

THE CANADA TRUST COMPANY

as Issuer Trustee of

CARDS II TRUST

**AMENDED AND RESTATED
DECLARATION OF TRUST**

Made as of September 16, 2004

STIKEMAN ELLIOTT LLP

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AMENDED AND RESTATED DECLARATION OF TRUST

AMENDED AND RESTATED DECLARATION OF TRUST made as of ●, 2004 by The Canada Trust Company, a trust company established under the laws of Canada (the “**Issuer Trustee**”).

WHEREAS the Issuer Trustee established the Trust (as defined below) for the purpose of carrying on the activities described in a declaration of trust (the “**Original Declaration of Trust**”) made as of August 31, 2004, in order to produce income for the benefit of the Beneficiary (as defined below);

AND WHEREAS the Issuer Trustee desires to amend and restate the Original Declaration of Trust;

NOW THEREFORE the Issuer Trustee hereby declares that it holds in trust as trustee the sum of TEN DOLLARS (\$10.00) contributed by it in connection with the execution by it of the Original Declaration Trust and all property of every nature and kind which it may acquire in its capacity as trustee of the Trust, and all income therefrom, for the benefit of the Beneficiary, in accordance with and subject to the provisions of this Declaration of Trust.

ARTICLE 1 INTERPRETATION

Section 1.1 Definitions

In this Declaration of Trust, the following terms have the following meanings:

“**Administration Agreement**” means the administration agreement between the Issuer Trustee and the Administrative Agent made as of even date, as such agreement may be amended, supplemented, modified, restated or replaced from time to time;

“**Administrative Agent**” means CIBC, its assigns and any successor administrative agent to the Trust appointed in replacement thereof as permitted under the Administration Agreement;

“**Affiliate**” means, with respect to any specified Person, any other Person controlling, controlled by or under common control with such specified Person and, for the purposes of this definition, “**control**” means, in respect of any specified Person, the power to direct the management and policies of such 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;

“Annual Net Income of the Trust” means, in respect of any fiscal year, the income of the Trust for such fiscal year as computed in accordance with Canadian generally accepted accounting principles and after deducting all expenses properly incurred by the Issuer Trustee in such fiscal year including all fees payable to the Administrative Agent or any other Person providing services to the Issuer Trustee;

“Asset Interests” means (i) the Ownership Interests purchased by the Trust pursuant to the Pooling and Servicing Agreement and one or more Series Purchase Agreements including, without limitation, undivided co-ownership interests in Receivables originated or acquired by the Originator; and (ii) any other rights, interests and benefits acquired by the Trust pursuant to the terms of the Programme Agreements;

“Beneficiary” means any one or more charities registered at the relevant time under the ITA (other than any registered charity which is a trust), which are members or otherwise part of or entitled to distributions from the United Way of Greater Toronto or any successor to such organization, from time to time designated in writing by the Issuer Trustee in consultation with the Administrative Agent on an annual basis or upon the termination of the Trust, and any successor of any such charity which is also a registered charity under the ITA (other than any registered charity which is a trust), or, should any such charity cease to exist or decline to accept a payment, such other charity registered under the ITA (other than any registered charity which is a trust), as the Issuer Trustee in its sole discretion but in consultation with the Administrative Agent may designate in writing from time to time to be the recipient of the Trust Property;

“Business Day” means any day of the year, other than a Saturday or Sunday or other day on which banks are required or authorized to be closed in Toronto, Ontario;

“CIBC” means Canadian Imperial Bank of Commerce, a Canadian chartered bank;

“Claim” has the meaning ascribed thereto in Section 6.3;

“Credit Enhancement” means any form of credit enhancement (howsoever characterized) for any Obligations Secured or any Asset Interests including, without limitation, any letter of credit, insurance policy, surety bond, cash reserve account, spread account, guaranteed rate agreement, liquidity facility, tax protection agreement or other similar agreement established for the benefit of the lender of money or the holders of such Notes, as applicable, but excluding, for greater certainty, Subordinated Notes;

“Credit Enhancement Agreement” means any credit enhancement agreement entered into between the Trust or the Custodian and one or more Persons providing Credit Enhancement to the Trust or the Custodian;

“Credit Enhancer” means any Person providing Credit Enhancement to the Trust or the Custodian pursuant to a Credit Enhancement Agreement and any successor or assign of such Person;

“Custodial Agreement” means the custodial agreement made as of April 17, 1998 among the Originator, the Trust, the Custodian and the Indenture Trustee, as amended, supplemented, modified, restated or replaced from time to time;

“Custodian” means Computershare Trust Company of Canada, in its capacity as agent and nominee under the Pooling and Servicing Agreement and any successor agent appointed in accordance with the terms of such agreement;

“Dealer” means one or more Persons (other than the Issuer Trustee or the Originator) who have entered into an agreement with the Trust for the purpose of facilitating the sale and distribution of Notes;

“Declaration of Trust”, “this Declaration of Trust”, “herein”, “hereof”, “hereto”, “hereunder” and similar expressions refer to this amended and restated Declaration of Trust, as the same may be amended, supplemented, modified, restated or replaced from time to time hereafter, and not to any particular Article, Section or paragraph hereof and, unless otherwise indicated, references to Articles, Sections, paragraphs and clauses are to Articles, Sections, paragraphs and clauses of this Declaration of Trust;

“Eligible Investments” has the meaning ascribed thereto in the Pooling and Servicing Agreement; provided that, no investments shall be made which do not otherwise qualify as investments which, pursuant to applicable accounting guidelines, are permissible investments for a qualified special purpose entity pursuant to Canadian generally accepted accounting principles;

“Final Settlement Date” means any date identified as such in a Series Purchase Agreement;

“Hedging Agreement” means any agreement evidencing a rate swap transaction, basis swap, forward rate transaction, commodity swap, equity or equity index swap, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction or any other similar transaction or any combination of these

transactions entered into in accordance with and subject to the terms of the Programme Agreements;

"Indenture Trustee" means BNY Trust Company of Canada, in its capacity as indenture trustee under the Trust Indenture and any successor indenture trustee appointed in accordance with the terms thereof;

"Issuer Trustee" means The Canada Trust Company and any successor thereto appointed pursuant to Article 5;

"ITA" means the *Income Tax Act* (Canada), as the same may be amended, restated or re-enacted from time to time;

"NIP Agent" means Canadian Imperial Bank of Commerce, a Canadian chartered bank, in its capacity as note issuance and payment agent and any successor agent appointed in accordance with the terms thereof;

"Noteholders" has the meaning ascribed thereto in the Trust Indenture.

"Notes" means the asset-backed notes from time to time issued pursuant to the Trust Indenture;

"Obligations Secured" means all present and future debts, expenses and liabilities, direct or indirect, absolute or contingent, due, owing or accruing due or owing from time to time by the Trust to the Specified Creditors in their capacity as such. For greater certainty, amounts owing to any Specified Creditors by the Trust, at any time, shall include (i) the unpaid face amount of any Notes issued on a discount basis, discounted to their present value using a discount rate equivalent to the yield to maturity of such Notes when it was issued; (ii) the principal amount together with the accrued and unpaid interest on interest bearing Notes; and (iii) accrued fees, whether or not then due and payable;

"Original Declaration of Trust" has the meaning ascribed thereto in the first recital to this Declaration;

"Originator" means CIBC or any of its Affiliates and their respective successors and assigns;

"Ownership Interest" has the meaning ascribed thereto in the Pooling and Servicing Agreement;

"Person" means any individual, corporation, estate, partnership, trust (including any beneficiary thereof), joint venture, association, joint stock company, unincorporated organization, government (or any agency or political subdivision thereof), or any other entity;

“Pooling and Servicing Agreement” means the amended and restated pooling and servicing agreement dated as of September 14, 2004 between CIBC, as Seller and initial Servicer (as such terms are defined therein) and the Custodian, as amended, supplemented, modified, restated or replaced from time to time;

“Programme Agreements” means, at any time, collectively, the Trust Indenture, this Declaration of Trust, the Series Purchase Agreements, Remittance Notices, Administration Agreement, the Pooling and Servicing Agreement, the Custodial Agreement and all Hedging Agreements, Servicing Agreements, Subordinated Loan Agreements, Credit Enhancement Agreements, Underwriting Agreements, Related Supplements and indemnities of the Originator in favour of the Trust in effect at such time;

“Rating Agencies” means at any time the credit rating agencies which at the request of the Trust are rating the Notes;

“Receivable” has the meaning ascribed thereto in the Pooling and Servicing Agreement;

“Records” means all contracts, books, records and other documents and information, including, without limitation, computer programs, tapes, disks, punch cards, data processing software and related property and rights, maintained with respect to, but solely to, the assets of the Trust;

“Related Supplement” means a supplemental indenture under the Trust Indenture creating and providing for the issuance of a Series, as amended, supplemented, modified, restated or replaced from time to time;

“Remittance Notice” has the meaning ascribed thereto in the Pooling and Servicing Agreement;

“Reserve” means an amount or amounts paid or otherwise contributed by, or held back from payments otherwise due to, the Originator under a Series Purchase Agreement which protect the Trust against losses or shortfalls;

“Series” has the meaning ascribed thereto in the Pooling and Servicing Agreement;

“Series Purchase Agreement” has the meaning ascribed thereto in the Pooling and Servicing Agreement;

“Servicer” means a Servicer designated to collect payments in respect of Asset Interests and to perform other tasks associated therewith under the Pooling and Servicing Agreement or a Servicing Agreement;

“Servicing Agreement” means any agreement entered into between the Trust and any Person providing for the present or future servicing of Asset Interests;

“Specified Creditors” means, collectively, Noteholders, Credit Enhancers, the Administrative Agent, the NIP Agent, the Indenture Trustee, the Custodian, counterparties to Hedging Agreements, the Issuer Trustee, the Originator (but only with respect to payments owing in respect of Reserves and under Subordinated Loan Agreements and not for any other amount due to the Originator), other lenders pursuant to Subordinated Loan Agreements, Dealers and Servicers (other than the Originator);

“Subordinated Loan Agreement” means any loan agreement between the Originator and the Trust, pursuant to which the Originator lends money to the Trust for the purpose of financing the payment by the Trust of expenses payable by the Trust in connection with the transactions contemplated pursuant to the Programme Agreements;

“Subordinated Notes” means any Class of Notes of a Series which are, pursuant to the Related Supplement, subordinate and junior in right of payment to the Notes of any other Class of such Series;

“Trust” means CARDS II Trust, a trust established under the laws of the Province of Ontario pursuant to this Declaration of Trust;

“Trust Activities” means the activities of the Trust described in Section 2.2;

“Trust Company” means a federally or provincially incorporated trust company licensed to carry on business in all provinces and territories of Canada and which is resident in Canada for purposes of the ITA,

“Trust Indenture” means the trust indenture made as of even date between the Trust and the Indenture Trustee, as amended, supplemented, modified, restated or replaced from time to time, and any other trust indenture (together with any supplemental indentures relating thereto) entered into by the Trust in connection with the issuance of asset-backed notes by the Trust;

“Trust Property” means, as of any particular time, all assets of the Trust and all property, real, personal or otherwise, tangible or intangible, which has been transferred, conveyed or paid to, or acquired by the Trust, including all income, earnings, profits and gains therefrom, and which at such time is owned or held by the Trust; and

“Underwriting Agreement” means any underwriting, agency or other agreement providing for the sale and distribution of Notes by one or more Dealers.

Section 1.2 Extended Meanings

In this Declaration of Trust, words importing the singular number also include the plural and vice versa and words importing any gender include all genders. A reference in this Declaration of Trust to any agreement, instrument or declaration means such agreement, instrument or declaration as the same may be amended, supplemented, modified, restated or replaced from time to time.

Section 1.3 Headings

Article and Section headings are not to be considered part of this Declaration of Trust and are included solely for convenience of reference.

Section 1.4 Proper Law

Subject to Section 10.1, this Declaration of Trust will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

Section 1.5 Invalidity of Provisions

The invalidity or unenforceability of any provision or covenant contained in this Declaration of Trust 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.

Section 1.6 References to Acts of the Trust

For greater certainty, where any reference is made in this Declaration of Trust to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty by or with respect to either (i) the Trust; or (ii) the Issuer Trustee, such reference will be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty by or with respect to, the Issuer Trustee as trustee of the Trust.

Section 1.7 References to Declaration of Trust, etc.

- (1) This Declaration sets out the Original Declaration of Trust as amended and restated by the Issuer Trustee from and including the date hereof.
- (2) Any and all references to the Declaration of Trust in any of the Programme Agreements shall mean and refer to the Original Declaration of Trust as amended and restated hereby

ARTICLE 2 PURPOSE OF THE TRUST

Section 2.1 Purpose of the Trust

The purpose of the Trust is to establish and carry on business activities for the benefit of the Beneficiary and to distribute the Trust Property in accordance with Article 9 and not for any religious, charitable, educational or public purpose.

Section 2.2 Activities of the Trust

The Trust will carry on its business activities for the benefit of the Beneficiary, all in accordance with and subject to the terms of the Programme Agreements. The business activities of the Trust will be the purchase, acquisition, disposition and administration of Asset Interests, all in accordance with and subject to the terms of the Programme Agreements, which purchase or acquisition is to be funded through the borrowing of money, or the issuance of promissory notes, debt securities or other debt instruments, including, without limitation, the issuance of Notes by private placement, public offering or otherwise. The activities of the Trust shall include all such other activities as may be reasonably incidental to the foregoing or necessary in connection with the performance by the Trust of its obligations under the Programme Agreements. The Trust shall not engage directly or indirectly in any activity other than the activities described in this Section 2.2.

ARTICLE 3 CHARACTERISTICS OF THE TRUST

Section 3.1 Name and Head Office

The English form of the name of the Trust is "CARDS II Trust" and the French form of the name of the Trust is "Fiducie de [CARDS II](#)". The Trust may use and may be legally designated by either the English form or the French form of its name. Should the Issuer Trustee determine that the use of such name is not practicable, legal or convenient, it may use such other designation or adopt such other name for the Trust as it deems proper and the Trust may hold property and conduct the Trust Activities under such other designation or name. The head office, chief executive office, chief place of business and situs of administration of the Trust will initially be situated at the offices of the Issuer Trustee situated at 79 Wellington Street West, 8th Floor, P.O. Box 1, Toronto-Dominion Centre, Toronto, Ontario M5K 1A2.

Section 3.2 Nature of the Trust

The Trust is not and is not intended to be, will not be deemed to be and will not be treated as a general partnership, limited partnership, syndicate, association, joint venture, co-tenancy arrangement, company or corporation, nor will the Issuer Trustee or the Beneficiary or any of them for any purpose be, or be deemed to be, or be treated in any way whatsoever as, liable or responsible hereunder as partners or

joint venturers. The Issuer Trustee will not be, or be deemed to be, the agent of the Beneficiary. The relationship of the Beneficiary to the Issuer Trustee will be solely that of the beneficiary of the Trust and the rights of the Beneficiary will be limited to those expressly conferred upon it by this Declaration of Trust and, for greater certainty, the Issuer Trustee will be entitled to deal with the Trust Property in the manner provided in this Declaration of Trust without the consent of or approval from or notice to the Beneficiary.

ARTICLE 4 RIGHTS AND POWERS OF ISSUER TRUSTEE

Section 4.1 General Rights and Powers

Subject to the specific restrictions and limitations set forth in this Declaration of Trust and notwithstanding the provisions of the *Trustee Act* (Ontario) or any other similar legislation in any jurisdiction, the Issuer Trustee will have, without the necessity of authorization by, and free from any power or control on the part of, the Beneficiary, full, exclusive and absolute power, control and authority over the Trust Property and the Trust Activities to the same extent as if the Issuer Trustee were the sole and absolute owner thereof in its own right including, without limitation, such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the Trust Activities in accordance with the Programme Agreements with such powers of delegation as may be permitted by this Declaration of Trust, including the right, power and authority to amend this Declaration of Trust subject to and in accordance with the terms hereof and to appoint, employ or contract with any Person as the Issuer Trustee may deem necessary, appropriate or desirable for the transaction of the Trust Activities, including for the administration of the Trust. For greater certainty, the powers of the Issuer Trustee that may be exercised as aforesaid include the powers set forth in Section 4.2 to and including Section 4.18. The enumeration of any specific power or authority in this Declaration of Trust will not be construed as limiting the aforesaid power or authority or any other specific power or authority. Subject only to the express limitations contained in this Declaration of Trust, every discretion or power hereby conferred on the Issuer Trustee is an absolute and uncontrolled discretion or power.

Section 4.2 Acquisition of Assets and Deposit of Funds

Subject to Section 2.2, the Issuer Trustee will have the power to acquire Asset Interests in accordance with the Programme Agreements. Subject to compliance with the terms of the Programme Agreements, the Issuer Trustee will have the power to deposit any money forming part of the Trust Property with any bank (which bank may be an Affiliate of the Issuer Trustee) licensed under the laws of Canada or any trust company (which includes the Issuer Trustee) licensed under the laws of any province of Canada and to withdraw such deposits in accordance with the Programme Agreements. The Issuer Trustee will have no liability for any loss

which may occur by reason of the failure of any depository with whom such money has been deposited.

Section 4.3 Legal Title and Custody

The Issuer Trustee will have the power to cause any and all Trust Property to be held by and/or registered in the name of any Person.

Section 4.4 Disposition of Trust Property

In accordance with and subject to the terms of the Programme Agreements, the Issuer Trustee will have the power to sell, convey, transfer and assign all Trust Property free and clear of any and all trusts hereby established, at public or private sale, for cash or on terms, with or without advertisement and subject to such restrictions, stipulations, agreements and reservations as it may deem proper.

Section 4.5 Management of Trust Property

In accordance with and subject to the terms of the Programme Agreements, the Issuer Trustee will have the power to own, manage, use, invest and hold the Trust Property (including, without limitation, the power to make investments in Eligible Investments) and to enter into agreements in respect of the Trust Property or its use including, without limitation, agreements to modify, amend, extend, renew or terminate any grant or agreement relating to the Trust Property and to waive compliance with any of the terms and conditions thereof, all, in each case, without the approval of or notice to the Beneficiary.

Section 4.6 Power to Borrow Money and Issue Debt Obligations

In accordance with and subject to the terms of the Programme Agreements, the Issuer Trustee will have the power to:

- (a) borrow or in any other manner raise money and to evidence the same by the issuance of promissory notes, debt securities or other debt instruments, including the Notes, by private placement, public offering or otherwise;
- (b) reacquire or redeem promissory notes, debt securities or other debt instruments, including the Notes;
- (c) execute and deliver any trust indenture or supplement thereto, security agreement, mortgage, pledge, hypothec, assignment or other instrument to secure debt obligations or any other obligations of the Trust, including the Notes, and amendments, modifications, restatements or replacements thereof, whether by fixed or floating charge or by assignment or by the granting of a security interest, free and clear of any and all trusts hereby established and, in lieu of or in addition to granting any security, to grant to any Person a negative

pledge whereby the Issuer Trustee agrees not to encumber any Trust Property and such other covenants as may be consistent with those set out in the Programme Agreements or as may otherwise be specified by any applicable Rating Agency in accordance with the foregoing; and

- (d) execute and/or deliver any agreement, instrument, certificate, direction or other document necessary or desirable in order to permit or give effect to the provisions of this Section 4.6, including, without limitation, prospectuses, offering memoranda, regulatory filings, dealer agreements, Underwriting Agreements, subscription agreements, letters of representation, consent letters, and any instruments ancillary thereto.

Section 4.7 Hedging Agreements

In accordance with and subject to the terms of the Programme Agreements, the Issuer Trustee will have the power to enter into Hedging Agreements in connection with or related to the borrowing or other raising of money by the Issuer Trustee or the purchase of Asset Interests or interests in Asset Interests, provided that such Hedging Agreements may be entered into only at or prior to the time that such securities are sold, or such borrowing, other raising of money or purchase takes place, as applicable.

Section 4.8 Execution of Notes or Other Instruments

Every deed, transfer, assignment, hypothec, agreement, certificate, direction, instrument, prospectus, or any other document which is necessary or desirable to be executed by the Trust, including, without limitation, any document evidencing Notes or relating to the issuance of Notes, will be signed on behalf of the Trust by the Issuer Trustee or its duly appointed agent, including the Administrative Agent.

Section 4.9 Facsimile Signatures

The Issuer Trustee may authorize the use of facsimile signatures on the documents evidencing Notes, provided, however, that where facsimile signatures are so used, documents evidencing Notes will be manually countersigned or certified by a transfer agent, trustee, registrar or similar Person. If a promissory note, debt security or other debt instrument contains a printed or mechanically reproduced signature of a Person, the Issuer Trustee may issue the promissory note, debt security or other debt instrument notwithstanding that the Person has ceased to be a director, officer or signing officer of the Issuer Trustee, and the promissory note, debt security or other debt instrument will be as valid as if the Person were a director, an officer or a signing officer at the date of its issue.

Section 4.10 Taxes

The Issuer Trustee will have the power to pay all taxes or assessments of whatever kind or nature imposed upon the Issuer Trustee and/or the Trust in

connection with the Trust Property or upon or against the income from the Trust Activities or any part thereof, to settle and compromise disputed tax liabilities and, for the foregoing purposes, to make such returns and do all such other acts and things as may be deemed by the Issuer Trustee necessary or desirable. The Issuer Trustee will have the power to deduct and remit any taxes which are required by law to be deducted and remitted from any payment made by the Issuer Trustee under any Programme Agreement or otherwise.

Section 4.11 Collection

In accordance with and subject to the terms of the Programme Agreements, the Issuer Trustee will have the power to:

- (a) collect, receive, give receipts for and sue for all sums of money or other property due to the Trust;
- (b) consent to extensions of time for payment of, or the renewal of, any securities or obligations of the Trust;
- (c) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise deal with or settle any actions, suits, proceedings, disputes, claims, demands or things relating to the Trust Property or the Trust Activities;
- (d) exercise any and all remedies available to it under any Programme Agreement or otherwise, including any power of foreclosure or sale available to the Issuer Trustee at law or pursuant to any agreement and, in connection with any such foreclosure or sale, to purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured or unsecured thereunder or such other security;
- (e) extend the time, with or without security, for the payment or delivery of any debts or property and to execute and enter into releases, agreements and other instruments; and
- (f) pay or satisfy any debts or claims upon any evidence that the Issuer Trustee determines to be sufficient.

Section 4.12 Expenses and Compensation of Issuer Trustee

The Issuer Trustee will have the power to incur and make payment of any charges or expenses which in the opinion of the Issuer Trustee are necessary or incidental to or proper for carrying out any of the purposes of this Declaration of Trust and the Trust Activities and to pay appropriate compensation or fees from the Trust Property to Persons with whom the Trust has contracted or transacted

business including, without limitation, any charges, expenses, compensation or fees payable under or in connection with the Programme Agreements. The Issuer Trustee will be entitled to receive reasonable fees and expenses from the funds of the Trust without any requirement of a passing of accounts in respect thereof or approval of the Beneficiary.

Section 4.13 Allocation

The Issuer Trustee will have the power to determine conclusively whether money or other assets received by the Trust or expenses or disbursements made by the Trust will be charged or credited to income or capital or allocated between income and capital, provided, however, that such determination will not be inconsistent with calculation of income in accordance with the ITA at the time the determination is made.

Section 4.14 Fiscal Year and Form of Accounts

The fiscal year of the Trust will end on May 31. The Issuer Trustee will have the power to determine and from time to time change the method or form in which the accounts of the Trust will be kept.

Section 4.15 Power to Contract

In accordance with and subject to the terms of the Programme Agreements, the Issuer Trustee will have the power to appoint, employ or contract with any Person as the Issuer Trustee may deem necessary or desirable for the transaction of the Trust Activities and may transfer assets to such Person and delegate to such Person any or all of the discretionary powers given to the Issuer Trustee with respect to the management of the Trust Property. Without in any way limiting the generality of the foregoing, the Issuer Trustee will have the power to:

- (a) enter into, execute, deliver, perform the obligations of the Trust under, and grant security as provided for in, the Programme Agreements;
- (b) appoint, employ or contract with any Person who, under the supervision of the Issuer Trustee, may, among other things: (i) furnish and supervise or cause to be furnished and supervised the performance of the clerical and administrative services necessary to the administration of the Trust and the Trust Property including, without limitation, the provision of office space, office equipment and personnel for the performance of such services, property management, administration and servicing, the maintenance of books and records for the Trust, the receipt and disbursement of Trust Property, the servicing and payment of debt and other obligations and generally all matters relating to the obtaining of and the administration and servicing of Trust Property, including, without limitation, as provided in the Administration Agreement; (ii) serve as an advisor to the Issuer

Trustee, furnish reports to the Issuer Trustee and provide research, economic and statistical data in connection with the Trust Activities; (iii) act as consultant, accountant, correspondent, lender, technical advisor, counsel, broker and dealer, underwriter, fiscal agent, corporate fiduciary, escrow agent, depository, custodian or agent for collection from obligors, loan administrator, appraiser, bank, insurer or insurance agent, transfer agent or registrar or issuing and paying agent for Notes or in any other capacity deemed by the Issuer Trustee necessary or desirable; (iv) act as attorney or agent in the purchase or sale or other disposition of the Trust Property or the property secured thereby and the handling, prosecution or settling of any claims of the Trust and assist in the performance of such functions necessary in the management of the Trust as may be agreed upon with the Issuer Trustee; and (v) execute and deliver the Programme Agreements. For greater certainty, the appointment by the Issuer Trustee of the Administrative Agent under the Administration Agreement will, where applicable, be deemed to constitute adequate supervision by the Issuer Trustee of any Person thereby engaged in connection with the foregoing activities;

- (c) investigate, select and conduct negotiations with Persons acting in the capacities referred to in Section 4.15(b) and pay appropriate fees to, and enter into appropriate contracts with, employ or retain the services of, any of them in connection with the Trust Property or property secured thereby, other assets and any security related thereto funded, acquired, sold or otherwise disposed of, or committed, negotiated or contemplated to be funded, acquired, sold, or otherwise disposed of or in connection with Notes;
- (d) substitute any other Person for any Person referred to in Section 4.15(b);
- (e) enter into any Underwriting Agreement or distribution, dealer or agency agreement relating to the distribution of the Notes; and
- (f) enter into a license agreement with respect to the use by the Trust of a trademark of any Person.

Section 4.16 Indemnification

In accordance with and subject to the terms of the Programme Agreements, the Issuer Trustee will have the power to indemnify or enter into agreements with respect to indemnification with any Person with whom the Issuer Trustee or the Trust deals to such extent as the Issuer Trustee determines necessary or desirable.

Section 4.17 Further Powers

Subject to Section 2.1, the Issuer Trustee will have the power to perform and do all such other acts and things and to execute itself (or have executed by any Person appointed by it pursuant to Section 4.8) all such deeds, transfers, assignments, hypothecs, agreements, certificates, directions, instruments or other documents whatsoever as it deems necessary, proper or desirable in order to carry on the Trust Activities in accordance with and subject to the Programme Agreements notwithstanding that such acts, things, deeds, transfers, assignments, hypothecs, agreements, certificates, directions, instruments or other documents are not herein specifically mentioned. Any determination as to what is necessary, proper or desirable in order to carry on the Trust Activities in accordance with the Programme Agreements or otherwise, provided it is made by the Issuer Trustee honestly and in good faith, will be conclusive. Any construction of this Declaration of Trust or the existence of any power or authority hereunder, made honestly and in good faith by the Issuer Trustee upon the advice of counsel, will be conclusive to the extent consistent with the law. In construing the provisions of this Declaration of Trust, there will be a presumption in favour of a grant of power to the Issuer Trustee.

Section 4.18 Auditors

In accordance with and subject to the terms of the Programme Agreements, the Issuer Trustee will have the power from time to time to select and appoint and discharge and reappoint an auditor of the Trust in its discretion and to negotiate and fix the fees of any such auditor.

Section 4.19 Defect in Appointment

Notwithstanding anything to the contrary herein contained, no action taken by the Issuer Trustee will be invalid by reason only of any defect that is thereafter discovered in its appointment.

ARTICLE 5 REPLACEMENT OF ISSUER TRUSTEE

Section 5.1 Resignation of Issuer Trustee

- (1) If the Issuer Trustee desires to resign and be discharged from the trusts and powers reposed in or conferred on it by this Declaration of Trust, it will provide 60 days written notice (or such shorter period of notice as the Administrative Agent, the Indenture Trustee and the Rating Agencies may agree to) thereof to the Administrative Agent, the Indenture Trustee and the Rating Agencies provided that no such voluntary resignation shall be effective until a replacement Issuer Trustee acceptable to the Indenture Trustee and the Administrative Agent has been appointed and has executed a written agreement whereby such replacement Issuer Trustee agrees to assume the obligations of the Issuer Trustee hereunder, under the

Programme Agreements and under any other contract pursuant to which the Issuer Trustee is obligated.

- (2) The Issuer Trustee shall resign if a material conflict of interest arises in its role as a trustee under this Declaration of Trust that is not eliminated within 90 days after the Issuer Trustee becomes aware that it has such a material conflict of interest. Forthwith after the Issuer Trustee becomes aware that it has such a material conflict of interest, it shall provide the Administrative Agent, the Indenture Trustee and Rating Agencies with written notice of the nature of such material conflict of interest. If, notwithstanding the foregoing provisions of this Section 5.1(2), the Issuer Trustee has such a material conflict of interest, the validity and enforceability of this Declaration of Trust and any agreement entered into by the Issuer Trustee (or the Administrative Agent on its behalf) shall not be affected in any manner whatsoever by reason only of the existence of such material conflict of interest. If the Issuer Trustee contravenes the foregoing provisions of this Section 5.1(2), the Administrative Agent may apply, on notice to the Rating Agencies, to a court of competent jurisdiction for an order that the Issuer Trustee be replaced as Issuer Trustee hereunder.

Section 5.2 Vacancy

In the event of the bankruptcy or insolvency of the Issuer Trustee or the inability of the Issuer Trustee to exercise its duties under this Declaration of Trust, the Administrative Agent may forthwith terminate the term of office of the Issuer Trustee as trustee and, in such instance, a vacancy will occur. No vacancy shall operate to annul this Declaration of Trust or affect the continuity of the Trust.

Section 5.3 Appointment of New Issuer Trustee

If, pursuant to this Article 5, the Issuer Trustee resigns or a vacancy occurs in the office of the Issuer Trustee for any reason, the Administrative Agent may by instrument in writing appoint a Trust Company, which either (i) has risk-based capital of at least \$50,000,000 or, in the case of an entity that is not subject to risk-based capital adequacy requirements, has a combined capital and surplus of at least \$50,000,000; or (ii) has been approved in writing by each Rating Agency prior to its appointment by the Administrative Agent, in order to replace the Issuer Trustee. If the Administrative Agent fails to make such appointment within 30 days of the occurrence of such vacancy, then the Issuer Trustee may make an application, on notice to the Rating Agencies, to a court of competent jurisdiction to appoint a successor Issuer Trustee hereunder. If the Issuer Trustee elects not to make such an application, the Administrative Agent may do so on notice to the Rating Agencies. The expense of any act, document, deed or other instrument or thing required under this Section 5.3 will be satisfied from the Trust Property on a *pro rata* basis among the separate groups of Asset Interests.

Section 5.4 Merger, Consolidation and Amalgamation

Any company into which the Issuer Trustee may be merged or with which it may be consolidated or amalgamated, or any company resulting from any merger, consolidation or amalgamation to which the Issuer Trustee is a party, will be a successor Issuer Trustee under this Declaration of Trust, provided that such company shall be a Trust Company.

Section 5.5 Vesting in Successor Issuer Trustee

Any successor Issuer Trustee will become vested with all the estates, properties, rights, powers, duties, responsibilities and trusts of its predecessors in the trusts hereunder as if it had been originally named as Issuer Trustee pursuant to this Declaration of Trust. In furtherance of the foregoing, upon written request of the successor Issuer Trustee, the Issuer Trustee ceasing to act will do, make, execute, deliver or cause to be done, made, executed or delivered all such acts, documents, deeds or other instruments and things as may be necessary or desirable in order to more effectively assign, transfer and deliver to, and vest in, the successor Issuer Trustee, upon the trusts herein expressed, all the rights, powers and trusts of, and all property and money held by the Issuer Trustee so ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.5 will be satisfied from the Trust Property on a *pro rata* basis among the separate groups of Asset Interests.

Section 5.6 Confidentiality

At all times (including, without limitation, at any time the Issuer Trustee should resign or be discharged from the trusts and powers reposed in or conferred on it by this Declaration of Trust), the Issuer Trustee (or the trustee so resigning and being discharged, as the case may be) will treat as confidential all information relating to the Trust, the Trust Activities and the transactions contemplated by the Programme Agreements obtained by it in its capacity as Issuer Trustee.

Section 5.7 Right to Disclose

The Trustee shall have the right to disclose any information disclosed or released to it if it is required to disclose under any applicable laws, court order or directions of government authorities or if it is requested by a Rating Agency. The Trustee shall not be responsible or liable to any party for any loss or damage arising out of or in any way sustained or incurred or in any way relating to such disclosure.

ARTICLE 6 STANDARD OF CARE, LIMITATION OF LIABILITY OF ISSUER TRUSTEE AND OTHER MATTERS

Section 6.1 Standard of Care

The Issuer Trustee will exercise its powers and carry out its obligations hereunder as Issuer Trustee honestly, in good faith and in the best interests of the

Trust and the Beneficiary and in connection therewith will exercise that degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances. To the extent that the Issuer Trustee has delegated or subcontracted the performance of all or a portion of its duties to the Administrative Agent as contemplated by Section 4.15, it will be deemed to have satisfied the aforesaid standard of care. Unless otherwise required by law, the Issuer Trustee will not be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Issuer Trustee will not be required to devote its entire time to the Trust Activities. For greater certainty, the entering into of any Programme Agreement by the Trust and the performance by the Trust of its obligations thereunder will be deemed to be in the best interests of the Beneficiary and the Trust.

Section 6.2 Limitation of Liability of Issuer Trustee

- (1) The Issuer Trustee, in incurring any debts, liabilities or obligations, or in taking or omitting any other actions for or in connection with the affairs of the Trust is, and will be deemed to be, acting as trustee of the Trust, and not in its individual capacity and as such, will not be subject to any liability whatsoever, in tort, contract or otherwise, in connection with the Trust Property or the Trust Activities, to the Beneficiary or to any other Person for any action taken or permitted by it to be taken or for its failure to take any action including, without limitation, the failure to compel in any way any former or acting Issuer Trustee to redress any breach of trust in respect of the execution of the duties of its office or in respect of the Trust Property or the Trust Activities, provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with the wilful misconduct, gross negligence or the failure to comply with the standard of care referred to in Section 6.1. Except to the extent provided in this Section 6.2, the Issuer Trustee will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Trust Property or the Trust Activities and resort will be had solely to the Trust Property for the payment or performance thereof. No property or assets of the Issuer Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Declaration of Trust. Notwithstanding any other provision of this Article 6, but subject to the Trust Indenture, each Specified Creditor is entitled to recourse to the Trust Property to satisfy in full the obligations of the Trust to it even if the Issuer Trustee has no right, or only an impaired right, to seek indemnification from the Trust Property or to apply the Trust Property in satisfaction of such obligations.

- (2) Without limiting the generality of the provisions contained in Section 6.2(1), the Issuer Trustee shall have the right to disclose any information disclosed or released to it if, in the opinion of the Issuer Trustee, or its legal counsel, it is required to disclose under any applicable laws, court order or administrative directions. The Issuer Trustee shall not be responsible or liable to any party for any loss or damage arising out of or in any way sustained or incurred in any way relating to such disclosure.

Section 6.3 Indemnification of the Issuer Trustee

The Issuer Trustee, its directors, officers, representatives and employees will at all times be indemnified and saved harmless out of the Trust Property from and against all claims (including any claim arising out of the assessment of any tax on income by a taxing authority), demands, levies, penalties, suits, losses, actions, causes of action, costs, charges, fees and expenses, damages and liabilities whatsoever, including, without limitation, those arising out of or related to actions taken or omitted to be taken by any agent of the Issuer Trustee, including, without limitation, the Administrative Agent, as contemplated hereby, legal fees and disbursements on a substantial indemnity basis and costs and expenses incurred in connection with the enforcement of this indemnity (each, a “**Claim**”), which the Issuer Trustee, its directors, officers, representatives and employees may suffer or incur, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of its duties as Issuer Trustee or which it sustains or incurs in or about or in relation to the Trust Property and the Trust Activities. To the extent that a Claim is attributable solely to a single Series or a number of specific Series of Notes, the Issuer Trustee will first exhaust its recourse against the related Asset Interests. If such Asset Interests are insufficient to satisfy the indemnity set out in this Section 6.3, or if the Claim is not attributable to a single Series or a number of specific Series of Notes, the Claim will be satisfied from the Trust Property on a *pro rata* basis among the separate groups of Asset Interests. Further, the Issuer Trustee will not be liable to the Trust, to any Beneficiary or to any other Person for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in the value of the Trust Property. The foregoing provisions of this Section 6.3 do not apply to the extent that in any circumstances there has been wilful misconduct, gross negligence or the failure to comply with standard of care referred to in Section 6.1 on the part of the Issuer Trustee, its directors, officers, representatives or employees excluding the other parties to the Programme Agreements. Notwithstanding any other provision hereof, this indemnity will survive the removal or resignation of the Issuer Trustee, the termination of this Declaration of Trust and the termination of any trust created hereby.

Section 6.4 Reliance upon Advice

The Issuer Trustee may rely and act upon any statement, notice, report or opinion prepared by or any advice received from the Administrative Agent or the NIP Agent or from the auditors, counsel or other professional advisors of the Issuer Trustee and will not be responsible or held liable for any loss or damage resulting from so relying or acting if the Issuer Trustee acted reasonably and in good faith relied upon the advice received and if the professional advisor was aware that the Issuer Trustee was receiving the advice in its capacity as Issuer Trustee. The Issuer Trustee is entitled to rely and act upon the genuineness and authenticity of any writing submitted to it that it in good faith believes to be genuine.

Section 6.5 Retain Experts

The Issuer Trustee may appoint such agents and employ or retain such counsel, accountants, engineers, appraisers or other experts or advisers as it may reasonably require for the purpose of discharging its duties hereunder and shall not be responsible for any misconduct on the part of any of them. The Issuer Trustee may pay remuneration for all services performed for it in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Section 6.6 Reliance on Experts

The Issuer Trustee may act and rely and shall be protected in acting in good faith on the opinion or advice of or information obtained from any agent, counsel, accountant, engineer, appraiser or other expert or adviser, whether retained or employed by the Trust, Noteholders or the Issuer Trustee, in relation to any matter arising in the performance of its duties under the Programme Agreements.

Section 6.7 Limitation of Liability of Beneficiary

The Beneficiary will not be subject to any personal liability whatsoever, in tort, contract or otherwise, to any Person in connection with the Trust Property or the Trust Activities and all such Persons (including, without limitation, the Issuer Trustee in respect of any matter for which the Beneficiary would otherwise have to indemnify the Issuer Trustee) will look solely to the Trust Property for satisfaction of claims of any nature arising out of or in connection therewith and the Trust Property only will be subject to levy or execution.

Section 6.8 Provisions Regarding Liability

Any written instrument creating an obligation of the Issuer Trustee will be conclusively deemed to have been executed by the Issuer Trustee only in its capacity as Issuer Trustee. Any written instrument creating an obligation of the Issuer Trustee will contain a provision to the effect that the obligations thereunder are not binding upon the Issuer Trustee except in its capacity as Issuer Trustee, nor will resort be had to the property of the Issuer Trustee except in its capacity as Issuer Trustee, but that the Trust Property or a specific portion thereof only will be bound,

and may at the request of the Issuer Trustee make specific provision to the foregoing effect and contain any further provisions which the Issuer Trustee may deem appropriate, but the omission of any such provisions will not operate to invalidate any such instrument or to impose liability on the Issuer Trustee, except as aforesaid. Except as otherwise expressly provided herein, the Issuer Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of its duties hereunder.

ARTICLE 7 RECORDS

Section 7.1 Records to be Kept

The Issuer Trustee will keep or cause to be kept at the head office of the Trust or at the office of the Administrative Agent such Records as are by law or good business practice necessary. The Records may be kept at the office of any Person whom the Issuer Trustee has appointed to maintain the same, provided that the Issuer Trustee has access to the Records on one day's notice to such Person.

Section 7.2 Segregation of Assets

The Trust will maintain Records to enable it to identify the particular Obligations Secured which may, in accordance with the Trust Indenture, have recourse to any separate group of Asset Interests.

Section 7.3 Method of Keeping Records

Where this Declaration of Trust requires the Issuer Trustee to cause a Record to be kept, it may be kept in bound or loose-leaf form or by means of a mechanical, electronic or other device.

ARTICLE 8 AMENDMENT

Section 8.1 Amendment

Subject to Section 2.1 and compliance with the terms of the applicable Programme Agreements, the Issuer Trustee may, from time to time, amend, vary, supplement, replace or restate the provisions of this Declaration of Trust without the consent or approval of the Beneficiary or any court as follows:

- (a) to the extent deemed necessary by the Issuer Trustee in good faith to be necessary to ensure compliance with, or to remove any conflicts or other inconsistencies which may exist between any term of this Declaration of Trust and the provisions of, any applicable law in effect from time to time;
- (b) to the extent deemed necessary by the Issuer Trustee in good faith to be necessary to make any change or correction in this Declaration of

Trust which is a typographical change or correction or which the Issuer Trustee has been advised by legal counsel is required for the purpose of curing any ambiguity or defect or inconsistent provision or clerical omission or mistake or manifest error contained herein, or

- (c) with the prior written consent of the Rating Agencies, to the extent deemed necessary or desirable in the sole discretion of the Issuer Trustee to permit or facilitate the carrying on of the Trust Activities, including the accommodation of requests made by the Rating Agencies or regulatory authorities in relation to the issuance of Notes.

The Issuer Trustee will immediately upon the entering into thereof, provide the Rating Agencies and the Indenture Trustee with a copy of any amendment, variation, supplement, replacement or restatement of this Declaration of Trust.

Section 8.2 Automatic Amendment

Upon the Issuer Trustee ceasing to be a trustee of the Trust, this Declaration of Trust will be automatically amended to delete any reference to the name of the trustee so ceasing to be a trustee of the Trust and to substitute therefor the name of the successor trustee of the Trust. Notice of any change in the Issuer Trustee may be endorsed upon or attached to this Declaration of Trust and signed by the successor Issuer Trustee and every such notice will be sufficient evidence to any Person dealing with the Issuer Trustee under this Declaration of Trust as to the facts to which it relates.

Section 8.3 Supplemental Declaration of Trust

The Issuer Trustee is authorized to execute any supplemental declaration of trust to give effect to amendments to this Declaration of Trust made pursuant to this Article 8. The Issuer Trustee shall not be obligated to enter into any such supplemental declaration if it adversely affects the Issuer Trustee's rights, duties or immunities under this Declaration of Trust or otherwise.

ARTICLE 9 TERMINATION OF THE TRUST AND DISTRIBUTION OF TRUST PROPERTY

Section 9.1 Termination

- (1) The Trust will continue in full force and effect for a period of twelve months from the date hereof and thereafter for so long as any Notes or other debt instruments of the Trust remain outstanding and until the Trust has satisfied all of its obligations under the Programme Agreements or otherwise for the purposes of carrying on the Trust Activities. Notwithstanding the foregoing, the Issuer Trustee will wind-up the affairs of the Trust and terminate the Trust and distribute the Trust Property then remaining no later than the

earlier of (i) December 31, 2024; and (ii) twelve months following the latest Final Settlement Date.

- (2) Subject to Section 9.1(1), The Issuer Trustee may in its sole discretion upon consultation with the Administrative Agent wind up the affairs of the Trust and terminate the Trust. On the date the Trust is terminated, the Issuer Trustee will select the Beneficiary or Beneficiaries and, upon receipt of such releases, indemnities and refunding agreements as the Issuer Trustee may deem necessary for its protection, distribute the remaining Trust Property, after payment of all other obligations of the Trust, in cash or in kind or in such shares and properties as the Issuer Trustee sees fit or partly in each, to the Beneficiary or Beneficiaries so selected.

Section 9.2 Distribution of Annual Net Income

The Annual Net Income of the Trust for each fiscal year will be distributable to the Beneficiary then so designated in accordance with this Declaration of Trust on the last day of the fiscal year and will be distributed no later than six months after the end of the fiscal year. If there is more than one such Beneficiary, the Annual Net Income of the Trust, if any, in respect of such fiscal year, will be divided equally among them. If any such distribution is to be made prior to the final determination of the Annual Net Income of the Trust, the Issuer Trustee will be entitled to rely on an estimate of the amount to be distributed, such estimate to be provided by the Administrative Agent no later than 30 days prior to the proposed distribution date set out above. The Beneficiary shall be entitled to enforce payment of such Annual Net Income of the Trust, if any, as of December 31 in each year.

ARTICLE 10

POWER TO CHANGE OFFICE AND GOVERNING LAW

Section 10.1 Change of Office.

The Issuer Trustee may at any time and from time to time during the existence of the trusts hereby created change the head office, chief executive office, chief place of business and situs of the administration of the Trust to another location within Canada or have such other offices or places of administration within Canada as the Issuer Trustee may from time to time determine is necessary or desirable.

Section 10.2 General

Notwithstanding anything herein contained, the Issuer Trustee, subject to obtaining the prior written consent of the Rating Agencies, may at any time and from time to time during the existence of the trusts hereby created by deed declare that the Trust will, from the date of such declaration, take effect in accordance with the law of some other province of Canada (not being a province under the law of which this Trust would not be irrevocable) and as from the date of such declaration

the law of the province named therein will be the law applicable to this Trust and the courts of that province will be the forum for the administration thereof but subject to the powers conferred by this Section 10.2 and until any further declaration is made hereunder, provided however, the Issuer Trustee will take advice with respect to the implications associated therewith, including any tax implications.

IN WITNESS WHEREOF the Issuer Trustee has caused this Declaration of Trust to be executed as of the day and year first above written by its duly authorized signatories.

THE CANADA TRUST COMPANY,
as Issuer Trustee

By: (signed) "Kathryn Thorpe" _____

Name: Kathryn Thorpe

Title: Authorized Signatory

By: (signed) "Susan Khokher" _____

Name: Susan Khokher

Title: Authorized Signatory