eligible Servicer as a successor servicer (the "**Successor Servicer**"), and such Successor Servicer shall accept its appointment by a written assumption in a form acceptable to the Indenture Trustee and its counsel. If a Successor Servicer has not been appointed or has not accepted its appointment at the time when the Servicer ceases to act as Servicer, the Indenture Trustee without further action shall automatically be appointed the Successor Servicer until such time as a Successor Servicer which is not an Affiliate of the Seller can be appointed. The Indenture Trustee may delegate any of its servicing obligations to an Affiliate or designee as contemplated by subsection 5.1(b) and section 6.7. Notwithstanding any provision to the contrary, the Indenture Trustee shall, if it is legally unable so to act, petition a court of competent jurisdiction to appoint any established institution having a net worth or capital and surplus of not less than \$50,000,000 and whose regular business includes the servicing of credit card receivables as the Successor Servicer hereunder. The Indenture Trustee shall give prompt notice to each Rating Agency and each Series Enhancer upon the appointment of a Successor Servicer.

- (b) Upon its appointment, the Successor Servicer shall be the successor in all respects to the Servicer with respect to servicing functions under this Agreement and shall be subject to all the responsibilities, duties and liabilities relating thereto placed on the Servicer by the terms and provisions hereof, and all references in this Agreement to the Servicer shall be deemed to refer to the Successor Servicer.

Notwithstanding the foregoing, any provision of this Agreement which requires the Servicer to make a deposit into the Collection Account not later than 12:00 noon (Toronto time) on an Allocation Date shall be deemed to require a Successor Servicer to make such deposit into the Collection Account on the Transfer Date immediately preceding such Allocation Date.

- (c) In connection with any Termination Notice, the Indenture Trustee will review any bids which it obtains from Eligible Servicers and shall be permitted to appoint any Eligible Servicer submitting such a bid as a Successor Servicer for servicing compensation not in excess of the aggregate Monthly Servicing Fees for all Series pursuant to the relevant Supplements plus any amounts payable to the Servicer pursuant to the terms of any Supplement; provided, however, that the Seller shall be responsible for payment of the Seller's portion of such aggregate Monthly Servicing Fees as provided herein and in any Supplement and that no such monthly compensation paid out of Collections shall be in excess of such aggregate Monthly Servicing Fees. Each Seller Indebtedness Holder and the Seller agrees that, if Capital One (or any Successor Servicer) is terminated as Servicer hereunder, the portion of Finance Charge Collections allocated to the Secured Property as security for payment to the Seller of amounts payable pursuant to this Agreement or any Supplement shall be reduced by an amount sufficient to pay the Seller's portion of the compensation of the Successor Servicer as provided herein and in any Supplement.
- (d) All authority and power granted to the Successor Servicer under this Agreement shall automatically cease and terminate upon termination of this Agreement pursuant to section 10.1, and shall pass to and be vested in the Seller and, without limitation, the Seller is hereby authorized and empowered to execute and deliver, on behalf of the Successor Servicer, as attorney-in-fact or otherwise, all documents and other instruments, and to do and accomplish all other acts or things necessary or appropriate to effect the purposes of such transfer of servicing rights. The Successor Servicer agrees to cooperate with the Seller in effecting the termination of the responsibilities and rights of the Successor Servicer to conduct servicing of the Receivables. The Successor Servicer shall transfer its electronic records relating to the Receivables to Capital One or its designee in such electronic form as it may reasonably request and shall transfer all other records, correspondence and documents to it in the manner and at such times as it shall reasonably request. To the extent that compliance with this section 7.2 shall require the Successor Servicer to disclose to Capital One information of any kind which the Successor Servicer deems to be confidential, Capital One shall be required to enter into such customary licensing and confidentiality agreements as the Successor Servicer shall deem necessary to protect its interests.

7.3 **Notification** Within two Business Days after the Servicer becomes aware of any Servicer Default, the Servicer shall give notice thereof to the Trust, the Indenture Trustee and each Rating Agency, and each Series Enhancer or any other person entitled thereto pursuant to any applicable Supplement, and the Indenture Trustee shall give notice to the Series Indebtedness Holders. Upon any termination or appointment of a Successor Servicer pursuant to this Article, the Trust shall give prompt notice thereof to the Indenture Trustee and the Series Indebtedness Holders.

## **ARTICLE 8 AMORTIZATION EVENTS AND EVENTS OF DEFAULT**

8.1 **Amortization Events** If any one of the following events shall occur: (i) the Seller shall consent to the appointment of a trustee, administrator, receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings of or relating to the Seller or of or relating to all or substantially all of the Seller's property, (ii) a decree or order of a court or agency or supervisory authority having jurisdiction in the premises for the appointment of a trustee, administrator, receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings, or for the winding-up or liquidation of the Seller's affairs, shall have been entered against the Seller and shall not have been appealed, dismissed or stayed within thirty (30) days of its filing or commencement, or a court, agency or other supervisory authority with jurisdiction shall not have decreed or ordered relief with respect to any such decree or order of a court, or (iii) the Seller shall admit in writing its inability to pay its debts generally as they become due, file a petition, proposal, plan or arrangement to take advantage of any applicable insolvency or reorganization statute, make an assignment for the benefit of its creditors or voluntarily suspend payment of its obligations (any such act or occurrence being an "**Insolvency Event**"),

then subject to any applicable Requirement of Laws, an amortization event (an "**Amortization Event**") shall occur with respect to all outstanding Series without any notice or other action on the part of the Trust, the Indenture Trustee or the Indebtedness Holders immediately upon the occurrence of such event.

8.2 **Additional Rights Upon the Occurrence of an Insolvency Event** If an Insolvency Event occurs with respect to the Seller, the Seller shall, on the date of any such Insolvency Event (the "**Appointment Date**"), immediately cease to transfer Principal Receivables to the Trust and shall promptly give notice to the Trust and the Indenture Trustee thereof. Notwithstanding any cessation of a transfer to the Trust of additional Principal Receivables, Principal Receivables transferred to the Trust prior to the occurrence of such Insolvency Event and Collections in respect of such Principal Receivables and Finance Charge Receivables (whenever created) accrued in respect of such Principal Receivables, shall continue to be part of the Secured Property. If so provided for in any Supplement, and upon the terms and conditions set forth in such Supplement, upon the occurrence of an Insolvency Event, the Trust will sell or cause to be sold on the date specified in such Supplement, Principal Receivables and the related Finance Charge Receivables (or interests therein) in an amount equal to 100% of the Allocated Amount for such Series on such date (after giving effect to the deposits and payments to be made on such date; *provided, however*, that in no event shall such amount exceed such Series' applicable Series Percentage of Receivables on such date). The proceeds (the "**Insolvency Proceeds**") from such sale shall be immediately deposited into the Collection Account and shall be allocated in accordance with

the terms of the applicable Supplement to the Secured Property held by the Indenture Trustee as security for the obligations of the Trust in favour of the Series Indebtedness Holders of such Series. The Insolvency Proceeds shall be paid to Series Indebtedness Holders of such Series in accordance with the terms of the applicable Supplement.

8.3 **Events of Default** An “**Event of Default**” with respect to any Series, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

- (a) failure by the Trust to pay any principal amount of any Series Indebtedness of that Series when the same becomes due and payable on the applicable Stated Maturity Date; or
- (b) failure by the Trust to pay any interest on any Series Indebtedness of that Series when the same becomes due and payable and such default shall continue for a period of thirty-five (35) days; or
- (c) default by the Trust in the performance or observance of any covenant or agreement of the Trust made in this Agreement in respect of the Series Indebtedness of that Series (or all Series, as applicable) (other than a default under (a) or (b) above) (all of such covenants and agreements in this Agreement which are not expressly stated to be for the benefit of a particular Series shall be considered to be for the benefit of the Series Indebtedness of each Series) or the applicable Supplement, or any representation or warranty of the Trust made in this Agreement or the applicable Supplement proves to have been incorrect in any material respect as of the time when the same shall have been made, which default has a material adverse effect on the interests of the Series Indebtedness Holders of that Series (or all Series, as applicable) and continues unremedied for sixty (60) days after the date on which written notice of such failure, requiring the same to be remedied, shall have been given (i) to the Trust and the Seller by the Indenture Trustee or any Series Enhancer, or (ii) to the Trust, the Seller and the Indenture Trustee by Series Indebtedness Holders of that Series (or all Series, as applicable) holding not less than fifty (50) percent of the aggregate outstanding principal amount of the Series Indebtedness of that Series (or all Series, as applicable); or
- (d) if the Trust shall: (i) consent to the appointment of a trustee, administrator, receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings of or relating to the Trust or of or relating to all or substantially all of the Trust’s property; (ii) be subject to a decree or order of a court or agency or supervisory authority having jurisdiction in the premises for the appointment of a trustee, administrator, receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings, or for the winding-up or liquidation of the Trust’s affairs, shall have been entered against the Trust and shall not have been appealed, dismissed or stayed within thirty (30) days of its filing or commencement, or a court, agency or other supervisory authority with jurisdiction shall not have decreed or ordered relief with respect to any

such decree or order of a court; or (iii) admit in writing the inability of the Trust to pay its debts generally as they become due, file a petition, proposal, plan or arrangement to take advantage of any applicable insolvency or reorganization statute, make an assignment for the benefit of creditors of the Trust or voluntarily suspend payment of the Trust's obligations.

The Trust shall deliver to the Indenture Trustee, within five (5) days after the occurrence of any Default, written notice of such Default, its status and what action the Trust is taking or proposes to take with respect thereto.

#### 8.4 **Acceleration of Maturity; Rescission and Annulment**

- (a) If an Event of Default described in paragraph (a), (b) or (c) of section 8.3 should occur and be continuing for a Series, then and in every such case the Indenture Trustee or Series Indebtedness Holders holding not less than a majority of the aggregate outstanding principal amount of the Series Indebtedness of that Series may declare all the Series Indebtedness of that Series to be immediately due and payable, by a notice in writing to the Trust and the Seller (and to the Indenture Trustee if declared by Series Indebtedness Holders), and upon any such declaration of acceleration of maturity, the aggregate outstanding principal amount of the Series Indebtedness, together with all accrued and unpaid interest thereon, shall become immediately due and payable.
- (b) If an Event of Default described in subsection 8.3(d) should occur and be continuing, then the aggregate outstanding principal amount of the Series Indebtedness of all Series, together with all accrued and unpaid interest thereon, shall automatically become, and shall be considered to be declared, due and payable.
- (c) At any time after a declaration of acceleration of maturity of Series Indebtedness of a Series has been made and before a judgment or decree for payment of the money due has been obtained by the Indenture Trustee as hereinafter in this Article 8 provided, Series Indebtedness Holders holding not less than a majority of the aggregate outstanding principal amount of the Series Indebtedness of such Series, by written notice to the Trust, the Seller and the Indenture Trustee, may rescind and annul such declaration and its consequences if:
  - (i) the Trust has paid or deposited with the Indenture Trustee a sum sufficient to pay:
    - A. all payments of principal of and interest on the Series Indebtedness of such Series and all other amounts that would then be due hereunder or in respect of the Series Indebtedness if the Event of Default giving rise to such acceleration had not occurred; and
    - B. all sums paid or advanced by the Indenture Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee, its agents and counsel; and

- (ii) all Events of Default, other than the non-payment of the principal of the Series Indebtedness of such Series that has become due solely by such acceleration, have been cured or waived as provided in section 8.7.

No such rescission shall affect any subsequent Event of Default or impair any right consequent to it.

8.5 **Collection of Indebtedness and Suits for Enforcement by Indenture Trustee**

- (a) The Trust covenants that if (i) default is made in the payment of any interest on any Series Indebtedness when the same becomes due and payable, and such default continues for a period of thirty-five (35) days following the date on which it became due and payable or (ii) default is made in the payment of the principal amount of any Series Indebtedness, if and to the extent not previously paid, when the same becomes due and payable on the applicable Stated Maturity Date, the Trust will, upon demand of the Indenture Trustee, immediately pay to the Indenture Trustee for the benefit of the Series Indebtedness Holders of such Series Indebtedness the whole amount then due and payable on such Series Indebtedness for principal and interest, together with interest on the overdue principal and interest at the applicable interest rate and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee, its agents and counsel.
- (b) If the Trust fails to pay such amounts forthwith upon such demand, the Indenture Trustee may institute a proceeding for the collection of the sums so due and unpaid, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Trust and collect in the manner provided by law out of the Secured Property, if applicable, wherever situated, the monies determined to be payable in the manner provided by law.
- (c) If an Event of Default occurs and is continuing, the Indenture Trustee may, in its discretion and subject to the provisions of section 8.4, section 8.6, section 9.1 and section 9.12, proceed to protect and enforce its rights and the rights of the Series Indebtedness Holders of any affected Series (or all Series, as applicable) under this Agreement by such appropriate proceedings as the Indenture Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement contained in this Agreement or in aid of the exercise of any power granted in this Agreement, or to enforce any other remedy or legal or equitable right vested in the Indenture Trustee by this Agreement or by law.

8.6 **Remedies; Priorities**

- (a) If, prior to the Stated Maturity Date of a Series, an Event of Default shall have occurred and be continuing for that Series, and the Series Indebtedness of such Series has been accelerated under section 8.4, the Indenture Trustee, may, and shall upon the direction of Series Indebtedness Holders holding more than 50% of the aggregate

outstanding principal amount of the Series Indebtedness of such Series, subject to the terms hereof and any applicable Supplement, do one or more of the following:

- (i) institute proceedings for the collection of all amounts then payable on the Series Indebtedness of such Series or under this Agreement with respect thereto, whether by declaration or otherwise, enforce any judgment obtained, and collect from the Trust the portion of the Secured Property allocated to such Series equal to the monies which are due;
- (ii) sell all or a portion of the Principal Receivables, in an amount not to exceed the Allocated Amount for such Series and the related Finance Charge Receivables (or interests therein); and
- (iii) take any other appropriate action to protect and enforce the rights and remedies of the Indenture Trustee or the Series Indebtedness Holders of such Series hereunder;

provided, however, that the Indenture Trustee may not exercise the remedy in subparagraph (ii) above unless (A) Series Indebtedness Holders holding not less than 90% of the aggregate outstanding principal amount of the Series Indebtedness of such Series consent thereto, (B) the Indenture Trustee determines that the proceeds of such sale and any other available amounts distributable to the Series Indebtedness Holders of such Series are sufficient to discharge in full all amounts of principal and interest then due and unpaid on such Series Indebtedness or (C) the Indenture Trustee determines that the Secured Property may not continue to provide sufficient funds for the payment of principal of and interest on the Series Indebtedness as they would have become due if the Series Indebtedness had not been declared due and payable, and the Indenture Trustee obtains the consent of Series Indebtedness Holders holding not less than 66 2/3% of the aggregate outstanding principal amount of the Series Indebtedness of each Class of such Series; and provided further that any sale of all or a portion of the Principal Receivables and the related Finance Charge Receivables shall be done in accordance with section 10.2(c). In determining such sufficiency or insufficiency with respect to clauses (B) and (C), the Indenture Trustee shall, at the Trust's expense, obtain and conclusively rely upon an opinion of an independent investment banking or accounting firm of national reputation as to the feasibility of such proposed action and as to the sufficiency of the Secured Property for such purpose. Notwithstanding any other provision of this Article 8, if, at any time on or after the Stated Maturity Date, an Event of Default occurs and is continuing for any Series, the Indenture Trustee shall sell all or a portion of the Principal Receivables, in an amount not to exceed the Allocated Amount for such Series, and the related Finance Charge Receivables in accordance with section 10.2(c).

- (b) Any amounts received pursuant to this section 8.6 shall be applied in accordance with the terms of the applicable Supplement.
- (c) In addition to the application of money or property pursuant to subsection 8.6(b) and the relevant Supplement for a Series, amounts then held in the Collection Account, Excess Funding Account or Series Accounts for such Series and any amounts available under the Series Enhancement for such Series shall be used to make payments to the Series Indebtedness Holders of the Series Indebtedness of such



Series and the Series Enhancer for such Series in accordance with the terms of this Agreement, the related Supplement and the Series Enhancement for such Series. Following the sale of the Secured Property (or portion thereof) allocated to a Series and the application of the proceeds of such sale to such Series and the application of the amounts then held in the Collection Account, the Excess Funding Account and any Series Accounts for such Series as are allocated to such Series and any amounts available under the Series Enhancement for such Series, such Series shall no longer be entitled to any allocation of Collections or other property constituting the Secured Property under this Agreement and the Series Indebtedness of such Series shall no longer be outstanding.

- (d) The Indenture Trustee may fix a record date and payment date for any payment to Series Indebtedness Holders pursuant to this section 8.6. At least fifteen (15) days before such record date, the Indenture Trustee shall mail to each Series Indebtedness Holder a notice that states the record date, the payment date and the amount to be paid.

#### 8.7 **Waiver of Defaults**

Prior to a declaration of acceleration of the maturity of the Series Indebtedness of any Series as provided in section 8.4, Series Indebtedness Holders holding a majority of the aggregate outstanding principal amount of the Series Indebtedness of such Series may, on behalf of all Series Indebtedness Holders of such Series, waive in writing any default with respect to the Series Indebtedness of such Series and its consequences (including an Event of Default), except a default:

- (a) in the payment of the principal (or premium, if any) or interest in respect of any Series Indebtedness of such Series, or
- (b) in respect of a covenant or provision that under subsection 11.1(b) hereof cannot be modified or amended without the consent of the requisite percentage of Series Indebtedness Holders of each affected Series as prescribed in section 11.1(b).

Upon any such written waiver, such default, and any Event of Default arising therefrom, shall cease to exist and shall be deemed to have been cured for every purpose of this Agreement; provided that no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

### **ARTICLE 9 THE TRUST AND THE INDENTURE TRUSTEE**

#### 9.1 **Duties of Trust and Indenture Trustee**

- (a) Each of the Trust and Indenture Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Agreement.
- (b) The Indenture Trustee shall give notice to the Series Indebtedness Holders of the occurrence of a Servicer Default or an Event of Default with respect to a Series of Notes, within a reasonable time, but not exceeding in any event thirty (30) days, after

the Indenture Trustee receives notice of the occurrence thereof, unless the Indenture Trustee in good faith determines that the withholding of such notice is in the best interests of the Series Indebtedness Holders and so advises the Trust in writing. The Indenture Trustee shall give notice of the occurrence of every Servicer Default or Event of Default to the Rating Agencies within five (5) Business Days after the Indenture Trustee receives notice of the occurrence thereof.

- (c) The Trust or the Indenture Trustee, as the case may be, upon receipt of all resolutions, certificates, statements, opinions, reports, documents, orders or other instruments furnished to the Trust or the Indenture Trustee pursuant to any provision of this Agreement, shall examine them to determine whether they conform to the requirements of this Agreement. The Trust or the Indenture Trustee shall give prompt notice to each other and the Series Indebtedness Holders of any material lack of conformity of any such instrument to the applicable requirements of this Agreement discovered by the Trust or the Indenture Trustee which would entitle the Trust, the Indenture Trustee or a specified percentage of Series Indebtedness Holders to take any action pursuant to the Receivables Purchase Agreement, this Agreement or any Supplement.
- (d) Subject to subsections 9.1(a) and (b) above, each of the Trust and the Indenture Trustee shall be liable only for its own dishonesty, bad faith, wilful misconduct, gross negligence or reckless disregard in the performance or non-performance of its duties and obligations hereunder; *provided, however*, that:
  - (i) neither the Trust nor the Indenture Trustee nor their respective officers, directors, employees or agents shall be personally liable for an error of judgment made in good faith by a Responsible Officer or Responsible Officers of it, unless it shall be proved that the Trust or the Indenture Trustee (as the case may be) was grossly negligent in ascertaining the pertinent facts;
  - (ii) neither the Trust nor the Indenture Trustee shall be personally liable with respect to any action taken or omitted to be taken by it in good faith and without wilful misconduct or gross negligence in accordance with the direction of Series Indebtedness Holders holding more than 50% of the aggregate outstanding principal amount of all Series Indebtedness (or, with respect to any such action that does not relate to all Series, 50% of the aggregate outstanding principal amount of the Series Indebtedness of all Series to which such action relates) relating to the time, method and place of conducting any proceeding for any remedy available to the Trust or the Indenture Trustee, or exercising any trust or power conferred upon the Trust or the Indenture Trustee, under this Agreement, the Receivables Purchase Agreement or any Supplement; and
  - (iii) neither the Trust nor the Indenture Trustee shall be charged with or deemed to have knowledge of any breach or failure of any representation, warranty or obligation given or made by any other party under the Receivables Purchase Agreement, this Agreement or any Supplement, including any failure by the

Servicer to comply with the obligations of the Servicer under such agreements, unless a Responsible Officer of the Trust or the Indenture Trustee, as the case may be, obtains actual knowledge of such breach or failure by notice of such breach or failure from (A) any other party to such agreement, (B) Series Indebtedness Holders holding not less than 10% of the aggregate outstanding principal amount of all Series Indebtedness (or, with respect to any such failure that does not relate to all Series, 10% of the aggregate outstanding principal amount of the Series Indebtedness of all Series to which such failure relates), or (C) any Series Enhancer.

- (e) Notwithstanding any other provision of this Agreement, neither the Trust nor the Indenture Trustee shall be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, unless the repayment of such funds or adequate indemnity against such risk or liability has been reasonably assured to its satisfaction. None of the provisions contained in this Agreement or any Supplement shall in any event require the Trust or the Indenture Trustee to perform, or be responsible for the manner of performance of, any obligations of the Servicer under any such agreement except, in the case of the Indenture Trustee only, during such time, if any, as the Indenture Trustee is required to be the successor to, and be vested with the rights, duties, powers and privileges of, the Servicer in accordance with the terms of this Agreement; *provided, however*, that this subsection 9.1(e) shall in no way prevent or restrict in any manner the enforcement by the Trust (or by the Indenture Trustee pursuant to the Security Interest hereby created) of the Servicer's obligations hereunder or under any Supplement.
- (f) Except for actions expressly authorized by the Receivables Purchase Agreement, this Agreement or any Supplement, neither the Trust nor the Indenture Trustee (during such time, if any, that it is a Successor Servicer hereunder) shall take any actions reasonably likely to impair the ownership by the Trust of any Receivable now existing or hereafter created or to impair the value of any Receivable now existing or hereafter created.
- (g) Except as expressly provided in the Receivables Purchase Agreement, this Agreement or any Supplement, the Trust shall have no power to vary the corpus of the Secured Property including by (i) accepting any substitute obligation for a Receivable initially assigned to the Trust under section 2.1 or 2.9 of the Receivables Purchase Agreement, or (ii) withdrawing from the Trust any Receivables.
- (h) In the event that the Paying Agent or the Transfer Agent and Registrar shall fail to perform any obligation, duty or agreement in the manner or on the day required to be performed by the Paying Agent or the Transfer Agent and Registrar, as the case may be, under this Agreement or any Supplement, the Indenture Trustee shall, subject to subsection 9.1(e), be obligated promptly upon receiving actual knowledge thereof to perform such obligation, duty or agreement in the manner so required.

- (i) If the Seller has agreed to transfer any of its credit card receivables (other than the Receivables) to another person, then upon the request and at the expense of the Seller, the Trust and the Indenture Trustee will enter into such interpurchase or intercreditor agreements (which shall be in form and substance satisfactory to the Trust and the Indenture Trustee) with the transferee of such receivables as are customary and necessary to separately identify the rights of the Trust, the Indenture Trustee and such other person in the Seller's credit card receivables; *provided, however,* that neither the Trust nor the Indenture Trustee shall be required to enter into any interpurchase or intercreditor agreement which could adversely affect the interests of the Trust or the Indenture Trustee and, upon the request of the Trust or the Indenture Trustee, the Seller will deliver an Opinion of Counsel on any matters reasonably requested by the Trust or the Indenture Trustee relating to such interpurchase or intercreditor agreement. The Servicer will give each Rating Agency and each Series Enhancer notice thereof five Business Days prior to the Trust or the Indenture Trustee entering into any such intercreditor agreement.

9.2 **Certain Matters Affecting the Trust and the Indenture Trustee** Except as otherwise provided in section 9.1:

- (a) the Trust and the Indenture Trustee may rely on and shall be protected in acting on, or in refraining from acting in accordance with, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, appraisal, approval, bond or other paper or document believed by it to be genuine and to have been signed or presented to it pursuant to this Agreement by the proper party or parties, *provided* that in so acting or refraining from acting the Trust or the Indenture Trustee acts in good faith without wilful misconduct or gross negligence;
- (b) the Trust and the Indenture Trustee may consult with counsel and any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by it hereunder in good faith and without wilful misconduct or gross negligence, in accordance with such Opinion of Counsel, *provided* that the costs of such counsel, reasonably incurred by the Trust or the Indenture Trustee, as the case may be, shall be added to, and be a part of, the fees payable to the Trust and the Indenture Trustee hereunder and under any Supplement;
- (c) the Trust and the Indenture Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement, any Supplement or the Receivables Purchase Agreement, or to institute, conduct or defend any litigation hereunder or under the Receivables Purchase Agreement or any Supplement or in relation hereto or thereto, at the request, order or direction of any of the Indebtedness Holders, pursuant to the provisions of this Agreement or any Supplement, unless such Indebtedness Holders shall have offered to the Trust or the Indenture Trustee, as the case may be, reasonable security or indemnity against the costs, expenses and liabilities which may be incurred therein or thereby; *provided, however,* that nothing contained herein shall relieve the Indenture Trustee of the obligations, upon the occurrence of a Servicer Default (which has not been cured or waived), to exercise such of the rights and powers vested in it in its capacity as Servicer by this

Agreement, any Supplement and the Receivables Purchase Agreement, and to use the same degree of care and skill in their exercise as is required of the Servicer pursuant to section 6.3;

- (d) neither the Trust nor the Indenture Trustee shall be personally liable for any action taken, suffered or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement or any Supplement;
- (e) neither the Trust nor the Indenture Trustee shall be bound to make any investigation into the facts of matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, appraisal, approval, bond or other paper or document believed by it to be genuine, unless requested to do so by Series Indebtedness Holders holding more than 25% of the aggregate outstanding principal amount of all Series Indebtedness (or, with respect to any such matters that do not relate to all Series, 25% of the aggregate outstanding principal amount of the Series Indebtedness of all Series to which such matters relate);
- (f) the Indenture Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys or a custodian, and the Indenture Trustee may employ such experts or advisers as the Indenture Trustee may reasonably require to execute such trusts or powers or to perform such duties and the Indenture Trustee shall not be responsible for any wilful misconduct, gross negligence or bad faith on the part of any such agent, attorney, custodian, expert or advisor appointed or retained by the Indenture Trustee in good faith and without wilful misconduct, gross negligence or bad faith; and
- (g) except as may be required by subsections 9.1(a) and (b), neither the Trust nor the Indenture Trustee shall be required to make any initial or periodic examination of any documents or records related to the Receivables or the Accounts for the purpose of establishing the presence or absence of defects, the compliance by the Seller with its representations and warranties or for any other purpose.

9.3 **Recitals and Actions of Seller** The Indenture Trustee assumes no responsibility for the correctness of the recitals contained herein, in any Supplement or in any evidences of Indebtedness (other than the certificate of authentication on any Note). Except as set forth in section 9.13, the Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement, any Supplement, any Indebtedness, howsoever evidenced (other than the certificate of authentication on any Note), or of any Receivable or related document. The Indenture Trustee shall not be accountable for the use or application by the Seller of any of the Indebtedness or of the proceeds of such Indebtedness, or for the use or application of any funds paid to the Seller hereunder or under any Supplement or deposited in or withdrawn from the Collection Account, any Series Accounts or any other accounts hereafter established to effectuate the transactions contemplated by this Agreement and any Supplement and in accordance with the terms of this Agreement and any Supplement.

9.4            **Indenture Trustee May Own Indebtedness** Notwithstanding the provisions of section 32 of the *Special Corporate Powers Act* (Quebec), the Indenture Trustee in its individual or any other capacity may become the owner or pledgee of Indebtedness with the same rights as it would have if it were not the Indenture Trustee.

9.5            **Eligibility Requirements for Indenture Trustee** The Indenture Trustee hereunder shall at all times (a) be a corporation organized and doing business under the laws of Canada or any province thereof authorized under such laws to exercise corporate trust powers, (b) be subject to supervision or examination by federal or provincial authority, and (c) either (i) have a net worth or a combined capital and surplus of at least \$50,000,000, (ii) have a net worth or a combined capital and surplus of at least \$10,000,000 and be a wholly-owned direct or indirect subsidiary of a Canadian Schedule 1 bank with a long-term unsecured debt rating of at least (x) A (low) by DBRS (y) Baa3 by Moody's and (z) BBB- by Standard & Poor's or (iii) otherwise satisfy the Rating Agency Condition. If such corporation publishes reports of condition at least annually, pursuant to Requirements of Law or to the requirements of the applicable supervising or examining authority, then, for the purpose of this section 9.5, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Indenture Trustee shall cease to be eligible in accordance with the provisions of this section 9.5, the Indenture Trustee shall resign immediately in the manner and with the effect specified in this section 9.5.

9.6            **Resignation or Removal of Indenture Trustee**

- (a) The Indenture Trustee may at any time resign and be discharged from the trust hereby created by giving notice thereof to the Trust, the Seller and the Servicer. Upon receiving such notice of resignation, the Trust shall promptly appoint an eligible indenture trustee as successor trustee by written instrument, in duplicate, one copy of which instrument shall be delivered to the resigning Indenture Trustee and one copy to the successor indenture trustee. If no successor indenture trustee shall have been so appointed and have accepted appointment within 30 days after the giving of such notice of resignation, the resigning Indenture Trustee may petition any court of competent jurisdiction for the appointment of a successor indenture trustee.
- (b) If at any time the Indenture Trustee shall cease to be eligible in accordance with the provisions of section 9.5 and shall fail to resign after request therefor by the Trust, or if at any time the Indenture Trustee shall be legally unable to act, or shall be adjudged a bankrupt or insolvent, or if a receiver of the Indenture Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Indenture Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then the Trust may remove the Indenture Trustee and promptly appoint a successor indenture trustee by written instrument, in duplicate, one copy of which instrument shall be delivered to the Indenture Trustee so removed and one copy to the successor indenture trustee.
- (c) Any resignation or removal of the Indenture Trustee and appointment of a successor indenture trustee pursuant to any of the provisions of this section 9.6 shall not

become effective until acceptance of appointment by the successor indenture trustee as provided in section 9.7.

9.7            **Successor Indenture Trustee**

- (a) Any successor indenture trustee appointed as provided in section 9.6 shall execute, acknowledge and deliver to the Trust, the Seller, the Servicer and its predecessor Indenture Trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor Indenture Trustee shall become effective and such successor indenture trustee, without any further act, deed or conveyance, shall become fully vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Indenture Trustee herein. The predecessor Indenture Trustee shall deliver, at the expense of the Servicer, to the successor trustee all documents or copies thereof and statements held by it hereunder; and the Trust, the Seller and the predecessor Indenture Trustee shall execute and deliver such instruments and do such other things as may reasonably be required for fully and certainly vesting and confirming in the successor indenture trustee all such rights, powers, duties and obligations.
- (b) No successor indenture trustee shall accept appointment as provided in this section 9.7 unless at the time of such acceptance such successor indenture trustee shall be eligible under the provisions of section 9.5.
- (c) Upon acceptance of appointment by a successor indenture trustee as provided in this section, such successor indenture trustee shall provide notice of such succession hereunder to all Series Indebtedness Holders and the Servicer shall provide such notice to each Rating Agency and each Series Enhancer.

9.8            **Merger or Consolidation of Indenture Trustee** Any person into which the Indenture Trustee may be merged or converted or with which it may be consolidated, or any person resulting from any merger, conversion or consolidation to which the Indenture Trustee shall be a party, or any person succeeding to the corporate trust business of the Indenture Trustee, shall be the successor of the Indenture Trustee hereunder, provided such corporation shall be eligible under the provisions of section 9.5 and provided further that each Rating Agency has received prior written notice of any such merger, conversion or consolidation, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

9.9            **Tax Returns** In the event the Trust shall be required to file Tax returns, the Trust shall prepare or shall cause to be prepared such Tax returns at least five days before such Tax returns are due to be filed. The Trust, in accordance with the terms of each Supplement, shall also prepare or shall cause to be prepared all Tax information required by Requirements of Law to be distributed to Series Indebtedness Holders and shall deliver such information to the Indenture Trustee at least five days prior to the date it is required by law to be distributed to Series Indebtedness Holders. The Indenture Trustee, upon request, will furnish the Trust with all such information known to the Indenture Trustee as may be reasonably required in connection with the preparation of all Tax returns of the Trust, and shall, upon request, execute such returns.

9.10 **Indenture Trustee May Enforce Claims Without Possession of Indebtedness**

All rights of action and claims of the Indenture Trustee under this Agreement or the Indebtedness may be prosecuted and enforced by the Indenture Trustee without the possession of the evidences of the Indebtedness or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Indenture Trustee shall be brought in its own name as indenture trustee. Any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee, its agents and counsel, be for the ratable benefit of the Indebtedness Holders in respect of which such judgment has been obtained.

9.11 **Suits for Enforcement** Nothing herein contained shall be deemed to authorize the Indenture Trustee to authorize or consent to or accept or adopt on behalf of any Indebtedness Holder any plan of reorganization, arrangement, adjustment or composition affecting the Indebtedness or the rights of any Indebtedness Holder, or to authorize the Indenture Trustee to vote in respect of the claim of any Indebtedness Holder in any such proceeding. Notwithstanding the foregoing, the Indenture Trustee shall not be precluded from filing a proof of claim in any such proceeding instituted against the Trust by any person other than the Indenture Trustee.

9.12 **Rights of Series Indebtedness Holders To Direct Trust and Indenture Trustee**

Subject to section 9.2, Series Indebtedness Holders holding more than 50% of the aggregate outstanding principal amount of all Series Indebtedness (or, with respect to any remedy, trust or power that does not relate to all Series, more than 50% of the aggregate outstanding principal amount of the Series Indebtedness of all Series to which such remedy, trust or power relates) shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trust and the Indenture Trustee, or exercising any power conferred on the Trust and the Indenture Trustee; *provided, however*, that, subject to section 9.1, the Trust and the Indenture Trustee shall have the right to decline to follow any such direction if advised by counsel that the action so directed may not lawfully be taken, or if the Trust or the Indenture Trustee in good faith shall, by a Responsible Officer or Responsible Officers of the Indenture Trustee, determine that the proceedings so directed would be illegal or be unduly prejudicial to the rights of the Series Indebtedness Holders not party to such direction or if such proceedings would involve it in personal liability and; *provided, further*, that nothing in this Agreement shall impair the right of the Trust or the Indenture Trustee to take any action deemed proper by it and which is not inconsistent with such direction of the Series Indebtedness Holders.

9.13 **Representations and Warranties of the Indenture Trustee** The Indenture Trustee hereby represents and warrants to the Trust as of the date of this Agreement and, unless otherwise specified below, each Series Issuance Date that:

- (a) **Organization and Good Standing.** The Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada and has, in all material respects, full power and authority to execute, deliver and perform its obligations under this Agreement and each Supplement.
- (b) **Due Qualification.** The Indenture Trustee is duly qualified, is in good standing and has obtained all necessary licenses and approvals required to carry on the business of a trust company in each of the provinces and territories of Canada and to act as a trustee under this Agreement.



- (c) **Due Authorization.** The execution and delivery of this Agreement and each Supplement by the Indenture Trustee and the performance by the Indenture Trustee of its obligations thereunder, have been authorized by the Indenture Trustee by all necessary corporate action on the part of the Indenture Trustee.
- (d) **Enforceability.** Each of this Agreement and each existing Supplement, as of the date of this Agreement, constitutes a legal, valid and binding obligation of the Indenture Trustee enforceable against the Indenture Trustee in accordance with its 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.
- (e) **No Conflict.** The execution and delivery by the Indenture Trustee of this Agreement and each Supplement, the performance of the transactions contemplated by this Agreement and each Supplement and the fulfilment of the terms hereof and thereof applicable to the Indenture Trustee, will not conflict with or violate (i) the constating documents or by-laws of the Indenture Trustee, any resolution of the board of directors (or any committee thereof) or shareholders of the Indenture Trustee or any Requirements of Law applicable to the Indenture Trustee 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 Indenture Trustee is a party or by which it or its properties are bound.
- (f) **No Proceedings.** There are no proceedings or investigations, pending or, to the best of the knowledge of the Indenture Trustee, threatened against the Indenture Trustee before any Governmental Authority (i) asserting the invalidity of this Agreement or any Supplement, (ii) seeking to prevent the consummation of any of the transactions contemplated by this Agreement or any Supplement, (iii) seeking any determination or ruling that, in the reasonable judgement of the Indenture Trustee, would materially and adversely effect the performance by the Indenture Trustee of its obligations under this Agreement or any Supplement, or (iv) seeking any determination or ruling that would materially and adversely effect the validity or enforceability of this Agreement or any Supplement.
- (g) **All Consents.** All authorizations, consents, orders or approvals of or registrations or declarations with any Governmental Authority required to be obtained, effected or given by the Indenture Trustee in connection with the execution and delivery by the Indenture Trustee of this Agreement, each Supplement and the performance of the transactions contemplated by this Agreement and each Supplement by the Indenture Trustee have been duly obtained, effected or given and are in full force and effect.

9.14 **Maintenance of Office or Agency** Each of the Trust and the Indenture Trustee will maintain at its expense an office or agency (the “**Corporate Trust Office**”) where notices and demands to or upon the Trust or the Indenture Trustee in respect of the Indebtedness and this Agreement may be served in the City of Toronto, Ontario. Each of the Trust and the Indenture

Trustee initially appoints their respective offices referred to in section 11.4 as such office. Each of the Trust and the Indenture Trustee will give prompt notice to the Servicer and to the Series Indebtedness Holders of any change in the location of the Register or any such office or agency.

9.15            **Payments from Secured Property** All statements, representations, covenants and agreements made by BNY Trust on behalf of the Trust in the Receivables Purchase Agreement, this Agreement and in any Supplement, unless otherwise expressly stated, are made and intended only for the purpose of binding the Secured Property and establishing the existence of rights and remedies which can be exercised and enforced against the Secured Property, therefore, anything contained in the Receivables Purchase Agreement, this Agreement or any Supplement to the contrary notwithstanding, no recourse shall be had under the Receivables Purchase Agreement, this Agreement, any Supplement or any evidence of the Indebtedness against BNY Trust in its personal capacity or against any director, officer, employees or agents of BNY Trust and BNY Trust shall have no personal liability for any amounts payable, or for the performance of any covenants or obligations, under this Agreement, any Supplement or any evidence of the Indebtedness; *provided, however,* that this section 9.15 shall not be construed to prohibit or to limit the exercise and enforcement, in accordance with the terms of the Receivables Purchase Agreement, this Agreement, any Supplement or evidence of the Indebtedness, of the Trust's rights and remedies hereunder or thereunder in respect of the Trust Assets or of the Indenture Trustee's rights and remedies in respect of the Secured Property nor to discharge the indebtedness of the Trust secured hereunder and under the Indebtedness.

## **ARTICLE 10 TERMINATION**

10.1            **Termination of Obligations** The respective obligations and responsibilities of the Servicer, the Trust and the Indenture Trustee created hereby (other than the obligation of the Indenture Trustee to make payments to the Series Indebtedness Holders as hereinafter set forth) shall terminate, except with respect to the duties described in section 6.4 and subsection 10.2(b), 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 zero (provided that the Servicer and the Trust have consented in writing to such termination), and (c) in the event of an Insolvency Event under section 8.1 in respect of which, in accordance with the related Supplement, the Trust sells, disposes of or otherwise liquidates 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 this Agreement and the terms of each Supplement (provided that the Servicer and the Trust have consented in writing to such termination).

### 10.2            **Final Payment to Series Indebtedness Holders**

- (a)            The Servicer shall give the Trust and the Indenture Trustee at least 30 days prior written notice of the Allocation Date on which the Series Indebtedness Holders of any applicable Series or Class shall receive the final payments due and payable to them in respect of the Series Indebtedness held by them and if any such Series Indebtedness is represented by Series Notes, the Series Indebtedness Holders holding such Series Notes shall, on such Allocation Date, surrender such Series Notes for payment of the final payments due and payable thereon and cancellation thereof. In

the event of a final payment resulting from the application of section 2.6 of the Receivables Purchase Agreement or section 7.1 or 8.1 hereof, the Servicer shall provide the foregoing notice of the Allocation Date on which the final payment is to occur promptly after the Servicer has determined that a final payment will occur if such Allocation Date is less than 30 days from the date of such determination. Any notice delivered under this subsection 10.2(a) shall be accompanied by an Officer's Certificate setting forth the information specified in section 5.5 covering the period during the then-current calendar year through the date of such notice. Not later than the fifth day of the month in which the final payment in respect of such Series or Class is payable to the Series Indebtedness Holders thereof, the Indenture Trustee shall provide notice to the Series Indebtedness Holders of such Series or Class specifying (i) the date upon which final payment of such Series or Class will be made upon presentation and surrender of the applicable evidences of the Series Indebtedness of such Series or Class at the office or offices therein designated, (ii) the details of any such final payment, and (iii) that the Record Date otherwise applicable to such payment date is not applicable, payments being made only upon presentation and surrender of the applicable evidences of such Series Indebtedness at the office or offices therein specified. The Indenture Trustee shall concurrently give such notice to the Transfer Agent and Registrar, the Paying Agent, each Rating Agency, and to any other person entitled thereto under any applicable Supplement, at the time such notice is given to the Series Indebtedness Holders.

- (b) Notwithstanding a final payment to the Series Indebtedness Holders of any Series or Class, except as otherwise provided in this subsection 10.2(b) and section 10.3, all funds then on deposit in the Collection Account, Excess Funding Account and any Series Account allocated to the Secured Property securing the Trust's obligations in favour of such Series Indebtedness Holders shall be held in trust by the Indenture Trustee for the benefit of such Series Indebtedness Holders and the Paying Agent or the Indenture Trustee, or such other person as may be designated under any applicable Supplement, shall pay such funds to such Series Indebtedness Holders upon surrender of the evidences of their Series Indebtedness (and any excess shall be paid to the Seller under the Seller Note). In the event that all such Series Indebtedness Holders shall not surrender the evidences of their Series Indebtedness for cancellation within six months after the date specified in the notice from the Indenture Trustee described in subsection 10.2(a) above, the Indenture Trustee shall give a second notice to any such Series Indebtedness Holders to surrender the evidences of their Series Indebtedness for cancellation and receive the final payment with respect thereto. If within one year after the second notice all such Series Indebtedness shall not have been surrendered for cancellation, the Indenture Trustee may take appropriate steps, or may appoint an agent to take appropriate steps, to contact the remaining Series Indebtedness Holders concerning surrender of the evidences of their Series Indebtedness, and the cost thereof shall be paid out of the funds in the Collection Account, Excess Funding Account or any Series Account which have been allocated to the Secured Property held by the Indenture Trustee as security for the obligations of the Trust in favour of such Series Indebtedness Holders. The Indenture Trustee and the Paying Agent shall pay to the Seller any monies held by them for the payment of principal or interest that remains unclaimed

for six years. After payment to the Seller, Series Indebtedness Holders entitled to the money must look to the Seller for payment as general creditors unless an applicable unclaimed intangible property law designates another person. Prior to the payment of such funds on deposit in the Collection Account, Excess Funding Account and any Series Account in accordance with the foregoing, the Indenture Trustee shall maintain all such funds on deposit in such Collection Account, Excess Funding Account and Series Accounts and, unless otherwise mutually agreed upon, the Indenture Trustee shall be under no obligation to invest or reinvest such funds but shall only be obligated to maintain such funds on deposit in the Collection Account, Excess Funding Account and such Series Accounts pending payment to the appropriate persons. The Indenture Trustee shall, at any time when required by applicable Requirements of Law, pay all or a part of any such funds to the public trustee (or any other appropriate governmental official or agency), which payment shall constitute a good discharge and release of the Indenture Trustee in respect of the funds so paid pursuant to such Requirements of Law.

- (c) In the event: (i) of a sale of Receivables pursuant to section 8.6; or (ii) that the Allocated Amount with respect to any Series is greater than zero on its Stated Maturity Date (after giving effect to deposits and payments otherwise to be made on such Stated Maturity Date), the Trust will, in accordance with the terms of the applicable Supplement, sell or cause to be sold, on a random basis, Principal Receivables and the related Finance Charge Receivables (or interests therein) in an amount equal to 100% of the Allocated Amount with respect to such Series on the relevant date of sale (after giving effect to any deposits and payments otherwise to be made on such relevant date of sale; *provided, however*, that in no event shall such amount exceed such Series' applicable Series Percentage of Receivables on such relevant date of sale). The proceeds (the "**Termination Proceeds**") from such sale shall be immediately deposited into the Collection Account and shall be allocated in accordance with the terms of the applicable Supplement to the Secured Property held by the Indenture Trustee as security for the obligations of the Trust in favour of the Series Indebtedness Holders of such Series. The Termination Proceeds shall be paid to Series Indebtedness Holders of such Series in accordance with the terms of the applicable Supplement.
- (d) The Indenture Trustee is hereby irrevocably appointed the agent and attorney-in-fact of the Trust in connection with any sale of Receivables pursuant to subsection 10.2(c). No purchaser or transferee of any such Receivables at a sale shall be bound to ascertain the Indenture Trustee's authority, inquire into the satisfaction of any conditions precedent or see to the application of any monies.

10.3 **Final Payment to Seller** Immediately prior to the termination of this Agreement pursuant to section 10.1, the Trust shall assign and convey to the Seller or its designee, without recourse, representation or warranty, all right, title and interest of the Trust in the Receivables, whether then existing or thereafter created, all monies due or to become due and all amounts received with respect thereto and all proceeds thereof in full satisfaction of amounts payable in respect of the Seller Indebtedness and upon payment thereof the Seller shall, if applicable, surrender any Seller Note to the Trust; *provided, however*, that the Trust shall retain for its own account

\$10,000 and shall also retain the amounts held by the Indenture Trustee pursuant to subsection 10.2(b) for the purposes therein specified. 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 which the Trust had in the Receivables.

## ARTICLE 11 MISCELLANEOUS PROVISIONS

### 11.1 Amendments; Waivers

- (a) This Agreement or any Supplement may be amended from time to time (including in connection with the issuance of a Supplemental Note or to change the definition of Monthly Period) by the Servicer, the Seller, the Trust and the Indenture Trustee without the consent of any of the Series Indebtedness Holders; *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, (ii) have a material adverse effect on the interests of the Series Indebtedness Holders; or (iii) have the effect of permitting the Trust to engage in any activity other than: holding Receivables and other Trust Assets, which assets are not contrary to the status of the Trust as a qualified special purpose entity under existing accounting literature, including passive derivative financial instruments that pertain to beneficial interests issued or sold to parties other than the Seller, its affiliates or its agents; issuing Notes and other interests in the Trust in accordance with this Agreement, the Receivables Purchase Agreement and any applicable Supplements; receiving Collections and making payments on such Notes and interests in accordance with the terms of this Agreement, the Receivables Purchase Agreement, and any Supplement; and other activities that are necessary or incidental to accomplish these limited purposes, which other activities are not contrary to the status of the Trust as a qualified special purpose entity under existing accounting literature *provided, further*, that, in each case, the Rating Agency Condition shall have been satisfied with respect to any such amendment. The Trust shall be permitted to amend the Receivables Purchase Agreement in the circumstances contemplated by and upon satisfaction of the conditions specified in section 6.1 of the Receivables Purchase Agreement.
- (b) This Agreement or any Supplement may also be amended from time to time (including in connection with the creation of a Supplemental Indebtedness) by the Servicer, the Seller, the Trust and the Indenture Trustee and the Trust shall be permitted to agree with the Seller to amend the Receivables Purchase Agreement pursuant to subsection 6.1(b) thereof, with the consent of Series Indebtedness Holders holding not less than 66-2/3% of the aggregate outstanding principal amount

of the Series Indebtedness of each Series in respect of which the Trust's ability to satisfy its obligations thereto is adversely affected, for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Agreement or any Supplement or of modifying in any manner the rights of the Indebtedness Holders; *provided, however*, that no such amendment shall (i) reduce in any manner the amount of or delay the timing of any payments to be made to Series Indebtedness Holders or deposits of amounts to be so paid or the amount available under any Series Enhancement without the consent of each affected Series Indebtedness Holder, (ii) change the definition of or the manner of calculating the amounts to which any Series Indebtedness Holder is entitled hereunder without the consent of each affected Series Indebtedness Holder, (iii) reduce the aforesaid percentage required to consent to any such amendment without the consent of each Series Indebtedness Holder, or (iv) adversely affect the rating of any Series or Class by the relevant Rating Agencies without the consent of Series Indebtedness Holders of such Series or Class holding not less than 66-2/3% of the aggregate outstanding principal amount of the Series Indebtedness of such Series or Class; provided further that in determining whether the Series Indebtedness Holders of the requisite principal amount of the Series Indebtedness of all adversely affected Series have consented, Series Indebtedness owned by the Seller or any Affiliate of the Seller shall be disregarded. The Indenture Trustee may, but shall not be obligated to, enter into any such amendment which affects the Indenture Trustee's rights, duties or immunities under this Agreement or otherwise.

- (c) Promptly after the execution of any such amendment or consent (other than an amendment pursuant to subsection 11.1(a)), the Trust shall furnish notification of the substance of such amendment to each Series Indebtedness Holder, and the Trust shall furnish notification of the substance of such amendment to each Rating Agency and each Series Enhancer.
- (d) It shall not be necessary for the consent of Series Indebtedness Holders under this section 11.1 to approve the particular form of any proposed amendment, but it shall be sufficient if such consent shall approve the substance thereof. The manner of obtaining such consents and of evidencing the authorization of the execution thereof by the Series Indebtedness Holders shall be subject to such reasonable requirements as the Indenture Trustee may prescribe.
- (e) Notwithstanding anything in this section 11.1 to the contrary, no amendment may be made to this Agreement or any Supplement which would adversely affect in any material respect the interests of any Series Enhancer without the consent of such Series Enhancer.
- (f) Any Supplement executed in accordance with the provisions of section 2.3 shall not be considered an amendment to this Agreement for the purposes of this section 11.1.
- (g) Series Indebtedness Holders holding more than 66 2/3% of the aggregate outstanding principal amount of the Series Indebtedness of each Series, or, with respect to any Series with two or more Classes, of each Class (or, with respect to any default that

does not relate to all Series, 66 2/3% of the aggregate outstanding principal amount of the Series Indebtedness of each Series to which such default relates or, with respect to any such Series with two or more classes, of each Class) may, on behalf of all Series Indebtedness Holders, instruct the Indenture Trustee to waive, and the Indenture Trustee shall waive any default by the Seller or the Servicer in the performance of their obligations under the Receivables Purchase Agreement, this Agreement or any Supplement and its consequences, *provided, however*, that no such waiver may apply to the failure to make any payments required to be made to Series Indebtedness Holders or to make any required deposits of any amounts to be so paid. Upon any such waiver of a default, such default shall cease to exist, and any default arising therefrom shall be deemed to have been remedied for every purpose of this Agreement. No such waiver shall extend to any subsequent or other default or impair any right consequent thereon except to the extent expressly so waived.

11.2 **Protection of Right, Title and Interest of Trust and Series Indebtedness Holders**

- (a) The Trust shall cause this Agreement, all amendments and Supplements hereto and/or all assignments, financing statements, continuation statements and financing change statements and any other necessary documents covering (i) the Trust's right, title and ownership interest in the Trust Assets, and (ii) the Indenture Trustee's Security Interest in the Secured Property to be promptly recorded, registered and filed, and at all times to be kept recorded, registered and filed, all in such manner and in such places as may be required by Requirements of Law fully to preserve, perfect and protect the right, title and ownership interest of the Trust, and the Security Interest of the Indenture Trustee hereunder to all property comprising the Trust Assets and the Secured Property, as the case may be. For greater certainty, so long as Eligible Receivables do not include Receivables payable by Obligors located in the Province of Québec, except as otherwise agreed to by each Rating Agency pursuant to clause (k) of the definition of "Eligible Receivables" in Schedule 1 hereto, the parties hereto agree that the Trust shall not be required to cause any such recording, registration and filing in respect of (i) or (ii) above in the Province of Québec. The Trust shall deliver to the Indenture Trustee file-stamped copies of, or filing receipts for, any document recorded, registered or filed as provided above, as soon as available following such recording, registration or filing. The Seller shall cooperate fully with the Trust in connection with the obligations set forth above and will execute any and all documents reasonably required to fulfil the intent of this subsection 11.2(a).
- (b) If the Seller or the Trust, as the case may be, (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 subsection 11.2(a) above likely to be materially misleading to a reasonable person within the meaning of the PPSA, or (ii) changes its 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 subsection 11.2(a)

above, the Seller (where such change relates to the Seller) shall, within 15 days after a change referred to in (i) or prior to making a change referred to in clause (ii), give the Trust notice of any such change or the Trust (where such change relates to the Trust) 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 Indenture Trustee notice of any such change and the Trust 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 Trust Assets or of the Security Interest of the Indenture Trustee in the Secured Property, as the case may be.

- (c) The Servicer will give the Trust and the Indenture Trustee prompt notice of any relocation of any office from which the Servicer services Receivables or 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, continuation statement or financing change statement or of any new assignment, financing statement or continuation statement and the Trust 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 Trust Assets or the Indenture Trustee's Security Interest in the Secured Property. The Servicer will at all times maintain each office from which it services Receivables within Canada or the United States.

11.3 **Limitation on Rights of Series Indebtedness Holders** No Series Indebtedness Holder shall have any right by virtue of any provisions of this Agreement to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Agreement, unless such Series Indebtedness Holder previously shall have made, and unless Series Indebtedness Holders holding more than 50% of the aggregate outstanding principal amount of all Series Indebtedness (or, with respect to any such action, suit or proceeding that does not relate to all Series, more than 50% of the aggregate outstanding principal amount of the Series Indebtedness of all Series to which such action, suit or proceeding relates) shall have made, a request to the Indenture Trustee to institute such action, suit or proceeding in its own name as Indenture Trustee hereunder and shall have offered to the Indenture Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, and the Indenture Trustee, for 60 days after such request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding; it being understood and intended, and being expressly covenanted by each Series Indebtedness Holder with every other Series Indebtedness Holder, the Indenture Trustee and the Trust, that no one or more Series Indebtedness Holders shall have any right in any manner whatever by virtue or by availing itself or themselves of any provisions of this Agreement to affect, disturb or prejudice the rights of any other Series Indebtedness Holder, or to obtain or seek to obtain priority over or preference to any other Series Indebtedness Holder, or to enforce any right under this Agreement, except in the manner herein provided and for the equal, ratable and common benefit of all Series Indebtedness Holders except as otherwise expressly provided in this Agreement. For the protection and enforcement of the provisions of this section 11.3, each and every Series Indebtedness Holder and the Indenture Trustee shall be entitled to such relief as can be given either at law or in equity.



11.4 **Notices, Payments, Etc.**

- (a) All demands, notices, instructions, directions and communications (collectively, “**Notices**”) under this Agreement and any Supplement shall be in writing and shall be deemed to have been duly given if personally delivered at, mailed by registered mail, return receipt requested, or sent by facsimile transmission (i) in the case of the Seller or the Servicer, to Capital One Bank (Canada Branch) at 5650 Yonge Street, Suite 1300, Toronto, Ontario M2M 4G3, Attention: Principal Officer (facsimile no. 416-228-5113) with a copy to Capital One Bank at 1680 Capital One Drive, McLean, Virginia, 22102, Attention: Director of Securitization (facsimile no. 703-720-2158) (ii) in the case of the Trust, to BNY Trust Company of Canada, at 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, to Computershare Trust Company of Canada, at 100 University Avenue, 9<sup>th</sup> 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. 416-593-5904), (v) in the case of Moody’s Investors Service, Inc., 99 Church Street, 4<sup>th</sup> Floor, New York, New York, 10007, Attention: Monitoring Department (facsimile no. 212-298-7139), or, if by e-mail, [servicerreports@moodys.com](mailto:servicerreports@moodys.com), (vi) in the case of Standard & Poor’s, 84 State Street, 6<sup>th</sup> Floor, Boston, Massachusetts, 02109, Attention: Asset-Backed Surveillance (facsimile no. 617-557-5197) (vii) in the case of the Paying Agent, the Transfer Agent and Registrar to the Indenture Trustee at the address specified in (iii) above, and (viii) to any other person as specified in any applicable Supplement; 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 required or permitted to be given to a Series Indebtedness Holder shall be given by first-class mail, postage prepaid, at the address of such Series Indebtedness Holder as shown in the Register and any notice so mailed within the applicable prescribed time shall be conclusively presumed to have been duly given whether or not such Series Indebtedness Holder receives such notice.
- (c) All Notices to be given to Capital One, as Seller, or Capital One, as Servicer, shall be deemed given if one Notice is provided to the address of Capital One. All Notices to be made to the Seller shall be deemed given if one notice is provided to the address of Capital One. All payments hereunder to Capital One, whether as Seller or as Servicer, shall be made to such account as it may specify in writing.
- (d) 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 or aforesaid).

11.5 **Successors, Assigns, Etc.** This Agreement will inure to the benefit of and be binding upon the parties hereto, the Indebtedness Holders, any Series Enhancer 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.

11.6 **Assignment** Notwithstanding anything to the contrary contained herein, except as provided in section 6.2, this Agreement may not be assigned by the Servicer without the prior consent of Series Indebtedness Holders holding Series Indebtedness evidencing not less than 66-2/3% of the aggregate outstanding principal amount of all Series Indebtedness, *provided* that each Rating Agency shall have been given at least 30 days' prior notice of such assignment.

11.7 **Further Assurances** The Seller, the Trust, the Indenture Trustee and the Servicer agree 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, security agreements, financing statements, continuation statements or financing change statements relating to the Trust Assets or the Secured Property for filing under the provisions of the PPSA of any applicable jurisdiction.

11.8 **No Waiver; Cumulative Remedies** No failure to exercise and no delay in the exercise, on the part of the Trust, the Indenture Trustee or the Indebtedness Holders, 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 by applicable Requirements of Law.

11.9 **Counterparts** This Agreement may be executed in two or more 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.

11.10 **Actions by Indebtedness Holders**

- (a) Wherever in this Agreement a provision is made that an action may be taken or a Notice given by Indebtedness Holders, such action or Notice may be taken or given by any Indebtedness Holder, unless such provision requires the holders of a specific percentage of Indebtedness.
- (b) Any Notice, request, authorization, direction, consent, waiver or other act by any Indebtedness Holder shall bind such Indebtedness Holder and every successor or assign of such Indebtedness Holder in respect of anything done or omitted to be done by the Trust, the Indenture Trustee or the Servicer in reliance thereon, whether or not

notation of such action is made upon the evidence of the Indebtedness owned by such Indebtedness Holder.

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

11.12 **Relationships** The relationship of the Trust and the Indebtedness Holders 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 parties hereto to create a relationship of debtor and creditor and there is no intention to create a relationship of trustee and beneficiary or partnership or agency between the Trust and the Indebtedness Holders.

11.13 **Nonpetition Covenant** Notwithstanding any prior termination of this Agreement, the Servicer, the Indenture Trustee, each Seller and each Supplemental Indebtedness Holder shall not, prior to the date which is one year and one day after the termination of this Agreement with respect to the Trust, acquiesce, petition or otherwise invoke or cause the Trust to invoke the process of any Governmental Authority for the purpose of commencing or sustaining a case against the Trust under any bankruptcy, insolvency or similar law of Canada or a province thereof or appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar office of the Trust or any substantial part of its property or ordering the winding-up or liquidation of the affairs of the Trust.

11.14 **Limitation of Liability**

- (a) The obligations or liabilities of the Trust under this Agreement and any Supplement, including any liability on account of the Indebtedness, 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 Agreement and will enter into each Supplement on behalf of Algonquin Credit Card Trust solely in BNY Trust's capacity as trustee of Algonquin Credit Card Trust and this Agreement and each Supplement 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.

11.15 **Treatment**

The parties hereto acknowledge and agree to treat the Series Indebtedness of each Series or Class as indebtedness of the Trust secured by the Receivables for all purposes and each holder of such Series Indebtedness agrees to treat such Series Indebtedness as indebtedness of the Trust secured by the Receivables for all purposes.

**IN WITNESS WHEREOF**, Capital One, in its capacity as owner of the Capital One Indebtedness, Seller and Servicer, 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)**

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;<sup>1</sup>

“**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

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<sup>1</sup> 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  
Trust Indenture  
Capital One Note**

*This Capital One Note was acquired on a private placement basis in reliance upon exemptions from the prospectus and registration requirements of applicable securities legislation. As a result, any resale of this Capital One Note will be subject to the restrictions (including any applicable hold periods) as set out in such securities legislation.*

THIS CAPITAL ONE NOTE IS NOT PERMITTED TO BE TRANSFERRED, ASSIGNED, EXCHANGED OR OTHERWISE PLEDGED OR CONVEYED EXCEPT IN COMPLIANCE WITH THE TERMS OF THE RECEIVABLES PURCHASE AGREEMENT AND THE TRUST INDENTURE REFERRED TO HEREIN.

No. •

### **ALGONQUIN CREDIT CARD TRUST**

BNY Trust Company of Canada, in its capacity as trustee of ALGONQUIN CREDIT CARD TRUST, without personal liability (in such capacity, the “**Trust**”), for value received hereby acknowledges itself indebted and promises to pay certain amounts to the registered holder hereof on or about the dates specified in, and in the amounts and in the manner specified in, an amended and restated receivables purchase agreement (the “**Receivables Purchase Agreement**”) made as of September 20, 2005 between Capital One Bank (Canada Branch) (“**Capital One**”), the Trust and Computershare Trust Company of Canada, in its capacity as indenture trustee (the “**Indenture Trustee**”), an amended and restated trust indenture (the “**Trust Indenture**”) made as of September 20, 2005 between Capital One, the Trust and the Indenture Trustee, and Supplements entered into pursuant to the Trust Indenture (the Receivables Purchase Agreement, the Trust Indenture and such Supplements are herein collectively referred to as the “**Agreements**”).

This Capital One Note has been issued under the Trust Indenture to evidence the indebtedness of the Trust to Capital One pursuant to the Agreements. The principal amount hereof and the other amounts to be paid hereunder shall be determined in the manner and paid at the times specified in the Agreements. Although a summary of certain provisions of the Agreements is set forth herein, this Capital One Note does not purport to summarize the Agreements and reference is made to the Agreements for information with respect to the nature and extent of the security interests created thereby, the rights of the holders of the Indebtedness, including the Seller Indebtedness, and the rights, duties and obligations of Capital One, the Trust and the Indenture Trustee. Copies of the Agreements may be requested from the Indenture Trustee by writing to the Indenture Trustee at 100 University Avenue, 9<sup>th</sup> Floor, Toronto, Ontario, M5J 2Y1. To the extent not defined herein, the capitalized terms used herein shall have the meanings ascribed to them, respectively, in the Agreements.

This Capital One Note is issued under and is subject to the terms, provisions and conditions of the Agreements, to which Agreements, as amended and supplemented from time to time, Capital One, by virtue of its acceptance hereof, assents and is bound.

Recourse for the indebtedness or other obligations of the Trust under this Capital One Note and the Agreements shall be had only to or from the property and assets mortgaged and charged from time to time under the Trust Indenture and the related Supplements and held by the Indenture Trustee on behalf of the holder of the Capital One Note as security for the Trust’s obligations in favour of such Indebtedness Holder. The Trust and the Secured Property shall not

otherwise be bound by such debts or other obligations, nor shall resort or satisfaction be had or sought to or from any other property of the Trust.

Subject to certain conditions and exceptions specified in the Agreements, the obligations created by the Agreements shall terminate upon the earliest of (a) the date of 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, and (c) in the event of an Insolvency Event under subsection 8.1 of the Trust Indenture in respect of which each Series, in accordance with the related Supplement, elects to sell, dispose of or otherwise liquidate 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.

BNY Trust Company of Canada has entered into the Trust Indenture and issued this Capital One Note in its capacity as trustee of Algonquin Credit Card Trust and not in its personal capacity. The liability of BNY Trust Company of Canada hereunder and under the Trust Indenture is limited to the assets of Algonquin Credit Card Trust. No other property or assets of BNY Trust Company of Canada, whether owned by it in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedures with regard to any obligation hereunder or under the Trust Indenture.

Unless the certificate of authentication hereon has been executed by or on behalf of the Indenture Trustee, by manual or facsimile signature, this Capital One Note shall not be entitled to any benefit under the Agreements or be valid for any purpose.

**IN WITNESS WHEREOF**, the Trust has caused this Capital One Note to be signed by its duly authorized officers.

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

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

Name:

Title:

INDENTURE TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is the Capital One Note described in the within-mentioned Agreements.

**COMPUTERSHARE TRUST COMPANY  
OF CANADA,**

in its capacity as indenture trustee  
and authenticating agent

By: \_\_\_\_\_  
Name:  
Title:



**Exhibit B**  
**to**  
**Trust Indenture**

**Form of Annual Servicer's Note**  
**(To be delivered on or before May 31 of each calendar year**  
**pursuant to section 5.5 of the Trust Indenture)**

## ANNUAL SERVICER'S CERTIFICATE

**TO:** BNY TRUST COMPANY OF CANADA, in its capacity as trustee of ALGONQUIN CREDIT CARD TRUST (in such capacity, the "Trust")

**AND TO:** COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as indenture trustee (in such capacity, the "Indenture Trustee")

**AND TO:** [Each Credit Enhancer]

**AND TO:** [Each Rating Agency]

The undersigned, [name], [office], of Capital One Bank (Canada Branch), in its capacity as servicer (in such capacity, the "Servicer") pursuant to an amended and restated trust indenture (the "Trust Indenture") made as of September 20, 2005 between Capital One Bank (Canada Branch), the Trust and the Indenture Trustee, as supplemented by [Series designation] Supplement made as of [date] between Capital One Bank (Canada Branch), the Trust and the Indenture Trustee, hereby certifies, without personal liability, as follows:

1. This Certificate is furnished pursuant to section 5.5 of the Trust Indenture. Capitalized terms used and not otherwise defined herein which are defined in the Trust Indenture shall have the meaning ascribed to them respectively in the Trust Indenture.
2. The Servicer is the servicer under the Trust Indenture.
3. I am a Servicing Officer and have supervised a review of the activities of the Servicer under the Trust Indenture during the fiscal year ended [December 31,] • (the "Review Period") and have made such other examinations and investigations as are, in my opinion, necessary to make the statements contained herein.
4. To the best of my knowledge, the Servicer has performed in all material respects all of its obligations under the Trust Indenture throughout the Review Period [or, if there has been such a default, set forth in detail (a) the nature of such default, (b) the action taken by the Seller and/or the Servicer, if any, to remedy such default, and (c) the current status of such default].
5. To the best of my knowledge, during the Review Period, no Amortization Event, Series Amortization Event or Event of Default has occurred or has been deemed to have occurred.
6. To the best of my knowledge, during the Review Period, the Trust has not granted, created, incurred, assumed or suffered to exist any Lien on any of the Secured Property [or, if so, set forth in detail the nature of the Lien].

day of •, •. **IN WITNESS WHEREOF**, the undersigned has duly executed this Certificate this •

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**Exhibit C  
to  
Trust Indenture**

**Form of Securities Law Indemnity Covenant**

**SECURITIES LAW INDEMNITY COVENANT**

**CAPITAL ONE BANK (CANADA BRANCH)**

and

**BNY TRUST COMPANY OF CANADA**

and

**BNY TRUST COMPANY OF CANADA**

in its capacity as trustee of

**ALGONQUIN CREDIT CARD TRUST**

and

■

Dated ■

**SELLER'S SECURITIES LAW INDEMNITY COVENANT** dated ■ by **CAPITAL ONE BANK (CANADA BRANCH)** ("**Capital One**"), a Canadian branch of **CAPITAL ONE BANK**, a Virginia banking corporation, in favour of **BNY TRUST COMPANY OF CANADA** (the "**Issuer Trustee**"), a trust company incorporated under the laws of Canada, **BNY TRUST COMPANY OF CANADA**, in its capacity as trustee of **ALGONQUIN CREDIT CARD TRUST** (in such capacity, the "**Trust**") and ■, ■ and ■ (collectively the "**Underwriters**").

WHEREAS pursuant to the provisions of an amended and restated trust indenture dated as of September 20, 2005 (as amended and supplemented, the "**Trust Indenture**") and a supplemental indenture dated as of ■ (the "**Series ■ Supplement**"), in each case, between the Trust, Capital One and the Indenture Trustee, the Trust will, on the date hereof, create and issue \$■, ■% Series ■ Class A Fixed Rate Notes (the "**Class A Notes**"), \$■, ■% Series ■ Class B Fixed Rate Notes (the "**Class B Notes**") and \$■, ■% Series ■ Class C Fixed Rate Notes (the "**Class C Notes**" and together with the Class B Notes, the "**Subordinated Notes**", and the Subordinated Notes together with the Class A Notes, the "**Notes**"), to the purchasers thereof (collectively, the "**Purchasers**") in the manner provided in the Trust Indenture and the Underwriting Agreements (as defined herein);

AND WHEREAS in furtherance of the issuance of the Notes by the Trust, a (final) short form prospectus dated ■ relating to the Notes (together with the documents incorporated by reference therein, the "**Prospectus**") was filed by Capital One, as administrative agent, on behalf of the Trust with the securities regulatory authorities in each of the Qualifying Jurisdictions (as defined herein);

AND WHEREAS pursuant to the Prospectus and in accordance with applicable Securities Laws, commencing on the date hereof, the Purchasers have certain statutory rights of rescission or actions for damages where the Prospectus or any Supplementary Materials contains a Misrepresentation (as defined herein);

AND WHEREAS Capital One has agreed to indemnify each of the Issuer Trustee, the Trust and the Underwriters from and against all Claims (as defined herein) which any of them may suffer or incur with respect to, among other things, any Misrepresentation (as defined herein) contained in the Prospectus or any Supplementary Material (other than, in the case of the Underwriters, any statement or information furnished by and relating solely to any Underwriter and, in the case of the Trust and the Issuer Trustee, any statement or information relating solely to the Issuer Trustee).

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Capital One, each of the parties hereto agree as follows:

**1. Definitions**

In this Indemnity Agreement, the following terms have the following meanings:

"**Claim**" means any and all losses, claims, expenses, fees, costs, damages, obligations, payments and liabilities;

"**Class A Notes Underwriting Agreement**" means the underwriting agreement dated ■ between the Trust, Capital One and the Underwriters relating to the offering of the Class A Notes;

"**Indemnified Parties**" means each of the Trust, the Issuer Trustee and each of the Underwriters, and each of their respective officers, directors, employees and agents, and any person to whose benefit this Indemnity Agreement shall enure or upon whom it shall be binding pursuant to the terms hereof;

"**Indemnity Agreement**" means this agreement as amended, modified, restated or replaced from time to time, and the expressions "**herein**", "**hereof**", "**hereto**", "**hereunder**" and similar expressions refer to this Indemnity Agreement and not to any Article, Section, paragraph, subparagraph, or clause hereof;

"**Material Contracts**" means, collectively, the Deed of Settlement, the Administration Agreement, the Trust Indenture, the Series ■ Supplement, the Receivables Purchase Agreement, the Underwriting Agreements and this Indemnity Agreement, as each of the same may be amended, restated or supplemented from time to time;

"**Misrepresentation**" has the meaning attributed to it in Section 7;

"**Obligations**" has the meaning attributed to it in Section 8;

"**Subordinated Notes Underwriting Agreement**" means the underwriting agreement dated ■ between the Trust, Capital One and ■ relating to the offering of the Subordinated Notes;

"**Qualifying Jurisdictions**" has the meaning attributed to it in Section 9; and

"**Underwriting Agreements**" means, collectively, the Class A Notes Underwriting Agreement and the Subordinated Notes Underwriting Agreement.

All capitalized terms used in this Indemnity Agreement which are not otherwise defined have the meanings ascribed to them in the Class A Notes Underwriting Agreement.

## **2. Extended Meanings**

In this Indemnity Agreement, words importing the singular number include the plural and vice versa and words importing gender include all genders.

## **3. Headings**

The division of this Indemnity Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Indemnity Agreement. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles or Sections are references to Articles and Sections of or to this Indemnity Agreement.

#### **4. References to Sections and Articles**

Unless otherwise provided, all references herein to Sections or Articles are references to Sections and Articles of this Indemnity Agreement.

#### **5. Proper Law of Indemnity Agreement**

This Indemnity Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

#### **6. Invalidity of Provisions**

Save and except for any provision or covenant contained herein which is fundamental to the subject matter of this Indemnity Agreement (including, without limitation, those that relate to the payment of money), the invalidity or unenforceability of any provision or covenant hereof or herein contained will not affect the validity or enforceability of any other provision or covenant hereof or herein contained and any such invalid or unenforceable provision or covenant will be deemed to be severable.

#### **7. Representation and Warranty**

Capital One represents and warrants that all information and statements (except any information or statement furnished by and relating solely to any of the Underwriters) in the Prospectus and any Supplementary Material are true and correct in all material respects and that the Prospectus and any Supplementary Material contains no untrue statement of a material fact (as defined in applicable Securities Laws) or does not omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the circumstances in which it was made (except any information or statement furnished by and relating solely to any of the Underwriters) (collectively, a "**Misrepresentation**").

#### **8. Fees and Expenses Related to Indemnification**

The obligation of Capital One to indemnify the Indemnified Parties hereunder shall include: (a) any and all reasonable charges, fees, costs and expenses owing by the Indemnified Parties of any kind in respect of any Claim, including without limitation any interest, fine or penalties payable; (b) any and all reasonable out-of-pocket expenses incurred by the Indemnified Parties in investigating or attempting to avoid any Claims or in enforcing any of their rights under this Indemnity Agreement; and (c) all other amounts owing by Capital One to the Indemnified Parties pursuant to the provisions of this Indemnity Agreement. All of the foregoing obligations are collectively referred to herein as the "**Obligations**".

#### **9. Indemnification**

Capital One hereby irrevocably agrees to protect, indemnify and save harmless each of the Indemnified Parties from and against all Claims (other than a loss of profits in connection with the distribution of the Notes) which any of the Indemnified Parties may suffer, incur or be the subject of (whether under the provisions of any statute or otherwise), from time to time, and which are caused by or arising directly or indirectly by reason of, from or in direct consequence of:



- (a) any breach of any material representation or warranty, or any non-fulfilment of any covenant or agreement of Capital One contained in this Indemnity Agreement or any other Material Contract;
- (b) any information or statement in the Preliminary Prospectus, the Prospectus or any Supplementary Material, containing a Misrepresentation (except any information or statement furnished by and relating solely to any of the Underwriters); and
- (c) any order made or any inquiry, investigation or proceeding commenced or threatened by any securities regulatory authority or other governmental authority in Canada or in any of the jurisdictions in which the Notes are offered for sale (the "**Qualifying Jurisdictions**") based upon any alleged circumstance described in Subsection 9(b).

#### **10. Method of Asserting Claims**

- (a) If any Indemnified Party receives notice of or otherwise becomes aware of a Claim against it for which it will seek indemnification, the Indemnified Party concerned shall notify Capital One of the nature of such Claim in writing, which notice shall specify, in reasonable detail to the extent then known, the nature and estimated amount of the Claim. If Capital One receives notice of or otherwise becomes aware of a Claim, it shall forthwith notify the relevant Indemnified Party of such Claim in writing, which notice shall specify, in reasonable detail to the extent then known, the nature and estimated amount of the Claim.
- (b) Capital One shall, forthwith after the receipt of notice of a Claim from an Indemnified Party or the delivery of notice of a Claim to an Indemnified Party, as the case may be, either pay and settle such Claim, or, subject as hereinafter provided, be entitled (but not required) to assume the defence on behalf of the Indemnified Party of any suit brought to enforce such a Claim; provided, however, that the defence shall be through legal counsel engaged by Capital One and acceptable to the Indemnified Party, acting reasonably, and no admission of liability or settlement shall be made by Capital One or the Indemnified Party without, in each case, the prior written consent of Capital One and the Indemnified Party, such consent not to be unreasonably or arbitrarily withheld or delayed. An Indemnified Party shall have the right to employ separate counsel in any such suit and participate in the defence thereof but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless: (a) the employment of such counsel has been authorized by Capital One; or (b) Capital One has not, within 15 Business Days, or such longer period of time is reasonable in the circumstances, after receiving written notice, employed counsel to have charge of the defence of such action; or (c) the named parties to any such suit include both the Indemnified Party and Capital One and the Indemnified Party shall have been provided with a written opinion of its counsel advising it that there may be one or more legal defences available to the Indemnified Party which are different from or in addition to those available to Capital One or an adversity of interest may exist between the Indemnified Party and Capital One which makes representation by counsel chosen by Capital One not advisable (in which case Capital One shall not have the right to assume the defence of such suit on behalf of

the Indemnified Party but Capital One shall be liable to pay the reasonable fees and expenses of counsel for the Indemnified Party and such fees and expenses shall be considered Obligations for the purposes of this Indemnity Agreement).

- (c) The prior written consent of such Indemnified Party shall be required, such consent not to be unreasonably or arbitrarily withheld or delayed, for any consent to judgment or other similar act, or any settlement Capital One proposes to enter into in respect of a Claim, which provide for or would result in: (a) the granting of equitable relief against such Indemnified Party; (b) any admission or deemed admission of liability or default on the part of such Indemnified Party; or (c) the granting of any other relief or remedy which, in the opinion of such Indemnified Party acting reasonably, would otherwise impair the reputation of such Indemnified Party.
- (d) In the event of any Claim, the defence of which is being undertaken and controlled by Capital One, the relevant Indemnified Parties will use all reasonable efforts to make available to Capital One those employees and representatives whose assistance, testimony or presence is necessary to assist Capital One in evaluating and in defending any such Claim; provided that Capital One shall be responsible for the reasonable out-of-pocket expense associated with any employees and representatives made available by an Indemnified Party to Capital One hereunder, which expense shall be equal to an amount to be mutually agreed upon per person, per hour or per day for each day or portion thereof that such employees or representatives are assisting Capital One and which expenses shall not exceed the actual cost to such Indemnified Party associated with such employees or representatives. Such expense shall be added to and form part of the Obligations.
- (e) The relevant Indemnified Parties shall make available to Capital One or its representatives on a timely basis, all documents, records and other materials in the possession of such Indemnified Parties, at the expense of Capital One, reasonably required by Capital One for its use in defending any Claim and shall otherwise cooperate on a timely basis with Capital One in the defence of such Claim.
- (f) If Capital One is unsuccessful in its defence of a Claim in whole or in part or fails to comply with the terms of settlement pertaining thereto and the person making such Claim is entitled to assert a right to recover any amount from an Indemnified Party, any amount paid by such an Indemnified Party in satisfaction of such Claim shall be added to and form part of the Obligations.
- (g) If Capital One does not reasonably undertake, conduct and control the settlement or defence of a Claim forthwith following the receipt of notice of such Claim, or if Capital One is not reasonably contesting such Claim, the relevant Indemnified Party shall have the right, but not the obligation, upon notice to Capital One to contest, settle or compromise the Claim. Any payment made by such Indemnified Party to settle or compromise such Claim shall be added to and form part of the Obligations, provided that any settlement or compromise of such Claim must be consented to by Capital One, such consent to not be unreasonably withheld.

- (h) Subject to Subsection 10(b) hereof, Capital One shall make payment of the Obligations in respect of any Claim forthwith after payment of such Claim is properly made by an Indemnified Party and a demand for payment is made in writing by such an Indemnified Party to it.
- (i) Capital One hereby waives its rights to recover contribution from any of the Underwriters or any other Indemnified Party with respect to any liability of Capital One by reason of or arising out of any Misrepresentation contained in the Prospectus (except any information or statement furnished by and relating solely to any of the Underwriters).
- (j) Notwithstanding Section 9, the parties acknowledge that Capital One shall not be responsible with respect to any action or failure to act which constitutes acting in bad faith, negligence or wilful misconduct on the part of any Indemnified Party. In the event and to the extent that a court of competent jurisdiction in a final judgement that has become non-appealable determines that an Indemnified Party was negligent, acted in bad faith or was guilty of wilful misconduct in connection with a Claim in respect of which Capital One has advanced funds to the Indemnified Party pursuant to this indemnity, such Indemnified Party shall reimburse such funds to Capital One and thereafter this indemnity shall not apply to such Indemnified Party in respect of such Claim.
- (k) Notwithstanding any other section or provision contained in this Indemnity Agreement, the rights to indemnity and contribution contained in this section shall survive the Closing Date, the resignation or removal of the Issuer Trustee and the termination of the Trust, and shall continue in full force and effect, unaffected by any disposition or re-distribution by any Purchasers of the Notes and shall be in addition to any other rights which the Indemnified Parties may otherwise have.

## **11. Subsequent Payments**

If, after payment by Capital One of any Claim, any Indemnified Party should receive any payment in respect thereof from a third party, such Indemnified Party shall hold such payment in trust for, and promptly upon receipt remit such payment to, Capital One.

## **12. Binding Effect**

The provisions of this Indemnity Agreement shall be binding upon and enure to the benefit of the Trust, the Issuer Trustee and the Underwriters and their successors and permitted assigns. Each of the undersigned acknowledges that the Trust is assigning its and only its rights hereunder to the Indenture Trustee as collateral security for the performance of the Trust's obligations pursuant to the Trust Indenture. Capital One hereby consents to such assignment and agrees that the Indenture Trustee may enforce the representations, warranties, covenants and indemnity obligations of Capital One provided for herein against Capital One in the Trust's place and stead.

**13. Successors and Assigns of Capital One**

Any change or changes in the name or reorganization (whether by way of reconstruction, consolidation, amalgamation, merger, transfer, sale, lease or otherwise) of Capital One or its business shall not affect or in any way limit or lessen the liability of Capital One hereunder. This Indemnity Agreement shall be binding upon Capital One and its successors and assigns.

**14. No Limitation**

This Indemnity Agreement is in addition to and without limitation of any other indemnity or indemnities made in favour of the Trust, the Issuer Trustee, the Underwriters or the other Indemnified Parties in connection with the transactions contemplated by the Prospectus or any of the Material Contracts.

**15. Notices**

All notices and other communications provided for hereunder must, unless otherwise stated herein, be in writing and telecopied or delivered, as to each party hereto, at its address set forth under its name in the Underwriting Agreement, (and for the Issuer Trustee, at the address set out in the Underwriting Agreement for the Trust) or at such other address designated by such party in a written notice in the manner contemplated in this Section 15 to the other parties hereto. Any such notice or other communication shall be deemed to have been given as of the date received, if received prior to 4:00 p.m. on a Business Day; if received on a day other than a Business Day or on a Business Day after 4:00 p.m., any such notice shall be deemed to have been given on the next following Business Day.

**16. Counterparts**

This Indemnity Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.

**IN WITNESS WHEREOF** the parties hereto duly execute this Indemnity Agreement as of the date first above written.

**CAPITAL ONE BANK (CANADA  
BRANCH)**

by \_\_\_\_\_

Name: Robert Livingston

Title: Principal Officer

**BNY TRUST COMPANY OF  
CANADA**

by \_\_\_\_\_

Name: Henry Hamilton II

Title: Trust Officer

**BNY TRUST COMPANY OF  
CANADA in its capacity as TRUSTEE  
OF ALGONQUIN CREDIT CARD  
TRUST**

by \_\_\_\_\_

Name: Henry Hamilton II

Title: Trust Officer

■

by \_\_\_\_\_

Name: ■

Title: ■

■

by \_\_\_\_\_

Name: ■

Title: ■

■

by \_\_\_\_\_

Name: ■

Title: ■

**Exhibit D  
to  
Trust Indenture**

**Form of Successor Servicer Confidentiality Agreement**

**CONFIDENTIALITY AGREEMENT  
FOR  
CONFIDENTIAL INFORMATION OF  
CAPITAL ONE BANK (CANADA BRANCH)**

**THIS AGREEMENT** relates to the protection of confidential information belonging to Capital One Bank (Canada Branch) (the “**BANK**”) a branch of Capital One Bank, a Virginia banking corporation licensed under the laws of Canada, and transmitted by the BANK to • , as Successor Servicer (the “**RECIPIENT**”), pursuant to the terms of the amended and restated receivables purchase agreement (as amended, restated or replaced from time to time, the “**Receivables Purchase Agreement**”) dated as of September 20, 2005 between the BANK, BNY Trust Company of Canada, in its capacity as trustee of Algonquin Credit Card Trust (the “**Trust**”) and Computershare Trust Company of Canada, as indenture trustee (the “**Indenture Trustee**”) and the amended and restated trust indenture dated as of September 20, 2005 between the BANK, the Trust and the Indenture Trustee (as supplemented by any Supplement, amended, restated or replaced from time to time, the “**Trust Indenture**”);

**WHEREAS** Section 7.1 of the Trust Indenture requires a Successor Servicer to enter into a confidentiality agreement with the BANK as Servicer;

**AND WHEREAS** the BANK as Servicer has determined that compliance with the terms of the Trust Indenture shall require the BANK as Servicer to disclose to the Successor Servicer information which the BANK as Servicer reasonably deems to be confidential and, as a result, the RECIPIENT as Successor Servicer is required to enter into a confidentiality agreement pursuant to the provisions of the Trust Indenture;

**NOW THEREFORE IN CONSIDERATION** of the BANK transmitting Confidential Information (as defined below) to the RECIPIENT and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the BANK and the RECIPIENT agree as follows:

1. The RECIPIENT hereby confirms and agrees that it, in its capacity as Successor Servicer, is bound by all terms and conditions specified in the Receivables Purchase Agreement and the Trust Indenture relating to the servicing of the Receivables and the role of the Successor Servicer.
2. The RECIPIENT shall not disclose such Confidential Information or any part thereof to any third party unless required to do so by a court of competent jurisdiction or other similar governmental agency or tribunal and the RECIPIENT shall use its best efforts to prevent the inadvertent disclosure of Confidential Information or any part thereof to any third party using a standard of care no less than the degree of care that the RECIPIENT would be reasonably expected to employ for its own similar confidential information, and, in connection therewith, shall allow the BANK to inspect the RECIPIENT’s security and confidentiality arrangements from time to time during normal business hours.
3. The RECIPIENT shall not use or derive any direct or indirect benefit from such Confidential Information or any part thereof except in its role as Successor Servicer.



4. For purposes of this Agreement, “**Confidential Information**” consists of all information provided in written, electronic or oral form before or after the date hereof in respect of the continued servicing of the Receivables to which the RECIPIENT is provided access by the BANK or on behalf of the BANK or by any affiliate of the BANK.

5. The obligations herein shall terminate with respect to any particular portion of Confidential Information which the RECIPIENT can document (a) was in the public domain at the time of the BANK’s communication thereof to the RECIPIENT, (b) entered the public domain through no fault of the RECIPIENT, (c) was in the RECIPIENT’s possession free of any obligation of confidence at the time of the BANK’s communication thereof to the RECIPIENT, or (d) was rightfully communicated to the RECIPIENT free of any obligation or confidence subsequent to the time of the BANK’s first communication thereof to the RECIPIENT.

6. The RECIPIENT shall inform its personnel, agents and advisors who receive Confidential Information of the terms of this Agreement and will use all reasonable efforts to ensure that they comply with the terms hereof.

7. The RECIPIENT acknowledges that its right to use and re-disclose information concerning consumers is limited by the *Gramm Leach Bliley Act of 1999, P.L. 106-102, 113 Stat. 1138* the *Personal Information Protection and Electronic Documents Act* (Canada) and other applicable federal, provincial and state laws and regulations regarding privacy and the confidentiality of consumer records, and the RECIPIENT agrees to abide by the same with respect to any non-public personal/consumer information that the RECIPIENT may receive from the BANK in connection with this Agreement. In the event that the RECIPIENT requests or is provided with personally identifiable customer information in relation to this Agreement, the RECIPIENT agrees that provision of such information shall be predicated by the execution of a separate consumer privacy and data security agreement in form and content acceptable to the BANK, at its sole discretion.

8. Capitalized terms used herein which are not defined here shall have the meanings ascribed thereto in the Receivables Purchase Agreement or the Trust Indenture, as applicable.

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

10. This Agreement may be executed in any number of counterparts, each of which shall be an original, but which together shall constitute one and the same instrument.

20. IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of •,

**CAPITAL ONE BANK (CANADA  
BRANCH)**

By: \_\_\_\_\_  
Name:  
Title:

• [SUCCESSOR SERVICER]

By: \_\_\_\_\_  
Name:  
Title: