

CARDS II TRUST
by
THE CANADA TRUST COMPANY
as Issuer Trustee

and

BNY TRUST COMPANY OF CANADA
as Indenture Trustee

and

CANADIAN IMPERIAL BANK OF COMMERCE
as NIP Agent

TRUST INDENTURE

Made as of September 16, 2004

STIKEMAN ELLIOTT LLP

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TRUST INDENTURE

TRUST INDENTURE made as of September 16, 2004, among **CARDS II TRUST**, a trust established under the laws of the Province of Ontario pursuant to a Declaration of Trust made as of September 16, 2004 (the "**Trust**"), by **THE CANADA TRUST COMPANY**, a trust company established under the laws of Canada (the "**Issuer Trustee**"), **BNY TRUST COMPANY OF CANADA**, a trust company established under the laws of Canada (the "**Indenture Trustee**") and **CANADIAN IMPERIAL BANK OF COMMERCE**, a Canadian chartered bank (the "**NIP Agent**").

WHEREAS the Trust is desirous of creating and issuing from time to time asset backed notes in the manner hereinafter provided;

NOW THEREFORE THIS INDENTURE WITNESSES that, in consideration of the covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE ONE INTERPRETATION

Section 1.01 Definitions.

In this Indenture, the following terms will have the following meanings:

"**Act**" means the *Securities Act* (Ontario) as in effect from time to time;

"**Administration Agreement**" means the administration agreement made as of even date between the Issuer Trustee, as trustee of the Trust, and the Administrative Agent, providing for certain credit assessment, administrative, management and audit services, as amended, supplemented, modified, restated or replaced from time to time;

"**Administrative Agent**" means CIBC, its successors and permitted assigns or any other successor administrative agent appointed pursuant to 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;

“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” has the meaning ascribed thereto in the Declaration of Trust;

“Book-Entry Noteholder” means, with respect to a Book-Entry Note, the Person who is the beneficial owner of a Book-Entry Note;

“Book-Entry Notes” means the beneficial interests in the Notes held through the Book-Entry System as described in Section 2.11; provided that after the occurrence of an event whereupon book-entry transfers are no longer permitted and Definitive Notes have been issued to holders of any Book-Entry Notes, such Book-Entry Notes shall no longer be effective;

“Book-Entry System” means the record entry securities transfer and pledge system administered by the Clearing Agency in accordance with its operating rules and procedures;

“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;

“Canadian Dollars” and **“Cdn. \$”** means the lawful money of Canada;

“CDS” means The Canadian Depository for Securities Limited, its successors and assigns;

“Certificate of the Trust” means a certificate of the Issuer Trustee as trustee of the Trust or of the Administrative Agent on behalf of the Issuer Trustee;

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

“Class” means, in respect of a Series, each class of Notes of such Series issued pursuant to this Indenture and the Related Supplement;

“Clearing Agency” means CDS or, if otherwise specified in the Related Supplement with respect to the Notes of any particular Series, any other organization registered as a “clearing agency” pursuant to the Act;

“Clearing Agency Letter of Representation” means any letter of representation provided by the Trust to a Clearing Agency with respect to procedures under the Book-Entry System;

“Collateral” means the property, assets, undertaking and agreements of the Trust and all rights and benefits accruing thereunder mortgaged, charged, pledged, granted, transferred, assigned, hypothecated and set over as security for the Obligations Secured in accordance with Article Four;

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

“Collections” means all cash collections and other cash proceeds of Asset Interests including, without limitation, any proceeds of sale of such Asset Interests deemed to have been received pursuant to the Pooling and Servicing Agreement or a Series Purchase Agreement;

“Co-Owner Direction” has the meaning ascribed thereto in the Pooling and Servicing Agreement;

“Counsel” means any barrister or solicitor or firm of barristers and solicitors retained by the Indenture Trustee which may include counsel to the Trust;

“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; provided that any such Person has the Required Rating or is otherwise approved by the Related Rating Agencies;

“Custodial Agreement” means the custodial agreement made as of even date 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;

“DBRS” means Dominion Bond Rating Service Limited or its successors;

“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” means the amended and restated declaration of trust made on as of even date, under which the Trust was established, as amended, supplemented, modified, restated or replaced from time to time;

“Definitive Notes” means fully registered certificates representing Notes in the form specified in the Related Supplement;

“Distribution Date” means any day in a month upon which periodic payments of principal and, if applicable, interest are to be paid on any Notes;

“Eligible Investment” 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 generally accepted accounting principles;

“Equivalent Amount” means, on any given date, the amount of Canadian Dollars resulting from the conversion of a specified amount of any other currency converted (i) at the spot rate quoted on such date for wholesale transactions by CIBC at its main branch in Toronto at approximately noon (Toronto time) in accordance with its normal practice; or (ii) if the specified amount of such other currency is the subject of a Hedging Agreement which provides for the delivery of or conversion to an equivalent amount of Canadian Dollars, the specified amount of such other currency shall be deemed to be converted to an amount in Canadian Dollars at the effective rate under such Hedging Agreement;

“Extraordinary Resolution” means a resolution described in Section 11.13;

“Hedging Agreement” means any agreement with a Person having the Required Rating or which is otherwise approved by the Related Rating Agencies evidencing (i) 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; and (ii) any bond or interest rate option which is not held by the Trust, in each case, entered into by the Trust in connection with or related to, and at the time of or prior to, the issuance of Notes or acquisition of Asset Interests by the Trust in accordance with and subject to the terms of the Programme Agreements;

“Indenture” means this Indenture, as amended, supplemented, modified, restated or replaced from time to time, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Indenture and not to any Article, Section, paragraph, subparagraph or clause hereof;

“Indenture Trustee” means BNY Trust Company of Canada, in its capacity as indenture trustee under this Indenture or any successor indenture trustee appointed in accordance with Article 12;

“Issuer Trustee” means The Canada Trust Company in its capacity as trustee of the Trust or any successor thereto appointed in accordance with Article 5 of the Declaration of Trust;

“Moody's” means Moody's Investors Service, Inc. or its successors;

“Noteholder” or **“holder”** means with respect to any of the Notes which are in registered form, the Person in whose name the Note is registered in the applicable Note Register from time to time in accordance with the provisions of this Indenture and, with respect to any of the Notes which are in bearer form, the bearer thereof, from time to time;

“Note Registers” means the registers providing for the registration of the Notes which the NIP Agent is required to maintain pursuant to Section 2.06;

“Notes” means the asset-backed notes created and issued from time to time pursuant to this Indenture and any Related Supplement;

“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;

“Obligor” means a Person obligated to make payments with respect to Asset Interests, whether as principal debtor or guarantor thereof, its successors and assigns;

“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;

“Participant” means a broker, dealer, bank or other financial institution or other Person who is a participant in the Book-Entry System and on whose behalf a Clearing Agency or its nominee holds Notes;

“Permitted Liens” means (i) liens for taxes, assessments or other governmental charges, levies, or imposts on the assets of the Trust not at the time delinquent or thereafter payable without penalty or contested in good faith by appropriate proceedings and for which adequate reserves, in accordance with generally accepted accounting principles shall have been set aside on the Trust's books; (ii) the security constituted hereby; and (iii) such liens or other encumbrances expressly permitted in any of the other Programme Agreements;

“Person” means any individual, corporation, partnership, joint venture, association, unincorporated organization, trust (including any beneficiary thereof), government or any department or agency thereof, or any other entity whether acting as an individual, fiduciary or in any other capacity;

“Pooling and Servicing Agreement” means the amended and restated pooling and servicing agreement made 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;

“Principal Terms” means, with respect to the Notes of any particular Series, any of;

- (a) the name or designation of the Notes of such Series and each Related Class;
- (b) the aggregate principal amount of the Notes of such Series and each Related Class;
- (c) the interest rates, if any, applicable to the Notes of such Series and each Related Class and the period over which any interest is to accrue;

- (d) the Distribution Dates, if any, applicable to the Notes of such Series and each Related Class;
- (e) the language and currency of such Notes;
- (f) the method for allocating principal and interest and other Collections to fund payments to the Notes of such Series and each Related Class;
- (g) the forms of the Notes of such Series and each Related Class;
- (h) the expected final payment dates (or the maturity dates) of the Notes of such Series and each Related Class;
- (i) any items required to be delivered to the Indenture Trustee on the Related Series Issuance Date pursuant to Section 2.03(2);
- (j) whether such Notes are to be Definitive Notes or Book-Entry Notes or whether such Notes may be issued in bearer form and any limitations imposed thereon;
- (k) the minimum amounts and denominations in which such Notes may be issued;
- (l) any additional or alternative Related Events of Possession;
- (m) provisions the specification of which in the Related Supplement is required or permitted under this Indenture;
- (n) any terms which amend, supplement, modify, restate or replace the terms of this Indenture as such pertain to such Notes; and
- (o) any other provisions expressing or referring to the terms or conditions upon which the Notes of such Series are to be issued under this Indenture;

“Programme Agreements” means, at any time, collectively, this Indenture, the Declaration of Trust, the Series Purchase Agreements, Remittance Notices, Administration Agreement, the Pooling and Servicing Agreement, the Custodial Agreement and any 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 Agency Condition” means, in respect of any Series, a condition, which is met when after the delivery of the required notice of any action, if

any, has been made to each Related Rating Agency, such Related Rating Agency determines and confirms in writing to the Issuer Trustee or the Administrative Agent that such action will not decrease or result in the withdrawal of the rating of the Notes of such Series or any Related Class with respect to which it is a Related Rating Agency;

“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;

“Receiver” means one or more of a receiver, receiver manager or receiver and manager of all or a portion of any Collateral appointed pursuant to Article Nine;

“Related” is used in reference to the Notes of a particular Series and means, when used in conjunction with:

- (a) **“Asset Interests”**: the Asset Interests, the purchase of the Trust of which financed or refinanced by the issuance of such Notes;
- (b) **“Class”**: each Class of such Series;
- (c) **“Collateral”**: that portion of the Collateral comprising (i) the Related Asset Interests; (ii) any Related Collections thereof; (iii) all amounts available under any Related Credit Enhancement Agreement; (iv) all amounts in the Collection Account attributable thereto; (v) all amounts in the Related Series Accounts and the Related Collateral Accounts; (vi) all Eligible Investments thereof and the proceeds of such Eligible Investments; and (vii) all rights under the Related Programme Agreements;
- (d) **“Collateral Accounts”**: those accounts into which Related Collections and the proceeds of the sale of any Related Collateral are to be deposited pursuant to Section 9.07;
- (e) **“Collections”**: all Collections with respect to Related Asset Interests;
- (f) **“Credit Enhancement”**: Credit Enhancement provided pursuant to a Related Credit Enhancement Agreement;
- (g) **“Credit Enhancement Agreement”**: a Credit Enhancement Agreement pursuant to which Credit Enhancement has been provided in respect of Related Asset Interests or Related Obligations Secured;

- (h) **“Credit Enhancer”**: a Credit Enhancer under a Related Credit Enhancement Agreement;
- (i) **“Dealers”**: the Dealers party to the Related Underwriting Agreement in respect of such Notes;
- (j) **“Distribution Date”**: the Distribution Date specified in the Related Supplement;
- (k) **“Expenses”**: those expenses which the holders of such Notes will be responsible for either fully or on a Related Proportionate Share basis;
- (l) **“Event of Possession”**: an event described in Section 8.01 in respect of such Notes;
- (m) **“Hedging Agreement”**: a Hedging Agreement relating to such Notes;
- (n) **“Notes”** means the asset-backed notes, which may include one or more Classes of Notes;
- (o) **“Obligations Secured”**: all Obligations Secured relating to the holders of such Notes and to Specified Creditors under the Related Programme Agreements including the Related Expenses;
- (p) **“Programme Agreements”**: this Indenture, the Declaration of Trust, the Administration Agreement, the Pooling and Servicing Agreement, the Related Series Purchase Agreement, the Custodial Agreement and any Related Remittance Notice, Related Hedging Agreements, Related Credit Enhancement Agreements, Related Servicing Agreements, Related Subordinated Loan Agreements, Related Underwriting Agreements, Related Supplements and indemnities of the Originator in favour of the Trust in effect from time to time;
- (q) **“Proportionate Share”**: at any time, the outstanding principal amount of such Notes at such time divided by the outstanding principal amount of all Notes at such time;
- (r) **“Rating Agency”**: a Rating Agency which has established a rating for such Notes;
- (s) **“Remittance Notice”**: a Remittance Notice under the Related Series Purchase Agreement;
- (t) **“Reserve”**: a Reserve under the Related Series Purchase Agreement;

- (u) **“Series Issuance Date”**: the date upon which the first such Notes are to be issued;
- (v) **“Servicer”**: the Servicer of Related Asset Interests under the Pooling and Servicing Agreement or a Related Servicing Agreement;
- (w) **“Servicer Fees”**: fees payable to a Related Servicer;
- (x) **“Servicing Agreement”**: a Servicing Agreement providing for the servicing of Related Asset Interests;
- (y) **“Specified Creditors”**: collectively, the holders of such Notes, Related Credit Enhancers, counterparties to Related Hedging Agreements, the Originator (but only with respect to payments owing in respect of any Related Reserves and under any Subordinated Loan Agreement and not for any other amount due to the Originator), other lenders pursuant to Related Subordinated Loan Agreements, Related Servicers (other than the Originator), Related Dealers, and the Custodian, Administrative Agent, NIP Agent, Indenture Trustee and Issuer Trustee to the extent their claims relate to such Notes;
- (z) **“Subordinated Loan Agreement”**: a Subordinated Loan Agreement relating to such Notes;
- (aa) **“Supplement”**: a supplement to this Indenture executed in connection with the issuance of such Notes; and
- (bb) **“Underwriting Agreement”**: an Underwriting Agreement in respect of such Notes;

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

“Required Rating” means (i) in respect of any Person, a rating of such Person's short-term indebtedness of “R-1 (middle)” or higher from DBRS and “P-1” or higher from Moody's, a rating of such Person's long-term unsecured indebtedness of “AA (low)” or better from DBRS and “Aa3” or better from Moody's; (ii) the equivalent thereof from time to time from any such Rating Agency or other Related Rating Agency designated by the Trust; or (iii) such lower rating as such Rating Agencies or other Related Rating Agencies may permit for any specific purpose;

“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;

“Senior Notes” means any Class of Notes of a Series which has been designated as such in the Related Supplement or, failing which, any class of Notes which is senior in right of payment to the Notes of all other Related Classes and, for purposes of Article Three, includes any Notes of any Related Class which, pursuant to the Related Supplement, are senior in right of payment to the Notes of any other Related Class;

“Series” means any series of Notes issued pursuant to this Indenture and any Related Supplement;

“Series Account” 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;

“Targeted Principal Distribution Date” means, in respect of any Series or Class of Notes, the date specified as such in the Related Supplement;

“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;

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

“Written Order” means an order in writing of, or sent by electronic means by, the Issuer Trustee as trustee of the Trust or the Administrative Agent on behalf of the Issuer Trustee.

Section 1.02 Meaning of “Outstanding” for Certain Purposes.

Each Note issued and certified in accordance with the terms hereof will be deemed to be outstanding until it has been surrendered by the Noteholder 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 Noteholders; 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.

Section 1.03 Extended Meanings.

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

Section 1.04 Headings.

The table of contents does not form part of this Indenture. Article and Section headings are not to be considered part of this Indenture, are included solely for convenience of reference and do not define, limit or enlarge the construction or interpretation hereof.

Section 1.05 References to Sections and Articles.

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

Section 1.06 Proper Law of Indenture.

This Indenture will be governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

Section 1.07 Invalidity of Provisions.

Save and except for any provision or covenant contained herein which is fundamental to the subject matter of this Indenture (including, without limitation, those that relate to the payment of moneys), 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.

Section 1.08 Computation of Time Periods.

In this Indenture, with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding".

Section 1.09 Non-Business Days.

Whenever any payment to be made hereunder shall be stated to be due, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken on a day other than a Business Day, such payment shall be made, such calculation shall be made and such other action shall be taken on the next succeeding Business Day and an extension of time shall be included for such purposes.

Any payment made after 3:00 p. m. (Toronto time) on a Business Day shall be deemed to be made on the next following Business Day.

Section 1.10 Accounting Principles.

Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purpose of this Indenture, such determination or calculation shall, to the extent applicable and except as otherwise specified herein or as otherwise agreed in writing by the parties, be made in accordance with generally accepted accounting principles applied on a consistent basis. Wherever in this Indenture reference is made to generally accepted accounting principles, such reference shall be deemed to be to the generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable as at the date on which such calculation is made or required to be made in accordance with such generally accepted accounting principles.

Section 1.11 Currency.

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

Section 1.12 References to Acts of the Trust.

For greater certainty, where any reference is made in this Indenture, or in any other instrument executed pursuant hereto or contemplated hereby to which the Trust or the Issuer Trustee, as trustee of the Trust, is party, 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 (other than relating to the constitution or existence of the Trust) by or with respect to (i) the Trust; or (ii) the Issuer Trustee, such reference shall 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 (other than relating to the constitution or existence of the Trust) by or with respect to, the Issuer Trustee as trustee of the Trust.

**ARTICLE TWO
THE NOTES**

Section 2.01 Notes.

- (1) The aggregate principal amount of Notes which may be created and issued pursuant to this Indenture is unlimited. The aggregate principal amount of Notes of a particular Series or any Related Class which may be created and issued pursuant to this Indenture is limited to the aggregate principal amount of Notes, if any, specified in the Related Supplement.
- (2) The Notes of any Series issued from time to time hereunder shall have the Principal Terms specified in the Related Supplement and shall bear such distinguishing letters and numbers as the NIP Agent shall approve.

Section 2.02 Requirements for Initial Creation of Notes.

Notes may be created by the Issuer Trustee, as trustee of the Trust, in accordance with the provisions hereof, provided that on or prior to the initial creation of Notes hereunder, the Issuer Trustee shall have delivered to the Indenture Trustee:

- (a) the Declaration of Trust;
- (b) the Administration Agreement; and
- (c) a Certificate of the Trust, dated the date of issuance of such Notes, stating that the issuance of the Notes will not result in the occurrence of a Related Event of Possession;

and the provisions of Section 2.03(2) shall have been satisfied.

Section 2.03 Creation and Issuance in Series.

- (1) The Notes may, at the election of the Issuer Trustee, be created and issued in one or more Series with such further particular designations added or incorporated in such title for the Notes of any particular Series as the Issuer Trustee may determine. All Notes of the same Series and Class at any time outstanding shall be identical in all respects except for the denominations and dates thereof and as may be otherwise specified in the Related Supplement. All Notes of a particular Class of a Series created and issued under this Indenture shall be in all respects entitled, equally and rateably with all other Notes of such Class, to the benefits hereof and of the Related Supplement without preference, priority or distinction on account of the actual time or times of certification and delivery, all in accordance with the terms and provisions of this Indenture and the Related Supplement.

- (2) In order to create Notes of any particular Series hereunder, the Issuer Trustee and the Indenture Trustee shall, on or before the Related Series Issuance Date, execute and deliver a Related Supplement. The terms of such Related Supplement may amend, supplement, modify, restate or replace the terms of this Indenture solely as applied to such Notes. The obligation of the Indenture Trustee to execute and deliver the Related Supplement is subject to the satisfaction of the following conditions:
 - (a) copies of the Pooling and Servicing Agreement and any Related Series Purchase Agreement, Related Credit Enhancement Agreement, Related Subordinated Loan Agreement, Related Servicing Agreement, Related Hedging Agreements and Related Underwriting Agreement then in effect shall have been delivered to the Indenture Trustee;
 - (b) a Clearing Agency Letter of Representation, if any, applicable to such Notes shall have been delivered to the Indenture Trustee and the Clearing Agency by the Administrative Agent;
 - (c) the Rating Agency Condition shall have been satisfied with respect to the Notes then outstanding;
 - (d) the Indenture Trustee shall have received a Certificate of the Trust certifying that, as of the date of such execution and delivery, (i) the representations and warranties set forth in Section 7.01 are true and correct in all material respects; and (ii) all Series Accounts required, pursuant to the Related Series Purchase Agreement, to have been established, shall have been established;
 - (e) in the event that an offering memorandum, prospectus or other similar document is required or is to be provided to prospective purchasers of

such Notes (as to which the Indenture Trustee shall have no duty or role in determining), the Originator shall have executed and delivered to the Issuer Trustee an indemnity relating to any misrepresentations contained therein in form and substance satisfactory to the Issuer Trustee;

- (f) any other items specified in the Related Supplement shall have been executed by and delivered to the appropriate Persons;
- (g) the Indenture Trustee shall have received an opinion of Counsel, in form and substance acceptable to the Indenture Trustee, stating that all requirements imposed by the terms of this Indenture for the creation of such Notes have been fulfilled in accordance with the terms of this Indenture; and
- (h) the Indenture Trustee shall have received a Certificate of the Trust stating that no event shall have occurred which would constitute a Related Event of Possession nor shall the issuance of such Notes constitute or result in the occurrence of a Related Event of Default.

Section 2.04 Execution, Certification and Delivery.

- (1) The form of Notes of any particular Series and each Related Class and the certificate of the NIP Agent to be endorsed thereon shall be substantially in the forms set out in the Related Supplement, with such appropriate insertions, omissions, substitutions and variations as may be approved by or permitted under the terms hereof or of the Related Supplement or as the Issuer Trustee and the NIP Agent may approve.
- (2) The Issuer Trustee may at any time and from time to time deliver Notes executed by it to the NIP Agent for certification.
- (3) Subject to Section 2.11, the NIP Agent shall certify Notes from time to time and make such Notes available for pick-up without receiving any consideration therefor upon receipt by and deposit with the NIP Agent of a Written Order for the certification and delivery of the Notes specifying for each such Note the name and address of the payee and the date, principal amount and interest rate, if applicable, of the Notes. A copy of each such Written Order shall be concurrently delivered to the Indenture Trustee by the Issuer Trustee or Administrative Agent, as the case may be.
- (4) No Noteholder shall be entitled to any benefit under this Indenture and no Note shall be issued or, if issued, shall be valid or obligatory for any purpose unless there appears on the Note a certificate executed by the NIP Agent, by the manual or facsimile signature of one of its authorized officers or

employees, and such certificate upon any Note shall be conclusive evidence that the Note has been duly certified and delivered hereunder. Any signature on behalf of the Trust or any guarantor of the Notes may be manual or by facsimile. Notes bearing the manual or facsimile signature of an individual who was at the time of execution a proper authorized signatory of the Issuer Trustee in respect of the Trust, any guarantor or the NIP Agent shall be valid and binding notwithstanding that any such individual shall have ceased to hold such office prior to the certification and delivery of such Notes or shall not have held such office at the date of issue of such Notes. Any certification of Notes issued hereunder shall not be construed as a representation or warranty as to the validity of this Indenture, the Related Supplement or the Notes (except as to the due certification thereof) and the NIP Agent shall in no respect be liable or answerable for the use made of the Notes or of the proceeds thereof. The certification of the NIP Agent signed on the said Notes shall however be a representation and warranty by the NIP Agent that said Notes have been duly certified and delivered by or on behalf of the NIP Agent pursuant to the provisions of this Indenture and the Related Supplement.

- (5) The certification and delivery of any Note by the NIP Agent shall constitute the issuance of such Note pursuant to the terms of this Indenture and the Related Supplement as of the date of such delivery.

Section 2.05 Temporary Notes.

- (1) Pending the preparation of Definitive Notes, the Trust may execute, and upon Written Order the NIP Agent shall certify and deliver, temporary Notes which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially in the form of the Definitive Notes in lieu of which they are issued and with such variations as the Issuer Trustee and the NIP Agent may determine, as evidenced by the NIP Agent's certification of such Notes.
- (2) If temporary Notes are certified and delivered, the Trust shall cause Definitive Notes to be prepared without unreasonable delay. After the preparation of Definitive Notes, the temporary Notes shall be exchangeable for Definitive Notes upon surrender of the temporary Notes at the office or agency of the Trust to be maintained as provided in Section 2.06, without charge to the holder. Upon surrender for cancellation of any one or more temporary Notes, the Trust shall execute and the NIP Agent shall certify and deliver in exchange therefor a like principal amount of Definitive Notes of authorized denominations. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits under this Indenture as Definitive Notes.

- (3) The provisions of this Section 2.05 do not apply with respect to Book Entry Notes.

Section 2.06 Registration, Transfer and Exchange.

- (1) The NIP Agent shall at all times while Notes are outstanding cause to be kept at its principal office in the City of Toronto or such other location as it may designate from time to time Note Registers in which will be entered the name of each Noteholder or Clearing Agency or its nominees, as the case may be, or if issued to or to the order of the bearer, a notation to that effect, and particulars of each of the Notes (including Notes issued under the Book-Entry System). The NIP Agent shall also at all times while any Notes in registered form are outstanding cause to be provided by and at its principal office in the City of Toronto or such other location as it may designate from time to time facilities for the exchange and transfer of Notes. The NIP Agent may from time to time provide additional facilities at its other offices or, with the approval of the Issuer Trustee, at the offices of third parties for such registration, exchange and transfer. Except as provided in Section 2.06(5), no transfer of a Note in registered form nor any transmission thereof by death will be valid unless made at one of such offices by the Noteholder or by his or her executors, administrators or other legal representatives, or his or her or their attorney duly appointed by an instrument in writing, in form and as to execution satisfactory to the NIP Agent and upon compliance with such reasonable requirements as the NIP Agent may prescribe and upon surrender of the Note to the NIP Agent for cancellation, whereupon a new Note in an aggregate principal amount, currency and interest rate, if any, and with the same maturity date, will be issued to the transferee in exchange therefor. The Note Registers will, at all reasonable times, be open for inspection by the Issuer Trustee, the Indenture Trustee, the Administrative Agent and any Noteholder.
- (2) Notes in any authorized denomination may be exchanged for an equal aggregate principal amount of Notes of the same Series and Class and having the same Principal Terms in any other authorized denomination or denominations. In every case of exchange of Notes of any denomination for other Notes and of any transfer of Notes in registered form, the NIP Agent may make a sufficient charge to reimburse it for any stamp taxes or governmental charge for its services and a reasonable sum per Note issued upon such exchange or transfer. Payment of such taxes and charges will be made by the party requesting the exchange or transfer as a condition precedent thereto.
- (3) In every case of exchange or transfer of a Note, the surrendered Notes shall be cancelled.

- (4) Notes in bearer form may be exchanged for Notes in registered form and vice versa (at the discretion of the NIP Agent), any such exchange to be for Notes of the same Series and Class and having the same Principal Terms and an equivalent principal amount.
- (5) Notes in bearer form shall be transferable by delivery.
- (6) The NIP Agent shall not be required to make transfers or exchanges of any Notes for the period beginning on the close of business on the day which is 15 days prior to a Related Distribution Date (or the next succeeding Business Day if such day is not a Business Day) through to and including such Related Distribution Date.

Section 2.07 Persons Entitled to Payment.

- (1) The Issuer Trustee, the Indenture Trustee, the NIP Agent and the Administrative Agent may deem and treat the bearer of any Note payable to bearer as the absolute owner of such Note and shall not be affected by any notice to the contrary.
- (2) The registered holder of any Note registered to a named payee or the transferee thereof, if such Note has been transferred in accordance with the provisions of Section 2.06, and any holder of a Note in bearer form, shall upon presentation of such Note be entitled to the principal moneys and interest, if any, evidenced by such Note, free from all equities or rights of set-off or counterclaim between the Trust and the original or any intermediate holder thereof, and all Persons may act accordingly.
- (3) Delivery of a Note to the NIP Agent by the holder of such Note shall, upon payment of all amounts outstanding thereon, be a good discharge to the Trust of all obligations evidenced by such Note. The NIP Agent shall not be bound to enquire into the title of any such holder, save as ordered by a court of competent jurisdiction or as required by statute, nor shall it be bound to see to the execution of any trust affecting the ownership of any Note or be affected by notice of any equity that may be subsisting in respect thereof.
- (4) In the case of the death of one or more joint registered owners, the principal money of and interest, if any, on a Note may be paid to the survivor or survivors of such registered holders whose receipt thereof, accompanied by the delivery of such Note, shall constitute a valid discharge to the Trust and the NIP Agent.
- (5) Any payment of principal or interest on any Note which is due on a day other than a Business Day shall be payable on the next succeeding Business Day

without adjustment for interest thereon and such payment shall be deemed to have been made with the same force and effect as if made on the due date.

Section 2.08 Mutilated, Destroyed, Lost or Stolen Notes.

If any of the Notes outstanding hereunder shall become mutilated or be lost, destroyed or stolen, the applicable Noteholder shall deliver to the NIP Agent a sworn affidavit of loss. Upon receipt of such affidavit, the NIP Agent shall certify and deliver a new Note of the same Series and Class and having the same Principal Terms and an equivalent principal amount as the one mutilated, lost, destroyed or stolen in exchange for and in place of and upon surrender and cancellation of such mutilated Note or in lieu of and in substitution for such lost, destroyed or stolen Note and the substituted Note shall be entitled to the security hereof and rank equally in accordance with its terms with all other Notes of the same Series, and Class issued hereunder. The applicant for a new Note shall bear the cost of the issue thereof, and in case of loss, destruction or theft, as a condition precedent to the issue thereof shall furnish such an affidavit of loss in form satisfactory to the Issuer Trustee and the NIP Agent, and an indemnity and surety bond in favour of the Issuer Trustee and the Indenture Trustee in amount and form satisfactory to the Issuer Trustee and the NIP Agent, in each case, as they may require, and shall pay the reasonable charges of the Issuer Trustee and the NIP Agent in connection therewith.

Section 2.09 Cancellation and Destruction of Notes.

All Notes surrendered or delivered to the NIP Agent for cancellation under this Indenture shall be forthwith cancelled by it as soon as practicable. All Notes which have been surrendered or delivered to and cancelled by the NIP Agent shall, subject to applicable law, be destroyed by the NIP Agent, and, if required by, and upon the written request of, the Issuer Trustee, the NIP Agent shall furnish to it a cancellation certificate setting forth the numbers and denominations of the Notes so cancelled.

Section 2.10 Protection of Notes.

- (1) The NIP Agent shall hold in safekeeping the Notes which have not been issued (but which have been delivered to the NIP Agent by or on behalf of the Issuer Trustee) pending receipt of a Written Order. The NIP Agent shall acknowledge receipt of the Notes so delivered by signing and returning to the Issuer Trustee an acknowledgement of receipt of the Notes, such acknowledgement to be in a form satisfactory to the Issuer Trustee.
- (2) The NIP Agent's responsibility for any Notes held in its custody hereunder shall be limited to using the same diligence in physically safeguarding such Notes as it does for its own securities. The NIP Agent shall account for the unissued Notes held in its custody whenever so required by the Issuer

Trustee. If at any time the NIP Agent shall discover that any of such Notes have been lost, damaged, destroyed, stolen or misappropriated, it shall promptly advise the Issuer Trustee thereof and identify, to the extent practicable, such Notes.

Section 2.11 Book-Entry Notes.

- (1) Except as provided in the Related Supplement for any Notes of a particular Series or Class, subject to Section 2.11(3), such Notes, upon original issuance, shall be issued under the Book-Entry System, in the form of a single typewritten Note certificate representing the Book-Entry Notes, to be delivered to the Clearing Agency by or on behalf of the Issuer Trustee in respect of such Series or Class. The Notes shall initially be registered on the Note Registers in the name of the Clearing Agency or its nominee and no Book-Entry Noteholder will receive Definitive Notes representing such Noteholder's interest in the Notes, except as provided in Section 2.11(3) or the Related Supplement. Unless and until Definitive Notes have been issued to the applicable Noteholders pursuant to Section 2.11(3) or as otherwise specified in the Related Supplement:
 - (a) the provisions of this Section 2.11 shall be in full force and effect;
 - (b) the Issuer Trustee, the Indenture Trustee, the NIP Agent and the Administrative Agent may deal with the Clearing Agency for all purposes (including the making of payments and the delivery of any notice, report or other communication) as the registered holder of Notes and as the authorized representative of the respective Book-Entry Noteholders;
 - (c) to the extent that the provisions of this Section 2.11 conflict with any other provisions of this Indenture, the provisions of this Section 2.11 shall prevail;
 - (d) the rights of the respective Book-Entry Noteholders shall be exercised only through the Clearing Agency (directly or by proxy in favour of the respective Participants) and shall be limited to those established herein and by law;
 - (e) all transfers and exchanges of Book-Entry Notes must be made through the Book-Entry System and any Person transferring a Book-Entry Note in such manner shall be deemed to have transferred to the transferee all of such Person's rights and obligations in respect thereof; all transferees of Book-Entry Notes shall be deemed to have received and accepted such transfer and be deemed to have agreed to be bound by the provisions of this Indenture; and

- (f) for purposes of any provision of this Indenture requiring or permitting actions with the consent of, or at the direction of, holders of Notes evidencing a specified percentage of the aggregate unpaid principal amount of Notes then outstanding, the Indenture Trustee is entitled to act and rely upon the instructions of the Clearing Agency that it has received instructions, directly or indirectly through their respective Participants, to such effect from Book-Entry Noteholders owning or representing, respectively, the requisite percentage of Notes.
- (2) Subject to Section 2.11(1), each of the parties hereto acknowledges and agrees that the Book-Entry Noteholders through their respective Participants are collectively entitled, under the terms hereof, to all of the rights accorded to registered holders of Notes and are bound by all of the obligations of such Noteholders.
- (3) If Book-Entry Notes have been issued and (i) the Issuer Trustee advises the Indenture Trustee and the NIP Agent that the Clearing Agency is no longer willing or able to discharge properly its responsibilities as the Clearing Agency with respect to such Notes and the Clearing Agency is unable to locate a qualified successor; (ii) the Issuer Trustee, acting in furtherance of an Extraordinary Resolution, advises the Indenture Trustee and the NIP Agent that it elects to terminate the use of the Book-Entry System with respect to the Notes of any particular Series or Class; or (iii) after the occurrence of a Related Event of Possession, Book-Entry Noteholders evidencing more than 50% of the aggregate unpaid principal amount then outstanding of the Notes of the affected Series or Class advise the Indenture Trustee and the NIP Agent through the Clearing Agency and the Participants in writing, that the continuation of the Book-Entry System with respect to such Notes is no longer in the best interests of the Book-Entry Noteholders with respect to such Notes, then the NIP Agent shall notify the relevant Book-Entry Noteholders of such Notes, through the Clearing Agency, of the occurrence of any such event and of the availability of Definitive Notes to Book-Entry Noteholders requesting the same. Upon surrender by the Clearing Agency of the single global certificate or certificates representing the Notes and accompanied by registration instructions from the Clearing Agency for re-registration, the NIP Agent shall certify and deliver such Definitive Notes. None of the Issuer Trustee, the Indenture Trustee or the NIP Agent shall be liable for any delay in delivery of such instructions and may conclusively act and rely on, and shall be protected in acting and relying on, such instructions. Upon the issuance of such Definitive Notes, the Issuer Trustee, the Indenture Trustee, the NIP Agent and the Administrative Agent shall recognize the holders of such Definitive Notes as Noteholders hereunder.

- (4) If Definitive Notes have been issued and thereafter the NIP Agent advises the Issuer Trustee of the availability of the Book-Entry System in regard to such Notes, the NIP Agent and the Issuer Trustee, acting in furtherance of an Extraordinary Resolution, shall agree to allow for the re-registration of such Definitive Notes under the Book-Entry System and the NIP Agent shall forthwith deliver notice thereof to each registered holder of such Notes. Upon surrender by each such Noteholder of its Definitive Note accompanied by instructions for re-registration of the Note under the Book-Entry System, all such Notes shall thereafter be re-issued under the Book-Entry System and be subject to Section 2.11(1), Section 2.11(2) and Section 2.11(3), *mutatis mutandis*.

Section 2.12 Payment of Amounts Due on Maturity of Notes.

- (1) The entire principal amount of each Note, except as otherwise specified in the Related Supplement, shall be due and payable on the Targeted Principal Distribution Date thereof unless such Note becomes due and payable at an earlier date by amortization, acceleration or otherwise.
- (2) Payment of amounts due upon maturity of the Notes will be made in the following manner. Subject to the Related Supplement, on or before 10:00 a.m. (Toronto time) on the Targeted Principal Distribution Date for such Notes, the Trust will pay, from the Related Series Account identified in the Related Series Purchase Agreement for such purpose to each of the holders entitled to receive payment, the principal amount of the Note together with any accrued and unpaid interest thereon (unless provided to the contrary in the Related Supplement, payable in the same currency), less any taxes required to be deducted or withheld, upon surrender of the holder's Note at any branch of the NIP Agent designated from time to time by the NIP Agent. The payment of such amount shall satisfy and discharge the liability of the Trust and the NIP Agent for such Notes and such Notes shall thereafter not be considered as outstanding hereunder.

Section 2.13 Periodic Payments on Notes.

- (1) The Notes shall accrue interest as provided herein and in the Related Supplement.
- (2) Subject to the Related Supplement, periodic payments in respect of each Note will be made in the following manner. On or before 10:00 a.m. (Toronto time) on each Related Distribution Date, the Trust will pay, from the Related Series Account identified in the Related Series Purchase Agreement for such purpose to each of the holders entitled to receive payment, an amount sufficient to pay the portion, if any, of the outstanding principal balance of such Notes then due, together with any accrued and unpaid interest (unless

provided to the contrary in the Related Supplement, payable in the same currency).

- (3) The Person in whose name any Note is registered on the day which is 15 days prior to a Related Distribution Date shall be deemed to be the Noteholder entitled to receive the payment due on the Related Distribution Date next following such day and the payment shall be made only to or upon the order in writing of that Noteholder and any payment so made shall be a valid discharge of the Trust and the NIP Agent for the amounts so paid. Subject to the Related Supplement, the NIP Agent shall, at least three Business Days prior to each Related Distribution Date (except in the case of payment at maturity, which shall only be paid on presentation and surrender of the Note for payment) forward or cause to be forwarded, by prepaid ordinary mail, to each Noteholder entitled to payment hereunder, at their respective addresses appearing in the Note Register, or, in the case of joint registered holders, payable to all such joint holders and addressed to all of them at the last address appearing in the Note Register for the one of such joint holders whose name appears first in such register, a cheque drawn on the Related Series Account identified in the Related Series Purchase Agreement for such purpose for the amount due on such Note (less any taxes required to be deducted or withheld), payable to the order of such Noteholder. The forwarding of such cheques shall satisfy and discharge the liability of the Trust for the indicated principal amount and accrued interest upon the Notes to the extent of the sums represented thereby (plus the amount of any tax deducted or withheld as aforesaid) unless such cheque is not paid on presentation. In the event of non-receipt of such cheque by such Noteholder or the loss or destruction thereof, the NIP Agent, upon being furnished reasonable evidence of such non-receipt, loss or destruction, and indemnity reasonably satisfactory to the NIP Agent, shall issue or cause to be issued to such Noteholder a replacement cheque for the amount of such cheque.
- (4) Interest shall accrue from day to day on the outstanding principal amount of each Note for the period and at the interest rate, and as calculated and compounded in the manner, specified in the Related Supplement.

Section 2.14 Interest Act.

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Indenture, in any Related Supplement or in any of the Notes that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. For the purposes of the *Interest*

Act (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Indenture, in any Related Supplement or in any of the Notes; and (ii) the rates of interest stipulated in this Indenture, in any Related Supplement or in any of the Notes are intended to be nominal rates and not effective rates or yields.

Section 2.15 Repayment of Unclaimed Moneys.

Subject to applicable law, any moneys made available by the Trust pursuant to Section 2.12 or Section 2.13 and not claimed by and paid, as provided therein, to Noteholders within six years after the date on which payment first becomes due and payable, shall be repaid to the Trust, with interest, if any, on demand (or retained by the Trust, as applicable), and thereupon the Trust shall be released from all further liability with respect to such moneys, and thereafter the holders of the Notes in respect of which such moneys were so repaid to the Trust shall have no rights in respect thereof and the Trust shall be discharged from its obligations in respect thereof.

Section 2.16 Maintenance of Records.

The NIP Agent shall open and maintain appropriate records with respect to each outstanding Note. The NIP Agent shall record by appropriate entries therein each payment made on account of interest and principal owing with respect to each such Note. For the purposes thereof, the NIP Agent shall provide to the Issuer Trustee a certified copy of such records as evidence of each payment as soon as practicable after making such payment. Such records of payment shall be conclusive evidence of the unpaid principal balance and interest owing in the absence of demonstrable error. The failure to record, or any error in recording, any such payment shall not, however, limit or otherwise affect the obligations of the Trust as to the principal amount or accrued interest owing with respect to any such Note.

Section 2.17 Acknowledgement.

- (1) The Indenture Trustee acknowledges that the Issuer Trustee, on behalf of the Trust, has entered into the Administration Agreement which provides, among other things, for the provision of certain services and the performance by the Administrative Agent of certain obligations of the Trust under this Indenture connected with the issuance of the Notes. Accordingly, any obligation of the Trust hereunder performed by the Administrative Agent on behalf of the Trust will be deemed to have been performed by the Trust and any payments referred to hereunder received or received and applied against the Notes by the Administrative Agent on behalf of the Trust will be deemed to have been received or received and applied by the Trust. The Indenture Trustee may act and rely on any instrument or report referred to hereunder prepared by the Administrative Agent on behalf of the Trust as if the instrument or report had been prepared by the Trust.

- (2) The Indenture Trustee also acknowledges that the Issuer Trustee, on behalf of the Trust, may designate a Servicer to provide, among other things, certain services and perform certain obligations of the Trust.

ARTICLE THREE SUBORDINATION

Section 3.01 Subordination.

The payment of the Subordinated Notes of any Series shall be subordinate and rank junior, to the extent and in the manner set forth in this Article Three and in the Related Supplement and the Related Series Purchase Agreement to the prior payment of amounts owing from time to time on the Senior Notes of such Series.

Section 3.02 Holding in Trust.

If, with respect to the Notes of any particular Series, (i) a Related Event of Possession shall have occurred and be continuing; (ii) the Notes have become due and payable pursuant to Section 8.02; and (iii) the Indenture Trustee or any holder of the Subordinated Notes of such Series shall thereafter receive from the Trust, or the Indenture Trustee shall hold, any amount for payment of the principal of or interest on Subordinated Notes, then the Indenture Trustee or such holder, as the case may be, shall, subject to Section 9.07, hold such amount in trust for the benefit of the holders of the Senior Notes and those Specified Creditors set out in a Certificate of the Trust delivered to the Indenture Trustee for such purpose, in accordance with and to the extent of their respective priorities. The Indenture Trustee or such holder of Subordinated Notes, as the case may be, shall from time to time pay over to the appropriate Specified Creditors from the amount so held in trust for the benefit of such Specified Creditors, so much as shall at the time of such payment by the Indenture Trustee or such holder of Subordinated Notes, as the case may be, have become due, and remain unpaid, of the Related Obligations Secured or, if the amount so due and remaining unpaid shall be greater than the amount so held in trust for the benefit of such Specified Creditors, then the entire amount so held; provided, however, that if such Related Event of Possession shall be waived in accordance with Section 8.03, or all amounts that shall have become due for payment of the Related Obligations Secured shall have been paid or duly provided for to the satisfaction of the Indenture Trustee such trusts for the benefit of such Specified Creditors shall terminate and any amount still held by the Indenture Trustee or such holders of Subordinated Notes, as the case may be, shall be applied by it for the purposes originally intended. In the event that the Indenture Trustee shall make any payment to any holder of Subordinated Notes contrary to the provisions of this Section 3.02, then such holder shall repay any amount so received to the Indenture Trustee, to be held and applied by the Indenture Trustee in accordance with the provisions of this Section 3.02.

Section 3.03 Subrogation to Senior Notes.

Subject to the payment in full of the Senior Notes of any particular Series or the making of due provision for such payment, the holders of the Subordinated Notes of such Series shall be subrogated to the rights of the holders of such Senior Notes to receive payments or distributions or assets of the Trust applicable to the Senior Notes, to the extent of the application thereto of moneys or other assets which would have been received by the holders of such Subordinated Notes but for the provisions of this Article Three, until the principal of and interest on such Subordinated Notes shall be paid in full.

Section 3.04 Rights of Holders Preserved.

In respect of a particular Class of Notes of a Series, nothing in this Article Three is intended to or shall impair the obligation of the Trust, subject to the rights of the holders of the Senior Notes of such Series, to pay Notes of such Series, as and when the same shall become due and payable in accordance herewith, or affect the relative rights of the holders of the Subordinated Notes and creditors of the Trust other than the holders of the Senior Notes, nor shall anything in this Article Three prevent the Indenture Trustee or the holder of any Notes from exercising all remedies otherwise permitted by this Indenture, subject to the rights (if any) under this Article Three of the holders of Senior Notes and the Indenture Trustee on their behalf in respect of any payment or distribution of cash, property or securities of the Trust received upon the exercise of any such remedy.

**ARTICLE FOUR
SECURITY**

Section 4.01 Security for the Obligations Secured.

- (1) Subject to Section 4.01(2), as security for the due payment of all Obligations Secured including, without limitation, all principal of and interest, if any, on the Notes from time to time issued and certified under this Indenture, and the performance by the Trust of all of the obligations of the Trust contained herein or in any Related Supplement in relation thereto, the Trust hereby:
 - (a) mortgages, charges, pledges, grants, transfers, assigns, hypothecates and sets over unto the Indenture Trustee for the benefit of the Specified Creditors as and by way of a fixed and specific mortgage, assignment, pledge, hypothec and charge and grants to the Indenture Trustee for the benefit of the Specified Creditors a security interest in (i) all Asset Interests now owned or hereafter acquired by the Trust and all amounts in the Collection Account attributable thereto; (ii) all Collections and any other debts, accounts, claims, moneys and choses in action which now are or which may at any time hereafter be due or owing to or owned by the Trust, and also all securities, bills, notes,

evidences of deposits of money, and other documents now held or owned or which may be hereafter taken, held or owned by the Trust, or anyone on behalf of the Trust, and all renewals thereof, accretions thereto, substitutions therefor and all interest, income and revenue arising therefrom or by virtue thereof, including, without limitation, all debts, collections, demands and choses in action now or hereafter owing to the Trust pursuant to any of the Programme Agreements, all amounts now or hereafter in all Related Series Accounts and Related Collateral Accounts, and interest on amounts held in such accounts, all Eligible Investments thereof and the proceeds of such Eligible Investments and all amounts available pursuant to any Credit Enhancement Agreement; and (iii) all proceeds in respect of the property described in (i) and (ii) now owned or hereafter acquired by the Trust; and

- (b) mortgages, charges, pledges, grants, transfers, assigns, hypothecates and sets over unto the Indenture Trustee for the benefit of the Specified Creditors, a floating charge over and grants to the Indenture Trustee for the benefit of Specified Creditors a security interest in all of the property, assets and undertaking now owned or hereafter acquired by the Trust (other than such property, assets and undertaking which are at all times validly subjected to the fixed and specific mortgage, assignment, pledge, hypothec and charge hereby created).
- (2) The Collateral shall be subject to the lien in favour of the Indenture Trustee created pursuant to Section 4.01 to secure the several obligations of the Trust hereunder and under any Related Supplement in favour of the Related Specified Creditors in respect of each Series. Funds on deposit in any Related Series Account or Related Collateral Account established in respect of any Series pursuant to this Indenture or the Related Supplement and funds available pursuant to any Related Credit Enhancement in respect of such Series shall be allocated to and held by the Indenture Trustee as part of the Related Collateral securing the obligations of the Trust in favour of the Related Specified Creditors in respect of such Series. With respect to the Notes of any particular Series, the Related Collateral shall be held as security for the due payment of the Related Obligations Secured alone. The Related Obligations Secured shall be secured solely by the Related Collateral and recourse in respect of such Related Obligations Secured shall be limited to the Related Collateral; it being understood that the Related Specified Creditors in respect of any particular Series shall not be entitled to receive payment from, and in enforcing the rights of the Indenture Trustee and such Related Specified Creditors hereunder or under any Related Supplement in respect of the Related Obligations Secured, recourse by the Indenture Trustee and such

Related Specified Creditors against the Trust, the Trust Property and the Collateral shall not be had against, the Related Collateral in respect of any other Series, including, for greater certainty, any Related Series Account or Related Credit Enhancement which is part of the Related Collateral in respect of any other Series. The Related Specified Creditors shall not have the right to claim against the Trust or participate in the insolvency of the Trust as unsecured creditors other than, and only to the extent that, such claim or participation is necessary to permit recourse to the Related Collateral.

Section 4.02 Habendum.

To have and to hold the Collateral and all rights hereby conferred unto the Indenture Trustee, its successors and assigns forever but in trust nevertheless for the benefit of the Specified Creditors and for the uses and purposes and subject to the terms and conditions herein set forth.

Section 4.03 Security Valid Irrespective of Advance of Moneys.

The Trust acknowledges that value has been given and that the security granted pursuant to Section 4.01 shall attach and be effective on the date of execution of this Indenture and when the Trust has rights in the Collateral, whether or not the moneys and the Notes or any other evidence of Obligations Secured or any part thereof hereby secured or intended to be hereby secured shall be advanced or issued before or after or upon the date of the execution of this Indenture.

Section 4.04 Satisfaction and Discharge.

- (1) The Indenture Trustee will from time to time, upon the receipt of a Written Order and at the expense of the Trust, cancel and discharge any of the security constituted by this Indenture and execute and deliver to the Issuer Trustee such assignments or other instruments as are required to discharge any of the security constituted hereby and reconvey to the Trust any property subject to any of the security constituted hereby, free and clear of such security, and to effect the cancellation or partial discharge of any registration or recording of the security interest or other encumbrance created hereby, and to release the Trust from this Indenture and the obligations hereof and the covenants herein contained (other than the provisions relating to the indemnification of the Indenture Trustee) at such time as the Trust has paid and satisfied all Obligations Secured to which such security relates at the times and in the manner therein and herein provided.
- (2) If, (i) pursuant to the terms of the Pooling and Servicing Agreement, a Series Purchase Agreement or a Credit Enhancement Agreement, any Asset Interest is to be conveyed to the Originator or the Related Credit Enhancer, respectively, or to any other Person; or (ii) with respect to the Notes of any particular Series, any payment is made from the Related Collateral Accounts

or the Related Series Accounts in accordance with the terms of this Indenture, the Related Supplement and the Related Series Purchase Agreement, such conveyance or payment shall be effective immediately, free and clear of the security constituted hereby and any other provision hereof, without the necessity of any Written Order, whether such conveyance or payment shall occur before or after any Related Event of Possession, and the Indenture Trustee shall be deemed to have taken all action contemplated by Section 4.04(1) to effect such conveyance.

ARTICLE FIVE POSSESSION AND USE OF COLLATERAL

Section 5.01 General.

- (1) Subject to the express terms of this Indenture and the Related Supplement, until, in respect of the Notes of any Series, the Related Obligations Secured have become due and payable pursuant to Section 8.02, the Issuer Trustee, as trustee of the Trust, will be permitted to possess and use the Related Collateral in connection with the activities of the Trust, including, without limitation, the right to exercise all of its rights and perform all of its obligations under each Related Programme Agreement and enter into Related Hedging Agreements without consultation with or the consent of the Indenture Trustee.
- (2) Each Note is issued on the express understanding and acknowledgement that the rights under such Note are subject in all respects to the priority and sharing arrangements set forth herein and in the Related Supplement, and to the provisions set forth herein and therein regarding allocation of payments. The benefit of this Indenture shall be allocated and shared among the Trust and the Noteholders in accordance with the terms hereof and any Related Supplement.
- (3) The Indenture Trustee shall be entitled to amounts received by the Indenture Trustee (or anyone else) pursuant to this Indenture or any enforcement thereof, for its own account, to the extent of any amounts owing to the Indenture Trustee pursuant hereto or in connection herewith for which the Indenture Trustee is expressly provided the benefit of the security hereby constituted, and any amounts so paid to the Indenture Trustee shall reduce the amounts otherwise available under this Indenture to each other Specified Creditor on a pro rata basis, based on their relative entitlement to such amounts.

Section 5.02 Collection Accounts.

- (1) The NIP Agent shall credit the amount of all proceeds of the sale of the Notes of any particular Series to the Related Collection Accounts.

- (2) With respect to the Notes of any particular Series, the Issuer Trustee shall, subject to Section 5.01(3), deposit all cash proceeds received by it in connection with Related Collateral, including, without limitation, any Related Collections, all Eligible Investments thereof and all proceeds of such Eligible Investments, to the Related Series Accounts designated for such purpose in the related Series Purchase Agreement. Until the Related Obligations Secured have become due and payable pursuant to Section 8.02, the Issuer Trustee, as trustee of the Trust, shall have access to such Related Series Accounts and may use the funds in such accounts for any purpose not in violation of this Indenture or the Related Programme Agreements, including, without limitation, payment of the Related Expenses.
- (3) All amounts payable by the Trust hereunder or under any Related Programme Agreement shall, prior to the occurrence of a Related Event of Possession, be paid (i) out of the Related Series Accounts to the extent attributable to the Notes of any particular Series, or the Related Collateral, the Related Obligations Secured or the Related Programme Agreements; and (ii) out of all Related Series Accounts in an amount equal to the Related Proportionate Share thereof to the extent not so attributable.
- (4) All such amounts deposited in the Related Series Accounts shall be allocated only to the Related Specified Creditors of the appropriate Series, except as otherwise expressly provided herein or in the Related Supplement.

Section 5.03 Location of Accounts.

If required to be maintained, the Related Series Accounts and the Related Collateral Accounts must be maintained, (i) if CIBC has the Required Rating, at CIBC; and (ii) if CIBC does not have the Required Rating, at a Canadian chartered bank or trust company which has the Required Rating, which may include Affiliates of the Issuer Trustee and the Issuer Trustee itself.

ARTICLE SIX COVENANTS OF THE TRUST

Section 6.01 Positive Covenants.

The Trust hereby covenants and agrees with the Indenture Trustee that, so long as any Obligations Secured remain outstanding and except as otherwise permitted by the prior written consent of the Indenture Trustee or otherwise contemplated herein or in the other Programme Agreements, it shall:

- (a) **Pay Obligations.** Duly and punctually pay or cause to be paid to every Noteholder the principal and interest, if any, of the Notes held by such Noteholder on the date, at the place and in the manner provided for in this Indenture, each Related Supplement and the Notes

and duly and punctually pay all Obligations Secured to the other Specified Creditors in the manner provided for in the Programme Agreements;

- (b) **Maintain Collateral.** Subject to the express terms of this Indenture, diligently maintain and protect the Collateral;
- (c) **Maintain Existence.** Do or cause to be done all things necessary to keep in full force and effect the existence of the Trust as a trust under the laws of the Province of Ontario and all properties, rights, franchises, licences and qualifications required to carry on its business in each jurisdiction in which it owns property or carries on business from time to time;
- (d) **Compliance with Laws, etc.** Comply with all applicable governmental restrictions and regulations and obtain and maintain in good standing all licences, permits, qualifications and approvals from any and all governments, governmental commissions, boards or agencies of jurisdictions in which it carries on business required in respect of the operations of the Trust;
- (e) **Pay Taxes.** Pay or cause to be paid all taxes, government fees and dues levied, assessed or imposed upon the Trust and its property or any part thereof, as and when the same become due and payable; provided that the Trust may protest the payment of any such taxes, fees or dues if it is acting in good faith and if it either provides the Indenture Trustee with cash in an amount sufficient to satisfy the same or otherwise satisfies the Indenture Trustee that its interests are not prejudiced thereby;
- (f) **Further Assurances.** From time to time execute and deliver all financing statements, instruments of further assurance and other instruments and take other or further action as the Indenture Trustee, relying on the advice of Counsel, may consider necessary or advisable in connection with the security constituted hereby;
- (g) **Pay Indenture Trustee.** Pay the Indenture Trustee reasonable remuneration as agreed between the Trust and the Indenture Trustee from time to time for its services as Indenture Trustee hereunder and pay to the Indenture Trustee on demand all reasonable expenses, disbursements and advances properly incurred by the Indenture Trustee in connection with the trusts hereof (including, without limitation, legal fees, expenses and the reasonable compensation and

disbursements of all other advisors, agents or experts employed or retained by the Indenture Trustee pursuant to this Indenture);

- (h) **Appoint Successors.** Upon the written request of the Indenture Trustee, use its best efforts, following any (i) termination or resignation of a Servicer under the Pooling and Servicing Agreement or a Servicing Agreement, as the case may be, the Administrative Agent, the Custodian, or the NIP Agent or, in each case, any successor thereof; or (ii) termination, non-renewal or expiry of a Credit Enhancement Agreement (other than a termination, non-renewal or expiry which occurs because the Related Asset Interests have been collected or assigned to the Related Credit Enhancer and neither party thereto has any further obligation thereunder), to appoint and enter into an agreement with a successor to such Servicer, Administrative Agent, Custodian or NIP Agent or replace or renew such Credit Enhancement Agreement, in form and substance the same as the applicable provisions in the relevant, previously existing Programme Agreement (subject, in each case, to such amendments as may be consented to by the Indenture Trustee) and will notify the Indenture Trustee and each of the Related Rating Agencies of each such occurrence and new agreement and will submit any such agreement relating to the appointment of a successor Administrative Agent, Custodian or NIP Agent to the Indenture Trustee and each of the Related Rating Agencies for its and their approval before executing same and will execute and deliver all supplemental indentures and amendments hereto and all instruments of further assurance and other instruments and will take other and further action as the Indenture Trustee, relying on the advice of Counsel, may consider necessary or advisable to assign and render subject to this Indenture any such agreement;
- (i) **Deliver Information.** Deliver or cause to be delivered to the Indenture Trustee and the Rating Agencies on a confidential basis (except that the Indenture Trustee may use such information for the purpose of complying with its obligations under this Indenture and any Related Supplement and the Rating Agencies may use such information for purposes of rating the Notes), (i) such financial statements, reports and other information relating to the conduct of the business and affairs of the Trust as the Indenture Trustee may reasonably require including, without limitation, information pertaining to any actual or anticipated Related Event of Possession or other event which could reasonably be anticipated to have a material adverse effect on the affairs of the Trust and copies of all Programme Agreements (including any amendments

thereto) in effect from time to time; and (ii) in respect of the Notes of any Series, the information specified in the Related Supplement;

- (j) **Deliver Financial Statements.** Deliver or cause to be delivered to the Indenture Trustee and each of the Rating Agencies within 140 days (or such shorter period within which the applicable financial statements must be filed pursuant to applicable securities laws from time to time) after the end of each fiscal year audited financial statements of the Trust for the fiscal year, including the balance sheet and statements of income, retained earnings and changes in financial position of the Trust and within 60 days (or such shorter period within which the applicable financial statements must be filed pursuant to applicable securities laws from time to time) after the end of each fiscal quarter, other than the fiscal quarter of the Trust ending at the fiscal year end of the Trust, unaudited financial statements of the Trust for such fiscal quarter of the Trust, including the balance sheet and statements of income, retained earnings and changes in financial position of the Trust. Upon receipt of financial statements delivered to it pursuant to this provision, the Indenture Trustee shall, while such financial statements remain current, maintain custody of same and make same available for inspection by Noteholders at their request during normal business hours. No obligation shall rest with the Indenture Trustee to analyze such financial statements, or evaluate the performance of the Trust as indicated therein, in any manner whatsoever;
- (k) **Change of Name.** Immediately notify the Indenture Trustee and each of the Rating Agencies of (i) any change in name of the Issuer Trustee or the Trust; and (ii) the name of any successor Issuer Trustee;
- (l) **Change of Address.** Immediately notify the Indenture Trustee and each of the Rating Agencies of any change in address of the Issuer Trustee or the Trust, if such address is outside of Ontario; and
- (m) **Register Financing Statements.** Take all necessary action to ensure the due registration of all requisite financing statements, financing change statements or other instruments to properly maintain, preserve and perfect the security provided hereunder in favour of the Indenture Trustee.
- (n) **Asset Interests Limitation.** Obtain the written consent of the Rating Agencies prior to (i) creating or originating any assets which would form part of the Asset Interests; or (ii) purchasing or otherwise acquiring any assets, which are other than Receivables, interests therein or related assets thereof; provided that, the Trust shall not in

any event acquire any investments which are not Eligible Investments and which do not otherwise qualify as investments which, pursuant to applicable accounting guidelines, are permissible investments for a qualified special purpose entity pursuant to generally accepted accounting principles; and

- (o) **Deliver Notice of Related Event of Default.** Immediately notify each of the Rating Agencies and the Indenture Trustee of the occurrence, in respect of a particular Series, of a Related Event of Default.

Section 6.02 Negative Covenants.

The Trust hereby covenants and agrees with the Indenture Trustee that, so long as any Obligations Secured remain outstanding and except as otherwise permitted by the prior written consent of the Indenture Trustee or as contemplated herein or in the other Programme Agreements, it shall not:

- (a) **No Sale.** Sell, transfer, exchange or otherwise dispose of any of the Collateral;
- (b) **Limit Activities.** Engage in any activity other than the acquisition of Asset Interests, the issuance of Notes to fund such acquisitions, related derivatives transactions, and all other activities incidental thereto, including fulfilling all of its obligations under the Programme Agreements;
- (c) **Impair Security.** Permit the validity or effectiveness hereof or of the Collateral to be impaired or permit the security created by this Indenture to be amended, hypothecated, subordinated, terminated or discharged, or permit any Person to be released from any covenants or obligations under this Indenture, except as may be expressly permitted hereby;
- (d) **Create Encumbrances.** Create, incur, assume or suffer to exist any encumbrance (including, without limitation, any mortgage, pledge, lien, charge, assignment, lease, hypothecation or security interest) upon or in respect of any of the Trust's undertaking, property or assets except Permitted Liens;
- (e) **Create Indebtedness.** Create, incur, assume or guarantee any indebtedness or obligation or pay any amount in respect thereof at any time after the date hereof (other than the Obligations Secured);
- (f) **Loans and Investments.** Make any loan to or investment in, or give any guarantee on behalf of or other financial assistance to, any Person;

- (g) **Dealings with Collateral, etc.** Take any steps to:
- (i) release any security or guarantee in respect of the Collateral;
 - (ii) waive or consent to a postponement of compliance on the part of any Obligor with any of the terms or provisions of any applicable agreement or in any manner grant indulgence to any such Obligor, except that the Trust may:
 - A. receive and accept payments made by such Obligor, in whole or in part, if the Administrative Agent would have done so had the Related Asset Interests been administered by it on its own behalf;
 - B. enter into special payment arrangements with such Obligor if, in the reasonable opinion of the Administrative Agent, the special payment arrangements would minimize ultimate loss under the Pooling and Servicing Agreement; or
 - C. add amounts in respect of taxes or other expenses or compound interest owed by such Obligor to the principal amount owing by such Obligor, in lieu of enforcing immediate payment thereof if the Administrative Agent would have done so had the Related Asset Interests been administered by it on its own behalf and if, in the reasonable opinion of the Administrative Agent, the special payment arrangements would minimize ultimate loss under the Pooling and Servicing Agreement; and
 - (iii) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions of the Pooling and Servicing Agreement or any Series Purchase Agreement or Servicing Agreement on the part of the Originator or the Servicer except as expressly permitted by each of the Related Credit Enhancers;
- (h) **Amend Programme Agreements.** Amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of the other party to any of the Programme Agreements (other than the Pooling and Servicing Agreement, a Series Purchase Agreement or a Servicing Agreement) if any such supplementation, amendment, modification, restatement or replacement or waiver or consent would reasonably be expected to,

individually or in the aggregate, materially adversely affect the rights or interests of the Specified Creditors, provided that, for greater certainty, this Section 6.02(h), Section 11.11(1)(e) and Section 13.03 shall not apply to nor prevent any such amendment, supplementation, modification, restatement, replacement, waiver or consent to or of such Programme Agreement where the consent or agreement of the Trust is not required pursuant to the terms of such Programme Agreement and is not otherwise sought by any party to such Programme Agreement;

- (i) **Consent to Resignations.** Consent to the resignation of (i) the Administrative Agent under the Administration Agreement; or (ii) the NIP Agent hereunder;
- (j) **Hedging Agreements, Credit Enhancement Agreements and Series Enhancement Agreements.** Enter into any Hedging Agreement, Credit Enhancement Agreement or Series Enhancement Agreement in respect of any Notes or the Related Asset Interests, unless the Rating Agency Condition shall have been satisfied; or
- (k) **Notices and Co-Owner Directions.** In respect of each Ownership Interest acquired by the Trust pursuant to the Pooling and Servicing Agreement and the related Series Purchase Agreement, give any notice or Co-Owner Direction contemplated by the Pooling and Servicing Agreement or the related Series Purchase Agreement, except where (i) it has been directed to do so in writing by the Indenture Trustee; or (ii) it is required to do so pursuant to the terms of a Programme Agreement, including any Related Supplement.

Section 6.03 Indenture Trustee May Perform Covenants.

If the Trust fails to perform any of its covenants herein contained, the Indenture Trustee may, subject to the receipt of indemnification and funding reasonably acceptable to the Indenture Trustee as provided in Section 12.03(2) and Section 12.03(3), itself perform the covenant if the covenant is capable of being performed by the Indenture Trustee and, if the covenant requires the payment or expenditure of money, the Indenture Trustee may make the payment or expenditure with its own funds or with money borrowed by or advanced to it for such purpose, but will be under no obligation so to do; and all sums so expended or advanced will bear interest at a commercially reasonable rate per annum equal to the then current rate of interest charged by the Indenture Trustee from time to time from the date of expenditure until repayment and will (together with such interest) be paid by the Trust upon demand and will until paid form part of the Obligations Secured and constitute a charge or lien on the Collateral to which such covenant related in priority to the security hereby constituted and will be payable out of any funds coming into possession of the Indenture Trustee hereunder. No performance or

payment will be deemed to relieve the Trust from the consequences of the occurrence of any Related Event of Possession hereunder.

Section 6.04 Right of Audit.

The Indenture Trustee may, in its discretion, at any reasonable time upon five Business Days' written notice to the Trust, cause an audit to be made on the Trust's books and records for the purpose of confirming the accuracy of all information and reports, if any, delivered to the Indenture Trustee, the Administrative Agent, the Custodian or the NIP Agent, as the case may be.

**ARTICLE SEVEN
REPRESENTATIONS AND WARRANTIES**

Section 7.01 Representations and Warranties of the Trust.

The Trust hereby represents and warrants to the Indenture Trustee and shall be deemed to represent and warrant to the Indenture Trustee on the issuance of Notes of any particular Series hereunder that:

- (a) **Valid Existence and Due Qualification.** The Trust is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, has the power and authority to enter into and perform its obligations under this Indenture and the other Programme Agreements executed by it and all instruments and agreements delivered pursuant hereto and thereto and to own its property and carry on its business as currently conducted including, without limitation, the power and authority and legal right to acquire Asset Interests, and has obtained all material licences, permits and approvals from all governments, governmental commissions, boards and other agencies required in respect of its operations;
- (b) **Due Authorization and Enforceability.** The execution, delivery and performance of this Indenture, the other Programme Agreements executed by it and every agreement or instrument to which the Trust is a party delivered pursuant hereto and thereto has been duly authorized by all requisite action and this Indenture and such other Programme Agreements, instruments and agreements have been duly executed and delivered by the Trust and constitute valid and binding obligations of the Trust enforceable against the Trust in accordance with their respective terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance;

- (c) **No Litigation.** There are no actions, suits or proceedings pending or, to the knowledge of the Issuer Trustee, threatened against or affecting the Trust at law or in equity or before or by any governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Trust or in the ability of the Trust to perform its obligations under this Indenture, the other Programme Agreements executed by it or any agreement or instrument to which the Trust is a party delivered pursuant hereto or thereto; and the Issuer Trustee is not aware of any existing ground on which any such action, suit or proceeding might be commenced with any reasonable likelihood of success; and the Issuer Trustee is not in default with respect to any judgment, order, writ, injunction, decree, award, rule or regulation of any court, arbitrator or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which, either separately or in the aggregate, would result in any such material adverse change;
- (d) **No Burdensome Agreements.** It is not a party to any agreement or instrument which materially adversely affects its ability to perform its obligations under this Indenture, the other Programme Agreements executed by it or any agreements or instruments to which the Trust is a party delivered pursuant hereto or thereto or materially adversely affects the business, operations, prospects, properties, assets or condition, financial or otherwise of the Trust;
- (e) **No Restriction.** It is not subject to any restriction or any judgment, order, writ, injunction, decree, award, rule or regulation which materially adversely affects, or in the future may materially adversely affect, the business, operations, prospects, properties, assets or condition, financial or otherwise of the Trust or its ability to perform its obligations under this Indenture, the other Programme Agreements executed by it or any agreements or instruments to which the Trust is a party delivered pursuant hereto or thereto;
- (f) **No Conflict.** Neither the execution nor delivery of this Indenture, the other Programme Agreements executed by it or any agreements or instruments to which the Trust is a party delivered pursuant hereto or thereto, the consummation of the transactions herein and therein contemplated, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the Declaration of Trust or any agreements or

instruments to which the Trust is a party or by which it or any of its property and assets are bound, or results or will result in the creation or imposition of any mortgage, lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Trust (other than Permitted Liens) or in contravention of any applicable law, rule or regulation of Canada or of any of the Provinces of Canada;

- (g) **No Consents Required.** No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any governmental authority or agency on the part of the Trust is required in connection with the execution and delivery of this Indenture, the other Programme Agreements executed by it or any agreements or instruments to which the Trust is a party delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or in connection with the enforcement of this Indenture, the other Programme Agreements executed by it or any agreements or instruments to which the Trust is a party delivered pursuant hereto or thereto except such as have been previously obtained, made, given or taken, as the case may be;
- (h) **Collateral.** The Collateral is free from all encumbrances other than Permitted Liens; and
- (i) **No Default.** No event has occurred which constitutes, or with notice or lapse of time or both, would constitute a Related Event of Possession.

Section 7.02 Representation and Warranty of Indenture Trustee.

The Indenture Trustee represents and warrants to the Issuer Trustee that the execution, delivery and performance by the Indenture Trustee of this Indenture are within the powers of the Indenture Trustee and have been duly authorized by all necessary action on the part of the Indenture Trustee, and do not contravene any applicable law in force on the date hereof relating to the conduct of the business of an indenture trustee or contractual restriction binding on or affecting the Indenture Trustee.

Section 7.03 Representation and Warranty of NIP Agent.

The NIP Agent represents and warrants to the Issuer Trustee and the Indenture Trustee that the execution, delivery and performance by the NIP Agent of this Indenture are within the powers of the NIP Agent and have been duly authorized by all necessary action on the part of the NIP Agent, and do not contravene any applicable law in force on the date hereof relating to the conduct of

the business of a note issuance and payment agent or contractual restriction binding on or affecting the NIP Agent.

Section 7.04 Survival of Representations and Warranties.

The representations and warranties of the Trust, the Indenture Trustee and the NIP Agent in Section 7.01, Section 7.02 and Section 7.03, respectively, shall survive the execution of this Indenture.

**ARTICLE EIGHT
EVENTS OF POSSESSION**

Section 8.01 Related Event of Possession.

A Related Event of Possession means, with respect to the Notes of any particular Series, (i) the happening of any event specified as such in the Related Supplement; or (ii) the happening of any one of the following events:

- (a) **Default in Payment.** The Trust fails to pay any of the Related Obligations Secured when the same becomes due and payable under any provision of this Indenture, the Related Supplement or such Notes (other than where the Issuer Trustee has advised the Indenture Trustee in writing that such failure resulted from inadvertence or error on the part of the Issuer Trustee or the Administrator and which failure is capable of timely rectification without having a material adverse effect on the ability of the Trust to satisfy its obligations under such Notes (which determination shall be made without regard to the availability of any Credit Enhancement)) and such failure continues for a period of five Business Days after the date on which written notice of such failure, requiring the same to be remedied, shall have been given to the Trust by the Indenture Trustee; provided that, for greater certainty, no such failure shall be considered to occur by reason or in consequence or as a result of amounts that may be deducted or withheld under the *Income Tax Act* (Canada) or any other applicable taxation statute by the Trust or the Indenture Trustee from any payment to be made to any Holder of such Notes having been so deducted or withheld and such amounts having been remitted to the appropriate governmental authorities on behalf of such Noteholder;
- (b) **Insolvency.** The Issuer Trustee admits the inability of the Trust to pay its liabilities generally as they become due or makes a general assignment for the benefit of the creditors of the Trust or otherwise acknowledges the insolvency of the Trust or any proceeding shall be instituted by or against the Trust seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding up, dissolution, reorganization, arrangement, adjustment, protection, relief or

composition of its debts under any law relating to bankruptcy, insolvency, reorganization, moratorium or seeking the entry of an order for relief by the appointment of a receiver, trustee or other similar official for the Trust or for any substantial part of its property and if such proceeding has been instituted against the Trust either such proceeding has not been stayed or dismissed within 45 days or any of the actions sought in such proceeding (including the entry of an order for relief or the appointment of a receiver), are granted in whole or in part or if a receiver is privately appointed in respect of the Trust or of the property of the Trust or any substantial part thereof;

- (c) **Levy of Execution.** An encumbrancer (other than the Indenture Trustee) takes possession of the Related Collateral or any part thereof which is, in the opinion of the Indenture Trustee, relying on the advice of Counsel, a substantial part thereof, or if any process or execution is levied or enforced upon or against the Related Collateral or any part thereof which is, in the opinion of the Indenture Trustee, relying on the advice of Counsel, a substantial part thereof and remains unsatisfied for such period as would permit any such Related Collateral to be sold thereunder, unless such process is in good faith disputed by the Trust, and the Trust gives or causes to be given security which, in the discretion of the Indenture Trustee, is sufficient to pay in full the amount thereby claimed in case the claim is held to be valid; or

- (d) **Breach of Covenant.** If the Trust fails to perform or observe any of its obligations hereunder (other than as referred to in Section 8.01(a)) on its part to be observed and performed (except to any extent which has not had and which could not reasonably be expected to have a material adverse effect on the ability of the Trust to pay any of the Related Obligations Secured when the same becomes due and payable) and such failure shall continue unremedied and continues to have such material adverse effect for a period of 30 days following notice thereof (referring to this Section 8.01(c) and giving particulars of the failure in reasonable detail) delivered to the Trust by the Indenture Trustee or holders of not less than 25% of the aggregate principal amount of the Senior Notes of such Series then outstanding, or such longer period as may be reasonably necessary to cure such failure but not exceeding, in any case, 90 days following such notice; provided that a period of more than 30 days shall only be permitted if (i) the Trust is proceeding with all due diligence to cure or cause to be cured such failure or such material adverse effect; and (ii) its proceedings can be reasonably expected to cure or cause to be cured such failure or such material adverse effect within such period.

Section 8.02 Indenture Trustee May Declare Related Obligations Secured Due.

- (1) Subject to Section 8.03, if, with respect to the Notes of any particular Series, the Indenture Trustee has notice of the occurrence of a Related Event of Possession, it shall deliver written notice thereof to the Trust and the Administrative Agent, the Related Credit Enhancers and the Related Rating Agencies describing the Related Event of Possession which has occurred, and declare, subject to the terms hereof, all or part of the Related Obligations Secured then outstanding (including, without limitation, all obligations of the Trust with respect to such Notes then outstanding) to be immediately due and payable and the security hereby constituted for such Related Obligations Secured will forthwith become enforceable. The Indenture Trustee shall incur no liability by reason of making such declaration in good faith.
- (2) Subject to Section 8.03, if the Indenture Trustee makes such declaration, the Trust will forthwith pay to the Indenture Trustee and Related Specified Creditors, in accordance with the order of priorities specified in Section 9.07(2), all Related Obligations Secured together with (i) all accrued and unpaid interest thereon to the date of such payment; and (ii) in connection with any discount Notes then outstanding, an amount equal to the product of (x) (A) the yield determined on the basis of the discounting of the face amount of the Note at the date of issuance thereof expressed as a number to three decimal places; multiplied by (B) the number of days such Note has been outstanding as at the date of acceleration; and divided by (C) the number of days in the original term to maturity of such Note; and (y) the face amount of any such discount notes.

Section 8.03 Waiver of Early Possession.

- (1) If, with respect to the Notes of any particular Series, the Related Obligations Secured have become due and payable pursuant to Section 8.02, the holders of the Notes of such Series shall have the right and power (exercisable by Extraordinary Resolution) to instruct the Indenture Trustee to waive a Related Event of Possession arising solely from (i) a Related Event of Possession specified in the Related Supplement as being an event which may be waived pursuant to this Section 8.03(1); or (ii) an event described in Section 8.01(a) or Section 8.01(d), and the Indenture Trustee will thereupon waive the Related Event of Possession upon the terms and conditions as such holders of Notes prescribe, provided always that no act or omission either of the Indenture Trustee or such holders of Senior Notes will extend to or be taken in any manner whatsoever to affect any subsequent Related Event of Possession or the rights resulting therefrom.

- (2) If a Related Event of Possession is waived in accordance with Section 8.03(1),
 - (i) the security hereby constituted will no longer be or be deemed to be enforceable by reason of such Related Event of Possession; (ii) any rights which had become vested in the Indenture Trustee by virtue thereof will be and be deemed to be cancelled fully or to the same extent as though no such Related Event of Possession had occurred; and (iii) the Indenture Trustee will, at the request and at the cost of the Trust, take such action as may reasonably be required to restore the position which prevailed immediately prior to the taking of the steps by the Indenture Trustee, subject, however, to any condition or conditions imposed by such holders of Notes in waiving the Related Event of Possession, and neither the Indenture Trustee nor any Receiver theretofore appointed by the Indenture Trustee will incur any liability by reason of the taking of the steps.

Section 8.04 Notice of Related Event of Possession.

- (1) The Indenture Trustee shall give notice to the relevant Noteholders of the occurrence of every Related Event of Possession, within a reasonable time, but not exceeding in any event 30 Business Days, after the Indenture Trustee receives notice of the occurrence thereof, unless the Indenture Trustee in good faith (and relying on an opinion of Counsel) determines that the withholding of such notice is in the best interests of such Noteholders and so advises the Trust in writing. The Indenture Trustee shall give notice of the occurrence of every Related Event of Possession to all other Specified Creditors to whom Related Obligations Secured are owed (excluding counterparties to Related Hedging Agreements) and each of the Related Rating Agencies within five Business Days after the Indenture Trustee receives notice of the occurrence thereof.
- (2) When such notice of an occurrence of a Related Event of Possession has been given and the Related Event of Possession is thereafter waived, notice that the Related Event of Possession is no longer continuing shall be given by the Indenture Trustee to Persons to whom notice was sent pursuant to Section 8.04(1) within a reasonable time, but not exceeding in any event 30 days, after the Indenture Trustee receives notice that the Related Event of Possession has been waived.

**ARTICLE NINE
REMEDIES**

Section 9.01 General.

Subject to Section 8.03 and the Related Supplement, if, with respect to the Notes of any particular Series, the Related Obligations Secured have become due and payable pursuant to Section 8.02 and the Trust has failed to pay such Related

Obligations Secured, the Indenture Trustee shall (subject, however, to compliance with the provisions of Section 12.03(2) with respect to the giving of indemnity and funds) proceed to realize upon the security constituted by this Indenture and to enforce the rights of the Indenture Trustee and of the Specified Creditors to whom Related Obligations Secured are owed by possession of the Related Collateral as provided in Section 9.02; by appointment of a Receiver with respect to the Related Collateral under the provisions of Section 9.03; or by proceedings in any court of competent jurisdiction for the appointment of a Receiver or for sale of the Related Collateral or any part thereof or for foreclosure; or by any other action, suit, remedy or proceeding authorized or permitted by this Indenture or by law or by equity; and may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Indenture Trustee and of such Specified Creditors lodged in any judicial proceedings relative to the Trust.

Section 9.02 Possession by Indenture Trustee.

Subject to Section 8.03, if, with respect to the Notes of any particular Series, the Related Obligations Secured have become due and payable pursuant to Section 8.02 and the Trust has failed to pay such Related Obligations Secured, the Indenture Trustee will have the right by its officers, agents or attorneys to take possession of all or any part of the Related Collateral and thenceforth to possess and use and exercise all the rights and benefits of the Trust under or in respect of such Related Collateral, to collect all moneys due and becoming due thereunder and to take possession of all or any documents or records evidencing or relating to any part of such Related Collateral with full power to manage and to receive the payments, income and profits in respect of such Related Collateral and to pay therefrom all expenses of managing such Related Collateral and all charges against such Related Collateral ranking in priority to the Specified Creditors to whom Related Obligations Secured are owed or payments which may be necessary to preserve or protect such Related Collateral. The remainder of the moneys so received and not required for any of the above purposes will be applied by the Indenture Trustee in the manner stated in Section 9.07.

Section 9.03 Appointment of Receiver.

Subject to Section 8.03, if the Indenture Trustee determines under the provisions of Section 9.01 to appoint a Receiver, the following provisions will apply:

- (a) the Indenture Trustee may from time to time in the same manner remove any Receiver so appointed and appoint another in its stead; in making any appointment the Indenture Trustee will be deemed to be acting as the agent of the Trust;

- (b) any appointment will be limited to the Related Collateral and may be made either before or after the Indenture Trustee has taken possession of such Related Collateral;
- (c) every Receiver may in the discretion of the Indenture Trustee be vested with all or any of the powers and discretions of the Indenture Trustee;
- (d) the Indenture Trustee may from time to time fix the reasonable remuneration of every Receiver and direct the payment thereof out of such Related Collateral, the income therefrom or the proceeds thereof;
- (e) the Indenture Trustee may from time to time require any Receiver to give security for the performance of his duties and may fix the nature and amount thereof, but will not be bound to require security;
- (f) every Receiver may, with the consent in writing of the Indenture Trustee, borrow money and grant security for the purposes of the maintenance, protection or preservation of such Related Collateral or any part thereof with any amount so borrowed and any interest thereon to be a charge or lien on such Related Collateral in priority to the security hereby constituted;
- (g) every Receiver will, so far as concerns responsibility for his acts or omissions, be deemed the agent of the Trust and in no event the agent of the Indenture Trustee, and the Indenture Trustee will not, in making or consenting to the appointment, incur any liability to the Receiver for its remuneration or otherwise, provided that the Trust hereby irrevocably authorizes the Indenture Trustee to give instructions to the Receiver relating to the performance of its duties as set out herein;
- (h) except as may be otherwise directed by the Indenture Trustee or as otherwise specifically provided in this Indenture, all moneys from time to time received by any Receiver will be paid over to the Indenture Trustee to be held by it on the trusts of this Indenture; and
- (i) the Indenture Trustee may pay over to any Receiver any moneys constituting part of such Related Collateral to the extent that the same may be required to be applied for the purposes hereof by such Receiver, and the Indenture Trustee may from time to time determine what funds such Receiver is at liberty to keep in hand with a view to the performance of its duty as Receiver.

Section 9.04 Sale by Indenture Trustee.

Subject to Section 8.03, if the Indenture Trustee determines under the provisions of Section 9.01 to realize upon the security hereby constituted by sale, the Indenture Trustee will have the right with or without possessing the Related Collateral to sell and dispose of all or any part of such Related Collateral en bloc or in parcels, at public auction or by private contract and at the time and on terms and conditions, which include in case of sale by auction a reasonable reserve bid as the Indenture Trustee determines, having first given notice of the time and place of the sale as it may think proper. It will be lawful for the Indenture Trustee to make any sale, whether by auction or private contract, either for cash or upon credit or partly for one and partly for the other, upon such reasonable conditions as to terms of payment as it may deem proper; also to rescind or vary any contract of sale that may have been entered into and resell with or under any of the powers conferred hereby; also to stop, suspend or adjourn any sale from time to time and hold the sale as adjourned without further notice; also to deliver to the purchaser of such Related Collateral or any part thereof a good and sufficient deed or other document evidencing title to the same.

Section 9.05 Purchase by Specified Creditors.

Any one or more of the Specified Creditors or any agent or representative thereof may become purchasers at any sale of any Collateral whether made under the power of sale herein contained or pursuant to judicial proceedings. The Originator shall be entitled to notice of such sale by the Indenture Trustee and to purchase Related Asset Interests at their then fair market value.

Section 9.06 Noteholders, etc. May Direct Indenture Trustee's Action.

Except as herein otherwise expressly provided and subject to Section 12.03(2) and Section 12.03(3), the holders of the Senior Notes of any particular Series may, from time to time by Extraordinary Resolution, direct and control the actions of the Indenture Trustee in any proceedings under this Article Nine in connection with such Notes and the Related Collateral except that, if the Indenture Trustee is directed to take proceedings out of court, the Indenture Trustee may in its discretion take judicial proceedings in lieu thereof.

Section 9.07 Application of Moneys.

- (1) Upon the occurrence and during the continuance of a Related Event of Possession, the Indenture Trustee shall establish and maintain one or more Related Collateral Accounts in respect of the Notes of each particular Series into which shall be deposited all Related Collections (and the proceeds of and interest on any Eligible Investments thereof) such that Related Collections required herein to be applied to the payment of Related Obligations Secured shall be segregated. All moneys standing in the Collection Account attributable to the Related Asset Interests at the time of a Related Event of

Possession shall be transferred to the appropriate Related Collateral Accounts in accordance with the Pooling and Servicing Agreement and the Related Series Purchase Agreement (but not to a Related Series Account as provided therein). All further Related Collections and the proceeds of sale of any Related Collateral shall be deposited to the Related Collateral Account, all as determined by the Indenture Trustee, which determination shall be conclusive for purposes of this Indenture, absent manifest error. The Indenture Trustee (and any Receiver appointed by it pursuant to Section 9.03) shall have sole access to such accounts and shall apply the moneys therein for the benefit of the Specified Creditors as provided hereunder. Notwithstanding the foregoing, all moneys received on account of Related Asset Interests which have been assigned to a Related Credit Enhancer pursuant to a Related Credit Enhancement Agreement shall not be deposited to a Related Collateral Account but shall be remitted by the Trust or the Indenture Trustee to the Related Credit Enhancer entitled thereto.

- (2) All moneys standing in a Related Collateral Account or otherwise received by the Indenture Trustee or by the Receiver pursuant to this Article Nine shall be applied in the manner and priorities indicated in the Related Supplement.

Section 9.08 Trust Moneys.

All moneys held by the Indenture Trustee pursuant to the provisions of this Indenture, subject to any provision herein to the contrary, shall be held by the Indenture Trustee as part of the Collateral as security for the Specified Creditors as herein provided. Any moneys held by the Indenture Trustee under the trusts of this Indenture shall, upon the receipt of a Written Order pursuant to Section 12.12, be placed by the Indenture Trustee in Eligible Investments. Upon receipt of (i) a Certificate of the Trust stating that no Related Event of Possession has occurred and is continuing; and (ii) a Written Order for payment to the Trust, the Indenture Trustee shall pay or cause to be paid all interest earned on moneys so deposited to the Trust.

Section 9.09 Limitation of Indenture Trustee's Liability.

The Indenture Trustee will not, nor will any Receiver appointed by it, be responsible or liable, otherwise than as a trustee and then limited solely to the Trust Property then available to it, for any debts contracted by it, for damages to Persons or property or for salaries or non fulfilment of contracts during any period wherein the Indenture Trustee or Receiver manages any of the Collateral or the activities of the Trust upon or after entry, as herein provided, nor will the Indenture Trustee or any Receiver be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession might be liable. The Indenture Trustee will not be bound to do, observe or perform or to see to the observance or performance by

the Trust of any of the obligations herein imposed upon the Trust, nor in any other way to supervise or interfere with the conduct of any activities of the Trust unless and until the Related Obligations Secured have become due and payable pursuant to Section 8.02 and the Indenture Trustee has been supplied with moneys reasonably necessary to provide for the expenses of the required action and with satisfactory funding and indemnity as provided in Section 12.03(2) and Section 12.03(3).

Section 9.10 Protection of Persons Dealing with Indenture Trustee.

No Person dealing with the Indenture Trustee or its agents will be obliged to inquire as to whether any of the security hereby constituted has become enforceable, or whether the powers which the Indenture Trustee is purporting to exercise have become exercisable, or whether any money remains due upon such security hereby constituted or the Obligations Secured, or as to the necessity or expediency of the stipulations and conditions subject to which any sale is made, or otherwise as to the propriety or regularity of any sale or of any other dealing by the Indenture Trustee with any of the Collateral, or to see to the application of any money paid to the Indenture Trustee; and in the absence of fraud on the part of the Person, the dealing will be deemed, so far as regards the safety and protection of the Person, to be within the powers hereby conferred and to be valid and effectual accordingly.

Section 9.11 Remedies Cumulative.

No remedy herein conferred upon or reserved to the Indenture Trustee, or upon or to the Specified Creditors is intended to be exclusive of any other remedy, but each and every remedy is cumulative and is in addition to every other remedy given hereunder or now existing or hereafter to exist by law or by statute.

Section 9.12 The Trust to Execute Confirmatory Deed.

In case of any sale hereunder, whether by the Indenture Trustee or under judicial proceedings, the Issuer Trustee, as trustee of the Trust, will execute and deliver to the purchaser on demand any instrument reasonably necessary to confirm to the purchaser its title to the property so sold, and in case of any such sale, the Indenture Trustee is hereby irrevocably authorized to carry the sale into effect and to execute on its behalf and in its name any such confirmatory instrument.

Section 9.13 Indenture Trustee Appointed Attorney.

The Trust irrevocably constitutes and appoints the Indenture Trustee and any officer or employee thereof, with full power of substitution, as its true and lawful attorney with full power and authority in the name of the Trust or in its own name, in its discretion, upon the occurrence and during the continuance of any Related Event of Possession, for the purpose of carrying out the terms of this Indenture to take all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes hereof, and without limiting the generality of the foregoing, hereby gives the Indenture Trustee

the power and right on behalf of the Trust, without notice to or assent by the Trust, to the extent permitted by applicable law, to do the following:

- (a) to ask for, demand, sue for, collect and receive all and any moneys due or becoming due with respect to the Related Collateral;
- (b) to receive, take, endorse, assign and deliver any and all cheques, notes, drafts, acceptances, documents and other negotiable and non-negotiable instruments, documents and chattel paper taken or received by the Indenture Trustee in connection therewith and herewith; and
- (c) to commence, file, prosecute, defend, settle, compromise or adjust any claim, suit, action or proceeding with respect to the Related Collateral.

The foregoing power of attorney shall be coupled with an interest and survive any dissolution, liquidation or winding up of the Trust.

Section 9.14 Credit Enhancement Agreement.

Notwithstanding any other provision of this Indenture, where, with respect to the Notes of any particular Series, (i) the unutilized portion of the Credit Enhancement available under any Related Credit Enhancement Agreement, is greater than zero; or (ii) the Related Credit Enhancer is owed any amount thereunder, in making any disposition of the Related Collateral, the Indenture Trustee shall, if so directed in the Related Supplement, exercise its rights and privileges under this Article Nine in accordance with such Related Credit Enhancement Agreement, all of the terms of which are hereby acknowledged by the Indenture Trustee, and the Related Credit Enhancer shall have the right upon giving written notice to the Indenture Trustee to initiate at any time any action, suit, or proceeding to enforce its rights under such agreement. Without limiting the generality of the foregoing, any conflict between the provisions of this Indenture and a Credit Enhancement Agreement shall be resolved by applying the provisions of the Credit Enhancement Agreement so long as the unutilized portion of the Credit Enhancement available thereunder is greater than zero or the Related Credit Enhancer is owed any amount thereunder. Any funds received by way of Related Collections of amounts payable in respect of Related Asset Interests which have been purchased by the Related Credit Enhancer shall, notwithstanding any other provision hereof, be held in trust separate and apart in a segregated account for the benefit of the Related Credit Enhancer and remitted to the Related Credit Enhancer as it may direct as soon as practicable.

Section 9.15 Disclaimer of Marshalling.

In the event that the security hereby constituted shall become enforceable and the Indenture Trustee shall have determined or become bound to enforce the same, the Trust covenants not to invoke the doctrine of marshalling or any other equitable

principle for the purpose of requiring the Indenture Trustee to realize or to have realized on any particular asset forming part of the Collateral.

**ARTICLE TEN
SUITS BY SPECIFIED
CREDITORS AND INDENTURE TRUSTEE**

Section 10.01 Specified Creditors May Not Sue.

Subject to Section 9.14, no Specified Creditor (other than the Indenture Trustee as expressly provided herein) will have any right to institute any suit, action or proceeding for payment of any part of the Obligations Secured or for the purpose of bringing Collateral to sale, or for the execution of any trust or power hereunder in relation thereto, or for the appointment of a Receiver of such Collateral or for any other remedy hereunder, provided that the Specified Creditors may take such action if the following conditions precedent have been fulfilled:

- (a) the Specified Creditor previously has given to the Indenture Trustee written notice of the happening of a Related Event of Possession;
- (b) in the case of any suit by the holders of the Notes of any particular Series only, such Noteholders, by Extraordinary Resolution, or by a written instrument signed by the holders of not less than 66 2/3% of the aggregate principal amount of Senior Notes of such Series then outstanding, have made a request to the Indenture Trustee and the Indenture Trustee has been afforded reasonable opportunity itself to either proceed to exercise the powers hereinbefore granted or to institute an action, suit or proceeding in its name for the purpose requested;
- (c) in the case of any suit by Specified Creditors other than the holders of the Notes of any particular Series only, such Specified Creditor has made a written request to the Indenture Trustee and the Indenture Trustee has been afforded reasonable opportunity itself to either proceed to exercise the powers hereinbefore granted or to institute an action, suit or proceeding in its name for the purpose requested;
- (d) the Specified Creditor has provided to the Indenture Trustee, when so requested by the Indenture Trustee, sufficient funds and security and indemnity satisfactory to the Indenture Trustee, acting reasonably, against the costs, expenses and liabilities to be incurred therein or thereby; and
- (e) the Indenture Trustee has failed to act hereunder within a reasonable time which shall, for the purposes hereof, not exceed a period of 60

days in any event after notification, request and offer of sufficient funds and indemnity by such Specified Creditors;

it being understood and intended that no Related Specified Creditor with respect to a Series shall have any right in any manner whatsoever to take any action against any Collateral other than the Related Collateral or to affect, disturb or prejudice the rights of any other Specified Creditor (of the same or any other Series), or to obtain or seek to obtain priority over or preference to any other Specified Creditor (of the same or any other Series), or to enforce any right under this Indenture, except in the manner herein provided and for the equal, rateable and common benefit of all Related Specified Creditors of the same Series, except as otherwise expressly provided in this Indenture and the Related Supplement.

Section 10.02 Indenture Trustee Not Required to Possess Notes.

All rights of action under this Indenture may be enforced by the Indenture Trustee without the possession of any of the Notes or the production thereof at any trial or other proceedings relative thereto and any such proceeding instituted by the Indenture Trustee may be brought in its own name as trustee of an express trust. 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 benefit of the Specified Creditors in respect of which such judgment has been recovered in the manner herein provided.

Section 10.03 Indenture Trustee May Institute All Proceedings.

The Indenture Trustee will have the power to institute and maintain any and all suits and proceedings as it may consider necessary or expedient to enforce the security hereby constituted or to prevent any impairment of such security by any acts of the Trust or of others in contravention of this Indenture or the Programme Agreements or in violation of law, or as the Indenture Trustee may be advised by Counsel are necessary or expedient to preserve and to protect its interest and the security and interests of the Specified Creditors in respect of the Collateral or in respect of the income, earnings, rents, issues and profits therefrom. Following the occurrence of a Related Event of Possession, any suit or proceedings may be instituted by the Indenture Trustee against others in the name of the Trust and the Indenture Trustee is hereby irrevocably constituted and appointed the agent of the Trust for this purpose.

Section 10.04 Application of Proceeds.

If, following the occurrence of a Related Event of Possession, any Specified Creditor receives any amount in satisfaction of any part of the Obligations Secured from any source whatsoever other than pursuant hereto, such amount shall be held in trust for and immediately remitted to the Indenture Trustee and shall be applied by the Indenture Trustee in the manner provided in Section 9.07.

ARTICLE ELEVEN MEETINGS OF NOTEHOLDERS

Section 11.01 Right to Convene Meetings.

The Indenture Trustee may at any time and from time to time and will on receipt of a Written Order or a written request signed by the holders of not less than 51% of the aggregate principal amount of the Notes then outstanding to which such meeting relates and upon receiving sufficient funds and on being indemnified to its reasonable satisfaction by the Trust or by the Noteholders signing such order or request against the costs which may be incurred in connection with the calling and holding of such meeting, convene a meeting of the Noteholders. In the event of the Indenture Trustee failing within 30 days after receipt of any such order or request and such sufficient funds and indemnity to give notice convening a meeting, the Issuer Trustee or such Noteholders, as the case may be, may convene such meeting.

Section 11.02 Notice of Meetings.

At least 15 days notice of any meeting will be given to (i) the Noteholders to whom such meeting relates in the manner provided in Section 15.03, (ii) the Related Credit Enhancers in the manner provided in Section 15.04, and (iii) to the Related Rating Agencies in the manner provided in Section 15.05, and a copy thereof will be sent by post to the Indenture Trustee, unless the meeting has been called by it, and to the Issuer Trustee, unless the meeting has been called by it. Such notice will state the time when and the place where the meeting is to be held and will state briefly the general nature of the business to be transacted thereat. It will not be necessary for any such notice to set out the terms of any resolution to be proposed or any of the provisions of this Article Eleven. Such notice will also state that any Noteholder may be represented at any meeting of Noteholders by a proxy duly appointed by instrument in writing in accordance with the regulations made from time to time by the Indenture Trustee pursuant to Section 11.09 and that the appointment of any proxy may be revoked at any time before the commencement of the meeting to which the appointment relates. The non-receipt of any such notice by a Noteholder shall not invalidate any resolution passed at such meeting.

Section 11.03 Chairperson.

Any individual, who need not be a Noteholder, nominated in writing by the Indenture Trustee will be chairperson of the meeting and if no person is so nominated, or if the individual so nominated is not present within 15 minutes of the time fixed for the holding of the meeting, the Noteholders present in person or represented by proxy will choose an individual present to be chairperson.

Section 11.04 Quorum.

Subject to the provisions of Section 11.11, at any meeting of the Noteholders a quorum will consist of Noteholders present in person or represented by proxy and

representing at least 25% of the aggregate principal amount of the Notes then outstanding to which such meeting relates. If a quorum of the Noteholders is not present within 30 minutes from the time fixed for holding any meeting, the meeting, if summoned by the Noteholders or pursuant to a request of the Noteholders, will be dissolved; but in any other case the meeting will be adjourned to the same day in the next calendar week (unless such day is not a Business Day in which case it will be adjourned to the next following Business Day thereafter) at the same time and place and no notice will be required to be given in respect of such adjourned meeting. At the adjourned meeting the Noteholders present in person or by proxy will constitute a quorum and may transact the business for which the meeting was originally convened notwithstanding that they may not represent 25% of the aggregate principal amount of the Notes then outstanding to which such meeting relates.

Section 11.05 Power to Adjourn.

The chairperson of any meeting at which a quorum of Noteholders is present may, with the consent of the holders of a majority of the principal amount of the Notes then outstanding represented thereat, adjourn any such meeting and no notice of such adjournment need be given except such notice, if any, as the meeting may prescribe.

Section 11.06 Show of Hands.

Every question submitted to a meeting will be decided in the first place by a majority of the votes given on a show of hands except that votes on Extraordinary Resolutions will be given in the manner provided in Section 11.07. At any such meeting, unless a poll is duly demanded as hereinafter provided, a declaration by the chairperson that a resolution had been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority will be conclusive evidence of the fact.

Section 11.07 Poll.

On every Extraordinary Resolution, and on any other question submitted to a meeting when demanded by the chairperson or by one or more Noteholders or proxies for Noteholders holding at least 5% of the aggregate principal amount of the Notes then outstanding to which such meeting relates, a poll will be taken in such manner and either at once or after an adjournment as the chairperson directs. Questions other than Extraordinary Resolutions will, if a poll be taken, be decided by the votes of the holders of a majority in principal amount of the Notes then outstanding represented at the meeting and voting on the poll.

Section 11.08 Voting.

On a show of hands, every person who is present and entitled to vote, whether as a Noteholder or as proxy for one or more Noteholders or both, will have

one vote. On a poll, each Noteholder present in person or represented by a proxy will be entitled to one vote in respect of each \$1,000 principal amount (or the Equivalent Amount in any other currency) of Notes of which he is then the holder or which he represents by proxy. A proxy need not be a Noteholder. In the case of joint registered holders of a Note, any one of them present in person or represented by proxy at the meeting may vote in the absence of the other or others but in case more than one of them be present in person or represented by proxy, they will vote together in respect of the Notes of which they are joint registered holders.

Section 11.09 Regulations.

The Indenture Trustee may from time to time make reasonable regulations and may make reasonable variations to the regulations as it thinks fit with respect to:

- (a) the voting by proxy by Noteholders and the form of instrument appointing proxies and the manner in which the same will be executed and with respect to the production of the authority of any Person signing on behalf of the giver of the proxy;
- (b) the lodging of instruments appointing proxies at any place or places and in such custody as the Indenture Trustee directs and the time, if any, before the holding of the meeting or adjourned meeting by which the same must be deposited;
- (c) the forwarding by the custodian thereof of particulars of instruments appointing proxies by letter, cable, telegraph, facsimile or electronic messaging system before the meeting to the Trust or to the Indenture Trustee or to the chairperson of the meeting; and
- (d) the issue of voting certificates to holders of Book-Entry Notes which voting certificates shall entitle the holders named therein to be present and vote at any such meeting and at any adjournment thereof or to appoint a proxy or proxies to represent them and vote for them at any such meeting and at any adjournment thereof, in the same manner and with the same effect as though the holders so named in such voting certificates were the actual registered holders of Definitive Notes.

Any regulations so made will be binding and effective and votes given in accordance therewith will be valid and will be counted. Instruments appointing proxies, the particulars of which are forwarded in accordance with the regulations, will confer the same right to vote as though the instruments themselves were produced at the meeting. Save as herein otherwise specified, the only Persons who will be recognized at any meeting of Noteholders as the holders of Notes or as entitled to vote or be present at the meeting in respect thereof will be the

Noteholders to whom such meeting relates and holders of proxies of such Noteholders.

Section 11.10 The Trust and Indenture Trustee.

Each of the Issuer Trustee, the Administrative Agent, the Indenture Trustee, the Related Credit Enhancers and the Related Rating Agencies, by their respective employees, officers and directors, and the legal advisors of such parties may attend any meeting of any Noteholders, but will not as such have a vote.

Section 11.11 Powers Exercisable by Extraordinary Resolution.

- (1) In addition to any powers hereinbefore given, the holders of Notes shall by Extraordinary Resolution have the power to:
 - (a) subject to Section 12.03(2) and Section 12.03(3) require the Indenture Trustee to exercise or refrain from exercising any of the powers conferred upon it by this Indenture;
 - (b) sanction the release of the Trust from its covenants and obligations hereunder;
 - (c) remove the Indenture Trustee from office and appoint a new Indenture Trustee;
 - (d) subject to the provisions of this Indenture (including, without limitation, Section 11.12), sanction any supplementation, amendment, modification, restatement or replacement of or waiver of or postponement of compliance with any provision of the Notes or of this Indenture (other than a Related Supplement to which Section 11.12 shall apply) which shall be agreed to by the Issuer Trustee and any modification, alteration, abrogation, compromise or arrangement of or in respect of the rights of the Noteholders against the Trust or against the Collateral whether such rights shall arise under the provisions of this Indenture or otherwise;
 - (e) subject to the consent of each Credit Enhancer and any other Specified Creditor who is a party to a Programme Agreement, permit or direct the Indenture Trustee to sanction any supplementation, amendment, modification, restatement or replacement of or waiver of or postponement of compliance with such Programme Agreement which would reasonably be considered to materially adversely affect the rights or interests of any Specified Creditor, provided however, that where such supplementation, amendment, modification, restatement or replacement or waiver or postponement would not reasonably be considered to materially adversely affect the rights or interests of a

particular Credit Enhancer, the consent of such Creditor Enhancer shall not be required hereunder;

- (f) assent to any compromise or arrangement by the Trust with any creditor, creditors or class or classes of creditors or with the holders of any securities of the Trust;
- (g) restrain any holder of any Note from taking or instituting any suit, action or proceeding for the recovery of amounts payable under such Note or hereunder or for the execution of any trust or power hereunder or for the appointment of a Receiver or trustee in bankruptcy or the winding up of the Trust or for any other remedy hereunder and to direct such holder of any Note to waive any Related Event of Possession on which any suit or proceeding is founded;
- (h) direct any Noteholder bringing any action, suit or proceeding to waive the Related Event of Possession in respect of which such action, suit or other proceeding shall have been brought;
- (i) sanction the sale, exchange or other disposition of the Collateral or any part thereof subject to and in accordance with this Indenture for such consideration as may be specified in the Extraordinary Resolution;
- (j) appoint a committee with power and authority (subject to such limitations, if any, as may be prescribed in the Extraordinary Resolution) to exercise, and to direct the Indenture Trustee to exercise, on behalf of the Noteholders, such of the powers of the Noteholders as are exercisable by Extraordinary Resolution or other resolution as shall be included in the Extraordinary Resolution appointing the committee. The Extraordinary Resolution making such appointment may provide for payment of the expenses and disbursements of and compensation to such committee. Such committee shall consist of such number of persons as shall be prescribed in the Extraordinary Resolution appointing it and the members need not be themselves Noteholders. Every such committee may elect its chairperson and may make regulations respecting its quorum, the calling of its meeting, the filling of vacancies occurring in its number and its procedures generally. Such regulations may provide that the committee may act at a meeting at which a quorum is present or may act by minutes signed by the number of members thereof necessary to constitute a quorum. All acts of any such committee within the authority delegated to it shall be binding upon all Noteholders. Neither the committee nor any member thereof shall be liable for any loss arising from or in connection with any action taken or omitted to be taken by them in good faith; and

- (k) take any other action authorized by this Indenture to be taken by Extraordinary Resolution.
- (2) Notwithstanding any other provision of this Indenture, (i) no change whatsoever to (x) the payee of a Note, the date of maturity of a Note, the principal amount or currency of a Note, the dates upon which payments are to be made under a Note, the interest rate payable on a Note, if any, or the place of payment of a Note may be made without the consent of the holders of such Note; or (y) the percentage specified in the definition of "Extraordinary Resolution" in Section 11.13 for passage of a resolution may be made without the consent of all Noteholders; and (ii) no Extraordinary Resolution may be adopted which would reasonably be expected to, individually or in the aggregate, materially adversely affect the rights or interests of a Credit Enhancer or the Indenture Trustee without the express written consent of such Credit Enhancer or the Indenture Trustee, as the case may be.

Section 11.12 Powers Exercisable by Extraordinary Resolution of Holders of Series.

- (1) The holders of the Senior Notes of each particular Series shall, in addition to any powers herein given to holders of Notes generally and to the exclusion of the holders of the Notes of all other Series, have the power, exercisable from time to time by Extraordinary Resolution, to sanction and agree to any supplementation, amendment, modification, restatement or replacement of or waiver of or postponement of compliance with any of the provisions of the Notes of such Series or the Related Supplement or this Indenture affecting such Notes solely or otherwise in a manner or to an extent differing from that in or to which it affects the rights of the holders of Notes of any other Series, provided such supplementation, amendment, modification, restatement, replacement, waiver or postponement would not reasonably be expected to, individually or in the aggregate, materially adversely affect the rights or interests of the holders of any Notes of any other Series.
- (2) If any business to be transacted at a meeting of Noteholders, or any action to be taken or power to be exercised by instrument in writing under Section 11.18 affects the rights of the holders of Notes of one or more Series in the manner described in Section 11.12(1), then:
 - (a) reference to such fact, indicating each Series so affected, shall be made in the notice of such meeting and the meeting shall be and is herein called a "serial meeting"; and
 - (b) the holders of Notes of a Series so affected shall not be bound by an action taken or power exercised at a meeting of Noteholders generally,

or at a serial meeting or by instrument in writing under Section 11.18 unless, in addition to compliance with the other provisions of this Article, such action is taken or power exercised by resolution of the Noteholders of such Series as follows:

- (i) at such serial meeting:
 - A. there are present a quorum consisting of two or more persons holding either personally or as proxies not less than 25% of the principal amount then outstanding of the Senior Notes of such Series (subject to the provisions of this Article as to adjourned meetings); and
 - B. the resolution is passed upon the affirmative vote of the holders of not less than a majority of the votes, or, in the case of a matter requiring an Extraordinary Resolution, upon a poll by the affirmative vote of not less than $66 \frac{2}{3}\%$ of the votes, given upon such poll or resolution; or
 - (ii) by a written instrument signed in one or more counterparts by the holders of not less than $66 \frac{2}{3}\%$ of the principal amount then outstanding of the Senior Notes of such Series.
- (3) If any business to be transacted at any meeting, or any action to be taken or power to be exercised by instrument in writing under Section 11.18, would not reasonably be expected to, individually or in the aggregate, materially adversely affect the rights or interests of the holders of Notes of one or more particular Series, the provisions of this Article Eleven shall apply as if the Notes of such Series were not outstanding and no notice of any such meeting need be given to the holders of Notes of such Series. For greater certainty but without limiting the generality of the foregoing:
- (a) a proposal to modify or terminate any covenant or agreement which by its terms is effective only so long as Notes of a particular Series are outstanding shall be deemed not to materially adversely affect the rights or interests of the holders of Notes of any other Series; and
 - (b) the holders of Notes of any Series not materially adversely affected by any proposal to be submitted to a serial meeting in accordance with Section 11.12(2) shall not have the right to attend at such serial meeting or to vote on or otherwise approve or reject such proposal.

Section 11.13 Meaning of “Extraordinary Resolution”.

“Extraordinary Resolution”, wheresoever used herein, subject as hereinafter in this Article Eleven provided, means a resolution proposed to be passed as an Extraordinary Resolution at a meeting of Noteholders duly convened for the purpose and held in accordance with the provisions of this Article Eleven at which the holders of at least 25% of the aggregate principal amount of the Notes or Notes of a particular Series (or Class thereof), as the case may be, then outstanding to which such meeting relates are present in person or by proxy and passed by the favourable votes of the holders of not less than 66 2/3% of the aggregate principal amount of such Notes or Notes of a particular Series (or Class thereof), as the case may be, represented at the meeting and voted on a poll upon such resolution. If, at any such meeting, the holders of 25% of the aggregate principal amount of such Notes or Notes of a particular Series (or Class thereof), as the case may be, then outstanding to which such meeting relates are not present in person or by proxy within 30 minutes after the time appointed for the meeting, then the meeting, if convened by or on the requisition of Noteholders, will be dissolved; but in any other case will stand adjourned to such date, being not less than 15 nor more than 60 days later and to such place and time as may be appointed by the chairperson. Not less than 10 days notice will be given of the time and place of such adjourned meeting, in the manner provided in Section 15.03. Such notice will state that at the adjourned meeting, the Noteholders present in person or by proxy will constitute a quorum but it will not be necessary to set forth the purposes for which the meeting was originally called or any other particulars. At the adjourned meeting, the Noteholders present in person or by proxy will constitute a quorum and may transact the business for which the meeting was originally convened and a resolution proposed at such adjourned meeting and passed by the requisite vote as provided in this Section 11.13 will be an Extraordinary Resolution within the meaning of this Indenture notwithstanding that the holders of 25% of the aggregate principal amount of the Notes or Notes of a particular Series (or Class thereof), as the case may be, then outstanding to which such meeting relates are not present in person or by proxy at such adjourned meeting. Votes on an Extraordinary Resolution will always be given on a poll and no demand for a poll on an Extraordinary Resolution will be necessary. The Trust shall give notice to the Related Rating Agencies and the Related Credit Enhancers of any resolution passed as an Extraordinary Resolution.

Section 11.14 Class Meetings.

If any business to be transacted at a meeting, or any action to be taken or power to be exercised by an instrument in writing under Section 11.17, especially affects the rights relating to a Class of Notes of a particular Series in a manner or to an extent substantially differing from the manner in or to the extent which it affects the rights relating to another Class of Notes of such particular Series (as to which the

opinion of the Indenture Trustee, relying on the advice of Counsel, shall be binding on all Noteholders and all other Persons for all purposes hereof) then:

- (a) reference to such fact, indicating the Class of Notes so especially affected, shall be made in the notice of such meeting and the meeting shall be and is herein called a "Class meeting"; and
- (b) subject to Section 11.15, the holders of the Class of Notes so especially affected shall not be bound by any action taken or power exercised at a meeting or by an instrument in writing under Section 11.17 unless in addition to compliance with the other provisions of this Article 11, such action is taken or power exercised by resolution of the holders of such Class of Notes as follows:
 - (i) at such Class meeting:
 - A. there is present a quorum consisting of two or more persons holding either personally or as proxies not less than 25% of the aggregate principal amount of the Notes of such Class so especially affected (subject to the provisions of this Article as to adjourned meetings); and
 - B. the resolution is by an Extraordinary Resolution; or
 - (ii) by or written instrument signed in one or more counterparts by the holders of not less than 66 2/3% of the aggregate principal amount then outstanding of the Notes of such Class.

Section 11.15 Renewal or Extension of Senior Notes.

- (1) Except as provided in the Related Supplement, the holders of Senior Notes of any Series may at any time in their discretion renew or extend the time of payment of the Senior Notes or exercise any other of their rights in respect thereof, including, without limitation, the waiver of a Related Event of Possession thereunder, all without notice to or assent from the holders of the Subordinated Notes of such Series or the Indenture Trustee.
- (2) No compromise, alteration, amendment, modification, extension, renewal or other change of, or waiver, consent or other action in respect of, any liability or obligation under or in respect of any Senior Notes or of any of the terms, covenants or conditions of an indenture or other document under which any Senior Notes shall have been issued, shall in any way alter or affect any of the provisions of Article Three.

Section 11.16 Powers Cumulative.

It is hereby declared and agreed that any one or more of the powers or any combination of the powers in this Indenture stated to be exercisable by the Noteholders by Extraordinary Resolution or otherwise may be exercised from time to time and the exercise of any one or more of such powers or any combination of powers from time to time will not be deemed to exhaust the rights of the Noteholders to exercise the same or any other power or combination of powers thereafter from time to time.

Section 11.17 Minutes.

Minutes of all resolutions and proceedings at every meeting as aforesaid will be made and duly entered in books to be provided for that purpose by the Indenture Trustee at the expense of the Trust and any such minutes as aforesaid, if signed by the chairperson of the meeting at which such resolutions were passed or proceedings taken, or by the chairperson of the next succeeding meeting of Noteholders to which such meeting relates, will be prima facie evidence of the matters therein stated and, until the contrary is proved, every such meeting, with respect to the proceedings of which minutes have been made, will be determined to have been duly held and convened, and all resolutions passed thereat or proceedings taken thereat to have been duly passed and taken.

Section 11.18 Instruments in Writing.

All actions which may be taken and all powers that may be exercised by the Noteholders at a meeting held as hereinbefore in this Article Eleven provided may also be taken and exercised by the holders of not less than 66 2/3% of the principal amount of Notes or Series of Notes, as the case may be, then outstanding, by an instrument in writing signed in one or more counterparts and the expression 'Extraordinary Resolution' when used in this Indenture will include an instrument so signed.

Section 11.19 Binding Effect of Resolutions.

Subject to Section 11.14, every resolution and every Extraordinary Resolution passed in accordance with the provisions of this Article Eleven at a meeting of Noteholders will be binding upon all the Noteholders to whom such meeting applies, whether present at or absent from such meeting, and every instrument in writing signed by Noteholders in accordance with Section 11.18 will be binding upon all the Noteholders to whom such instrument applies whether signatories thereto or not, and each and every such Noteholder and the Indenture Trustee (subject to the provisions for its indemnity contained in Section 12.03(2)) will be bound to give effect accordingly to every such resolution, Extraordinary Resolution and instrument in writing.

**ARTICLE TWELVE
THE INDENTURE TRUSTEE**

Section 12.01 Trust Indenture Legislation.

- (1) In this Article Twelve, the term “applicable legislation” means the provisions, if any, of the *Trust and Loan Companies Act* (Canada) and any other statute of Canada or a province thereof (in each case as amended from time to time), and of regulations under any such statute, relating to trust indentures and to the rights, duties and obligations of trustees under trust indentures and of entities issuing debt obligations under trust indentures, to the extent that in the opinion of counsel to the Trust such provisions are at the time in force and applicable to this Indenture.
- (2) If and to the extent that any provision of this Indenture limits, qualifies or conflicts with a mandatory requirement of applicable legislation, such mandatory requirement shall prevail.
- (3) The Trust and the Indenture Trustee agree that each will at all times in relation to this Trust Indenture and any action to be taken hereunder, observe and comply with and be entitled to the benefits of applicable legislation.

Section 12.02 Rights and Duties of Trustee.

- (1) In the exercise of the rights and duties prescribed or conferred by the terms of this Indenture, the Indenture Trustee will act honestly and in good faith with a view to the best interests of the Specified Creditors as a whole and exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances. Subject to the foregoing, the Indenture Trustee shall not be liable for any error in judgment or for any act done or step taken or omitted by it in good faith or for any mistake, in fact or law, made in good faith by it or for anything which it may do or refrain from doing in good faith in connection herewith, except arising out of its own wilful misconduct, gross negligence or the failure to comply with the standard of care described in the first sentence of this Section 12.01(1).
- (2) Every provision of this Indenture that by its terms relieves the Indenture Trustee of liability or entitles it to rely upon any evidence submitted to it, is subject to the provisions of applicable legislation and of Section 12.03 and Section 12.04.

Section 12.03 Conditions Precedent to Indenture Trustee’s Obligation to Act.

- (1) The Indenture Trustee shall not be bound to give any notice or do or take any act, action or proceeding pursuant hereto unless and until it shall have been required so to do under the terms hereof. The Indenture Trustee shall not be

- required to take notice of any Related Event of Possession hereunder, other than in payment of any moneys required by any provision hereof to be paid to it, unless and until notified in writing of such Related Event of Possession, which notice shall distinctly specify the Related Event of Possession desired to be brought to the attention of the Indenture Trustee and, in the absence of any such notice, the Indenture Trustee may for all purposes of this Indenture conclusively assume that the Trust is not in default hereunder and that no Related Event of Possession has occurred.
- (2) The Indenture Trustee will not be bound to do, observe or perform or see to the observance or performance by the Trust of any of the obligations herein imposed upon the Trust or of the covenants on the part of the Trust herein contained, nor to take or continue any steps to enforce the security hereof, nor in any way to supervise or interfere with any of the activities of the Trust, unless and until the Related Obligations Secured have become due and payable pursuant to Section 8.02 and then only after it has been indemnified and provided with sufficient funds, in each case, to its reasonable satisfaction against all actions, proceedings, claims and demands to which it may render itself liable and all costs, charges, damages and expenses which it may incur by so doing.
 - (3) None of the provisions contained in this Indenture shall require the Indenture Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers unless indemnified as aforesaid or to give any bond or security in respect of the trust and powers of this Indenture.
 - (4) The Indenture Trustee may, before commencing or at any time during the continuance of any such act, action or proceeding, require the Noteholders at whose instance it is acting to deposit with the Indenture Trustee the Notes held by them, for which Notes the Indenture Trustee shall issue receipts.
 - (5) The Indenture Trustee shall retain the right not to act and shall not be held liable for refusing to act unless it receives clear and reasonable documentation which complies with the terms of this Indenture. Such documentation must not require the exercise of any discretion or independent judgment, except as otherwise provided herein.
 - (6) The Indenture Trustee may, as a condition precedent to any action to be taken by it under this Indenture, require such opinions, statutory declarations, reports, certificates or other evidence as it, acting reasonably, considers necessary or advisable. Each of the Issuer Trustee, Administrative Agent and NIP Agent shall provide to the Indenture Trustee an incumbency certificate setting out the names and sample signatures of persons authorized to give

instructions to the Indenture Trustee hereunder. The Indenture Trustee shall be entitled to rely on such certificate until a revised certificate is provided to it hereunder. The Indenture Trustee shall be entitled to refuse to act upon any instructions given by a party which are signed by any person other than a person described in the incumbency certificate provided to it pursuant to this Section 12.03(6).

Section 12.04 Experts and Advisors.

- (1) The Indenture Trustee may, in the exercise of all or any of the trusts, powers and discretions vested in it hereunder act by its officers or employees. The Indenture Trustee may delegate to any Person the performance of any of the trusts and powers vested in it by this Indenture, and any delegation may be made upon terms and conditions and subject to regulations as the Indenture Trustee may think to be in the interest of the Specified Creditors as a whole.
- (2) The Indenture Trustee may rely and act upon any statement, 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 Indenture Trustee, the Administrative Agent or the NIP Agent and shall not be responsible or held liable for any loss or damage resulting from so relying or acting if the Indenture Trustee acted in good faith in relying upon the advice received. The Indenture Trustee is entitled to rely and act upon the genuineness and authenticity of any writing submitted to it any Person, not only as to its due execution and the validity and the effectiveness of its provisions but also as to the truth and acceptability of any information therein contained, which it in good faith believes to be genuine and what it purports to be.
- (3) The Indenture Trustee may, but is not required to, employ or consult any agents or other assistants (including, without limitation, counsel, accountants, appraisers, other experts, agencies, and advisors) as it may reasonably require for the proper determination and discharge of its duties hereunder or any agreement entered into connection herewith, and will not be responsible for any negligence or misconduct on the part of any agents or other assistants or for any liability incurred by any Person as a result of not appointing such agents or other assistants, provided that it has acted in accordance with Section 12.02(1), and may pay reasonable remuneration for all services performed for it in the discharge of the trusts hereof without taxation of any costs or fees of any Counsel, and the Indenture Trustee will be entitled to receive reasonable remuneration for all services performed by it in the discharge of the trusts hereof and compensation for all disbursements, costs, liabilities and expenses made or incurred by it in the discharge of its duties hereunder and in the management of the trusts hereof. All such

remuneration, disbursements, costs, liabilities and expenses and all remuneration and expenses incidental to the preparation, execution and recording of this Indenture, any Related Supplement or any instrument ancillary or supplemental hereto and to the creation of the Notes, whether done by or owing to the Indenture Trustee or done or incurred at the request of the Indenture Trustee or the Trust, will bear interest at a commercially reasonable annual rate of interest equal to the then current rate of interest charged by the Indenture Trustee from the date of the same being incurred or expended (or the date of invoice in the case of the Indenture Trustee's remuneration) until the date of reimbursement and will (together with such interest) be paid by the Trust upon demand and will until paid form part of the Obligations Secured entitled to the security hereby constituted and will be payable out of any funds coming into the possession of the Indenture Trustee.

- (4) Wherever by this Indenture the Indenture Trustee is authorized to employ or consult Counsel and to pay costs secured by the security constituted hereby, the costs need not be taxed unless the Indenture Trustee deems it necessary to tax the same but may be agreed to by the Indenture Trustee and paid as a lump sum. No costs paid by the Indenture Trustee pursuant to this Section 12.04(4) in good faith will be disallowed in the taking of any accounts by reason only of the fact that the costs are greater than they might have been if taxed, or by reason of their not being taxed, but the costs so paid by the Indenture Trustee will, if not improperly incurred by it, be allowed and paid to the Indenture Trustee and will until paid form part of the Obligations Secured entitled to the security hereby constituted and will be payable out of any funds coming into the possession of the Indenture Trustee. Any Counsel employed or consulted by the Indenture Trustee may, but need not be, counsel for the Trust.

Section 12.05 Evidence of Compliance, Certificates of the Trust and Written Orders.

- (1) The Trust will furnish on a basis no more frequently than monthly but not less frequently than annually to the Indenture Trustee (i) evidence of compliance with respect to the satisfaction and discharge of this Indenture; and (ii) evidence as to the balance outstanding of the Obligations Secured, including, without limitation, the particulars and amounts of any Notes outstanding from time to time. Such evidence will consist of:
- (a) a Certificate of the Trust stating that the conditions of this Indenture with respect to the satisfaction and discharge of this Indenture have been complied with in accordance with the terms of this Indenture;
 - (b) in the case of a condition of compliance which is, by the terms of this Indenture, subject to review by counsel, an opinion of counsel that

such condition has been complied with in accordance with the terms of this Indenture; and

- (c) a Certificate of the Trust stating the balance outstanding of the Obligations Secured, including, without limitation, the particulars and amounts of any Notes outstanding from time to time.
- (2) The Indenture Trustee will be furnished upon demand, on a basis no more frequently than monthly but not less frequently than annually, with evidence, in the form of a Certificate of the Trust, as to compliance with any provision of this Indenture relating to any action required or permitted to be taken by the Trust under, or any obligation imposed on the Trust by, this Indenture.
 - (3) The evidence of compliance referred to in Section 12.05(1) and Section 12.05(2) shall include a certificate by the individual in his stated capacity giving the evidence declaring that he or she has read and understands the conditions of the Indenture relating to the matter in question and declaring that he or she has made such examinations or investigations as he or she believes necessary to enable him or her to make the statements or give the opinions contained or expressed therein.
 - (4) Except where some other mode of proof is required by this Indenture, the Indenture Trustee will be at liberty to accept a Certificate of the Trust (i) as to any statement of facts as conclusive evidence of the truth of the statement; (ii) as to any particular act or transaction or step or thing which, in the opinion of the individual or officer so certifying, is expedient, as sufficient evidence that the act, transaction, step or thing is expedient; and (iii) as to any expenditure made or indebtedness incurred by the Trust or any successor trustee to the Trust as sufficient evidence that the expenditure or indebtedness was made or incurred for the purpose set forth in the Certificate of the Trust, and, in each case, the Indenture Trustee will be in no way bound to call for further evidence or be responsible for any loss that may be occasioned by its failing to do so. However, the Indenture Trustee may cause to be made any independent investigations as it may reasonably require and the expense thereof (together with interest at a commercially reasonable annual rate of interest equal to the then current rate of interest charged by the Indenture Trustee from the date of the Indenture Trustee's expenditure to the date of its reimbursement) will be paid by the Trust upon demand and will until paid by the Trust form part of the Obligations Secured entitled to the security hereby constituted and will be payable out of any funds coming into the possession of the Indenture Trustee. If, as a result of any independent investigation, the Indenture Trustee is not satisfied as to any matter or thing set forth in the Certificate of the Trust, the Indenture Trustee may refuse to act thereon.

- (5) Wherever applicable legislation requires that evidence be in the form of a statutory declaration, the Indenture Trustee may accept such statutory declaration in lieu of a Certificate of the Trust.
- (6) The Indenture Trustee will not be bound to act in accordance with any order, direction or request of the Trust, the Issuer Trustee or the Administrative Agent until a Written Order has been delivered to the Indenture Trustee, and the Indenture Trustee will be fully empowered to act and will be fully protected from all liability in acting upon any instruments purporting to be Written Orders and believed by the Indenture Trustee to be genuine.
- (7) The regularity and validity of all acts, consents, requests and directions of the Trust will, for the protection of the Indenture Trustee, be deemed conclusively proved by a Certificate of the Trust or a Written Order, as the case may be.

Section 12.06 Instruments Held By Indenture Trustee.

The Indenture Trustee will be at liberty to place all instruments or other securities or deeds or other documents of title comprising part of the Collateral in safekeeping with any Canadian chartered bank or trust company and the Indenture Trustee will not be responsible for any loss incurred in connection with any such placement. The Indenture Trustee may pay out of any funds in the possession of the Indenture Trustee all sums required to be paid on account of or in respect of any such placing.

Section 12.07 Protection of Indenture Trustee.

By way of supplement to the provisions of any law for the time being relating to trustees, it is expressly declared and agreed as follows:

- (a) The Indenture Trustee will not be bound to give notice to any Person of the execution hereof or of the charge of this Indenture unless and until any of the security hereby constituted has become enforceable and the Indenture Trustee has determined or become obliged to enforce the same;
- (b) the Indenture Trustee will not be liable for or by reason of any failure or defect of title to or any lien, charge or encumbrance upon any of the Collateral or for or by reason of the statements or implications of fact or law contained in or arising out of anything contained in this Indenture or in the Notes or be required to verify the same, but all statements or implications will be deemed to have been made by the Trust only, and it will not be the duty of the Indenture Trustee, except as herein otherwise specifically provided, to see to or require evidence of the registration or filing or renewal of this Indenture, or any other

indenture or writing by way of mortgage, pledge, charge, transfer or assignment of or upon any of the Collateral or upon any other property of the Trust or to procure any mortgage, pledge or charge or other additional instrument of further assurance or to do any other act for the continuance of the security constituted hereby or for giving notice of the existence of any of the security constituted hereby or for extending or supplementing the same, or to insure or keep insured or require evidence of insurance against loss or damage by fire or otherwise any of the Collateral, or to keep itself informed or advised as to the payment by the Trust of any taxes or assessments or premiums of insurance or other payments which the Trust should make or to require payments to be made;

- (c) the Indenture Trustee will not be responsible for any error made or act done by it resulting from reliance upon the signature of any Person on behalf of the Trust or of any Person on whose signature the Indenture Trustee may be called upon or entitled to act or refrain from acting under this Indenture;
- (d) the Indenture Trustee will not incur any liability or responsibility whatsoever in consequence of permitting or suffering the Trust to retain or to be in possession of any part of any of the Collateral and to use and enjoy the same unless herein expressly otherwise provided; nor will the Indenture Trustee be or become responsible or liable for any destruction, deterioration, loss, injury or damage which may occur or be done by the Trust or by any other Person to any of the Collateral, or be in any way responsible for the consequence of any breach on the part of the Trust of any of the covenants herein contained or of any acts of servants or agents of the Trust;
- (e) the Indenture Trustee may buy, sell, lend upon and deal in the Notes and generally contract and enter into financial transactions with the Administrative Agent or the Issuer Trustee without being liable to account for any profits made thereby;
- (f) the Indenture Trustee shall have the right to disclose any information disclosed or released to it if in the opinion of the Indenture Trustee, or its legal counsel, it is required to disclose such information under any applicable laws, court order or administrative directions and the Indenture 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;

- (g) the Indenture Trustee shall not be liable for or by reason of any statements of fact or recital in this Indenture or in the Notes or required to verify the same, but all said statements or recitals are and shall be deemed to be made by the Trust;
- (h) subject to Section 12.02(1), no property or assets of the Indenture Trustee owned in its personal capacity will be subject to levy, execution or other enforcement procedure arising under or in connection with this Indenture;
- (i) the Indenture Trustee shall not incur any liability or responsibility whatsoever or be in any way responsible for the consequences of any breach on the part of the Trust of any of the representations, warranties or covenants herein contained or of any acts of the agents or servants of the Trust; and
- (j) the Trust hereby indemnifies and saves harmless the Indenture Trustee, its directors, officers, employees, representatives and agents from and against any and all claims, demands, losses, actions, causes of action, costs, charges, expenses, damages, liabilities and obligations whatsoever, including without limitation, legal fees and disbursements on a substantial indemnity basis and costs and expenses incurred in connection with enforcement of this indemnity, which the Indenture Trustee or any of the foregoing Persons may suffer or incur, whether at law or in equity, in any way caused by or arising, directly, or indirectly, in respect of anything done, omitted to be done or permitted to be done by the Indenture Trustee or any of the foregoing Persons in or about or in relation to the execution of the Indenture Trustee's duties as Indenture Trustee including, without limitation, anything done or omitted to be done in relation to the registration, perfection, release or discharge of security; provided that the foregoing indemnification shall not apply in respect of anything done, omitted to be done or permitted to be done by the Indenture Trustee or any of the foregoing Persons 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 12.02(1) by the Indenture Trustee, its officers or employees. The Indenture Trustee shall be the trustee for its directors, officers, employees, representatives and agents for the purpose of the foregoing indemnification and the Trust hereby agrees that the foregoing indemnification shall survive the termination or discharge of this Indenture and the resignation or replacement of the Indenture Trustee;

- (k) the Indenture Trustee shall not be required to give security for the execution of the trusts or its conduct or administration under this Indenture; and
- (l) the Indenture Trustee will not be required to disburse monies according to this Indenture except to the extent that monies have been deposited with it.

Section 12.08 Resignation or Removal of Indenture Trustee; Conflict of Interest.

- (1) The Indenture Trustee may resign its trust after giving 60 days' notice in writing to the Issuer Trustee and the Rating Agencies or such shorter notice as the Issuer Trustee and the Rating Agencies may accept as sufficient, provided that no such voluntary resignation shall be effective until a replacement Indenture Trustee acceptable to the Issuer Trustee and the Rating Agencies, acting reasonably, has been appointed and has executed a written agreement whereby such replacement Indenture Trustee agrees to assume the obligations of the Indenture Trustee hereunder. The Indenture Trustee shall resign if a material conflict of interest arises in its role as a trustee under this Indenture that is not eliminated within 90 days after the Indenture Trustee becomes aware that it has such a material conflict of interest; provided that no such resignation shall be effective until a replacement Indenture Trustee acceptable to the Issuer Trustee and the Rating Agencies, acting reasonably, has been appointed and has executed a written agreement whereby such replacement Indenture Trustee agrees to assume the obligations of Indenture Trustee hereunder. Forthwith after the Indenture Trustee becomes aware that it has a material conflict of interest it shall provide the Issuer Trustee with written notice of the nature of that conflict. Upon resignation in accordance with this Section 12.08(1) or removal in accordance with Section 12.08(2), the Indenture Trustee shall be discharged from all further duties and liabilities under this Indenture. If, notwithstanding the foregoing provisions of this Section 12.08(1), the Indenture Trustee has such a material conflict of interest, the validity and enforceability of this Indenture and of the Notes issued hereunder shall not be affected in any manner whatsoever by reason only of the existence of such material conflict of interest. If the Indenture Trustee contravenes the foregoing provisions of this Section 12.08(1), any interested party may apply to a court of competent jurisdiction on notice to the Rating Agencies for an order that the Indenture Trustee be replaced as trustee hereunder. The Indenture Trustee represents to the Issuer Trustee that at the time of the execution and delivery hereof no material conflict of interest exists in the Indenture Trustee's role as a fiduciary hereunder.

- (2) The Noteholders may at any time, by Extraordinary Resolution, remove the Indenture Trustee and appoint a replacement Indenture Trustee.
- (3) In the event of the Indenture Trustee resigning or being removed or being dissolved, becoming bankrupt, going into liquidation or otherwise becoming incapable of acting hereunder, the Issuer Trustee shall forthwith appoint a replacement Indenture Trustee unless a replacement Indenture Trustee has already been appointed by the Noteholders pursuant to Section 12.08(2); failing which the retiring Indenture Trustee, at the expense of the Trust, or any Specified Creditor may apply to a court of competent jurisdiction on notice to the Rating Agencies, on such notice as such court may direct, for the appointment of a replacement Indenture Trustee. Any replacement Indenture Trustee so appointed by the Issuer Trustee or by such court shall be subject to removal by the Noteholders. Any replacement Indenture Trustee appointed under any provision of this Section 12.08 shall be a corporation authorized to carry on a trust business as contemplated hereby in each of the provinces and territories of Canada.
- (4) The expense of any act, document or other instrument or thing required under this Section 12.08 will be satisfied from the assets of the Trust.
- (5) Subject to Section 12.08(1), any successor Indenture Trustee shall, forthwith upon appointment, become vested with all the estates, properties, rights, powers and trusts of its predecessor in the trusts hereunder, with like effect as if originally named as Indenture Trustee herein. Nevertheless, upon the written request of the successor Indenture Trustee or of the Issuer Trustee, the Indenture Trustee ceasing to act shall, upon payment of its outstanding remuneration and expenses, execute and deliver an instrument assigning and transferring to such successor Indenture Trustee, upon the trusts herein expressed, all the rights, powers and trusts of the Indenture Trustee so ceasing to act, and shall duly assign, transfer and deliver all property and money held by such Indenture Trustee to the successor Indenture Trustee so appointed in its place. Should any deed, conveyance or instrument in writing from the Issuer Trustee be required by any new Indenture Trustee for more fully and certainly vesting in and confirming to it such estates, properties, rights, powers and trusts, then any and all such deeds, conveyances and instruments in writing shall, on the request of the new or successor Indenture Trustee, be made, executed, acknowledged and delivered by the Issuer Trustee.
- (6) Any company into which the Indenture Trustee may be merged or with which it may be consolidated or amalgamated, any company resulting from any merger, consolidation or amalgamation to which the Indenture Trustee shall be a party or any company to which the Indenture Trustee may transfer

all or substantially all of its assets shall be a successor Indenture Trustee under this Indenture without the execution of any instrument or any further act; provided that such successor Indenture Trustee shall be a corporation qualified to carry on a trust business as contemplated hereby in each of the provinces and territories of Canada and shall not have a material conflict of interest in its role as a fiduciary under this Indenture.

Section 12.09 Authority to Carry on Business.

The Indenture Trustee represents to the Trust that at the date of execution and delivery by it of this Indenture it is authorized to carry on the business of a trust company in each of the provinces and territories of Canada. If, notwithstanding the provisions of this Section 12.09, the Indenture Trustee ceases to be so authorized to carry on business, the validity and enforceability of this Indenture and the Notes issued hereunder shall not be affected in any manner whatsoever by reason only of such event but the Indenture Trustee shall, within 90 days after ceasing to be authorized to carry on a trust business as contemplated hereby in each of the provinces and territories of Canada, either become so authorized or resign subject to, and in the manner and with the effect specified in, Section 12.08.

Section 12.10 Authorization for Quebec Security.

- (1) For greater certainty and without limiting the powers of the Indenture Trustee herein and for purposes of constituting security on any of the Trust's property in the Province of Quebec as security for the due payment of all Obligations Secured and the performance by the Trust of all of the obligations of the Trust contained herein, the Trust and the Indenture Trustee hereby acknowledge that the Indenture Trustee shall, for purposes of holding any security granted by the Trust on any of the Trust's property pursuant to the laws of Quebec, be the holder of an irrevocable power of attorney for all present and future Specified Creditors. The Indenture Trustee hereby agrees to act in such capacity for the benefit of all present and future Specified Creditors for purposes of holding any security on any of the Trust's property. The purchase of any Note by any Noteholder shall constitute ratification by such Noteholder of the power of attorney of the Indenture Trustee constituted hereunder and the incurrence of any debt by the Trust with the other Specified Creditors pursuant to the applicable Programme Agreement shall constitute such ratification by such Specified Creditor of such power of attorney constituted hereunder.
- (2) The Indenture Trustee hereby authorizes and, to the extent necessary, grants a mandate to the Trust to enable the Trust, in the ordinary course of business, to radiate or reduce registrations at the Register of personal and movable real rights in respect of any personal or movable real rights in favour of the Trust and associated with any of the Asset Interests. The Trust may delegate its

powers hereunder to a third party. Such mandate shall terminate automatically upon the occurrence of a Related Event of Possession.

Section 12.11 Acceptance of Trusts by Indenture Trustee.

The Indenture Trustee hereby accepts the trusts in this Indenture declared and provided and agrees to perform the same upon the terms and conditions herein set forth.

Section 12.12 Investment of Funds.

- (1) Upon receipt of a Written Order, the Indenture Trustee shall invest the funds in its name in accordance with such Written Order and may, but need not, invest such funds with its deposit department or the deposit department of one of its Affiliates. Such Written Order shall be provided to the Indenture Trustee no later than 9:00 a.m. on the day on which the investment is to be made and shall instruct the Indenture Trustee to invest the funds in an Eligible Investment. Any such order received by the Indenture Trustee after 9:00 a.m. or received on a non-Business Day, shall be deemed to have been given prior to 9:00 a.m. the next Business Day. Neither the Indenture Trustee nor its Affiliates shall be liable to account for any profit to any parties to this Indenture or to any other person or entity other than at a rate, if any, established from time to time by the Indenture Trustee or one of its Affiliates.
- (2) The Indenture Trustee shall not be held liable for any losses incurred in the investment of any funds in Eligible Investments.

**ARTICLE THIRTEEN
LIABILITY OF NIP AGENT**

Section 13.01 Standard of Care.

The NIP Agent will exercise its powers and carry out its obligations hereunder as NIP Agent honestly, in good faith and in the best interests of the Trust, the Specified Creditors 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.

Section 13.02 Limitation of Liability of NIP Agent.

The NIP Agent will not be subject to any liability of the Trust, the Issuer Trustee or the Indenture Trustee whatsoever, in tort, contract or otherwise, to any Person, for any action taken or permitted by it to be taken, or for its failure to take any action, 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, negligence or the failure to comply with the standard of care referred to in Section 13.01, by the NIP Agent, its officers or employees. Subject to Section 13.03,

the NIP Agent will not be subject to any liability for any claims, demands, losses, actions, causes of action, costs, charges, expenses, damages, liabilities and obligations whatsoever against or with respect to the Trust, arising out of anything done, omitted to be done or permitted to be done by it in respect of the execution of the duties of its office and resort will be had solely to the assets of the Trust for the payment or performance thereof. Subject to Section 13.03, no property or assets of the NIP Agent, owned in its personal capacity, will be subject to levy, execution or other enforcement procedure in this regard to any obligations under this Indenture.

Section 13.03 Indemnification by NIP Agent.

- (1) Subject to Section 13.03(2) and Section 13.03(3), the NIP Agent agrees to indemnify, defend and hold harmless the Trust, the Issuer Trustee and the Indenture Trustee from and against any and all claims, demands, losses, actions, causes of action, costs, charges, debts, expenses, damages, liabilities and obligations whatsoever, including, without limitation, legal fees and disbursements on a substantial indemnity basis and costs and expenses incurred in connection with the enforcement of this indemnity, which may be imposed on, incurred by or assessed against the Trust, the Issuer Trustee or the Indenture Trustee as the result of any wilful misconduct, negligence or the failure to comply with the standard of care referred to in Section 13.01, by the NIP Agent, its officers or employees as determined by a final non-appealable judgment of a court of competent jurisdiction.
- (2) Notwithstanding Section 13.03(1), the parties acknowledge that the NIP Agent shall not be responsible with respect to (i) any liability for which the NIP Agent is indemnified out of the assets of the Trust hereunder; or (ii) any liability of the Trust, the Issuer Trustee or the Indenture Trustee accruing after the termination of this Indenture, unless attributable to the actions or omissions of the NIP Agent prior to such termination.
- (3) The NIP Agent shall have the exclusive right to compromise or defend, through counsel selected and retained by the NIP Agent, any such liabilities or related claims. Any decision of a judicial or quasi-judicial body in such a matter shall be binding upon the Trust, the Issuer Trustee and the Indenture Trustee. Such compromise or defence shall be at the NIP Agent's expense, if and to the extent unsuccessful.

Section 13.04 Indemnification of NIP Agent.

- (1) Subject to Section 13.04(2), the NIP Agent will at all times be indemnified and saved harmless out of the assets of the Trust from and against any and all claims, demands, losses, actions, causes of action, costs, charges, debts, expenses, damages, liabilities and obligations whatsoever, including, without limitation, legal fees and disbursements on a substantial indemnity basis and

costs and expenses incurred in connection with the enforcement of this indemnity, which the NIP Agent may suffer or incur, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of anything done, omitted to be done or permitted to be done by it in or about or in relation to the execution of its duties as NIP Agent. Further, the NIP Agent will not be liable to the Trust for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in the value of the assets of the Trust.

- (2) The indemnification provided in Section 13.04(1) shall not apply in respect of anything done, omitted to be done or permitted to be done by the NIP Agent arising from or in connection with the wilful misconduct, negligence or the failure to comply with the standard of care referred to in Section 13.01 by the NIP Agent, its officers or employees as determined by a final non-appealable judgment of a court of competent jurisdiction..

Section 13.05 Compliance with Laws.

The NIP Agent may comply with the provisions of any law, regulation or order now or hereafter in force which purports to impose on a holder of any of the Notes a duty to take or refrain from taking any action in connection with any of the Notes or payments or distributions of moneys payable in respect of any of the Notes.

Section 13.06 Protection of NIP Agent.

- (1) The NIP Agent may rely and act upon any statement, report or opinion prepared by or any advice received from the auditors, counsel or other professional advisors of the NIP Agent and shall not be responsible or held liable for any loss or damage resulting from so relying or acting if the NIP Agent acted in good faith in relying upon the advice received and if the professional advisor was or should reasonably have been aware that the NIP Agent was receiving the advice in its capacity as NIP Agent and would be relying upon such advice. The NIP Agent 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.
- (2) The NIP Agent shall not be required to investigate to determine whether the Notes may be properly certified and delivered in accordance herewith. The NIP Agent shall be entitled to presume that all of the conditions precedent to the certification and delivery of the Notes have been satisfied and that the Issuer Trustee has taken all necessary action and provided all required certificates to the Indenture Trustee or other party as may be required herewith prior to the certification and delivery of the Notes.

- (3) The NIP Agent may rely upon any Written Orders received by it from time to time.
- (4) The NIP Agent is hereby instructed and authorized to deal with the Administrative Agent acting as agent for and in the name of the Issuer Trustee on all matters relating to the Notes. The NIP Agent shall not be bound to enquire as to the authority of the Administrative Agent in respect thereof. The Issuer Trustee shall instruct the Administrative Agent to comply with the provisions of this Indenture dealing with any action to be taken by the Administrative Agent.
- (5) Neither the NIP Agent nor any of its officers or employees shall incur any liability to the Trust by reason of acting or not acting on, or by reason of any error in, any telephoned verbal instructions of the Issuer Trustee or the Administrative Agent prior to due confirmation thereof in writing.
- (6) The NIP Agent shall not be responsible for any error made or act done by it resulting from reliance upon the identity, official position or signature of any individual purporting to be an authorized signing authority of the Issuer Trustee or the Administrative Agent or any other person on whose signature the NIP Agent may be called upon to act or refrain from acting hereunder.

Section 13.07 Compensation of NIP Agent.

In consideration of and as compensation for all services rendered by the NIP Agent pursuant to this Indenture, the Issuer Trustee will pay to the NIP Agent from the assets of the Trust regular and periodic fees, the amounts of which shall be agreed upon by the Issuer Trustee and the NIP Agent from time to time and in any event, not less frequently than on each anniversary date of this Agreement.

Section 13.08 Resignation or Removal of NIP Agent.

The NIP Agent may resign or be removed by the Issuer Trustee upon not less than 30 days' notice or, in the event that either such party fails to materially comply with terms of this Indenture, the other party may, at its option, in the case of the NIP Agent, resign or, in the case of the Issuer Trustee, remove the NIP Agent, in each case immediately with subsequent written notice to the other party. Notwithstanding the foregoing, the NIP Agent shall not be permitted to resign until a replacement NIP Agent has been appointed by the Issuer Trustee and has executed a written agreement whereby such replacement NIP Agent agrees to assume the obligations of the NIP Agent hereunder. Upon resignation or removal of the NIP Agent, the NIP Agent shall return to the Issuer Trustee against written receipt therefor, all Notes and any books and records relating thereto then held by the NIP Agent.

Section 13.09 Acceptance of Appointment of NIP Agent.

The NIP Agent hereby accepts its appointment hereunder and agrees to perform its functions set out in this Indenture in accordance herewith.

**ARTICLE FOURTEEN
SUPPLEMENTAL INDENTURES AND AMENDMENTS**

Section 14.01 Supplemental Indentures.

- (1) From time to time, the Indenture Trustee, the Issuer Trustee and the NIP Agent may, and, upon receipt of a written request from the Administrative Agent or when so required under this Indenture, shall, without the consent of the Specified Creditors, make, execute, acknowledge and deliver deeds or indentures supplemental hereto and which thereafter will form part hereof, for any one or more of the following purposes:
 - (a) mortgaging, pledging, assuring, confirming or transferring to, or vesting in, the Indenture Trustee, or charging in favour of the Indenture Trustee, any property now owned or hereafter acquired by the Trust, and providing that the same will become and be part of any Related Collateral;
 - (b) correcting or amplifying the description of any property in which security is hereby specifically granted or intended so to be;
 - (c) adding to the limitations or restrictions herein specified further limitations or restrictions thereafter to be observed upon the amount of the issue of Notes hereunder or upon the dealing with the property of the Trust, or upon the release of property forming part of the Collateral which would not reasonably be expected to, individually or in the aggregate, materially adversely affects the rights or interests of the Specified Creditors;
 - (d) adding to the covenants of the Trust herein contained for the protection of the Specified Creditors or providing for Related Events of Possession in addition to those herein specified;
 - (e) making such provisions not substantially inconsistent with this Indenture as may be necessary or desirable with respect to matters or questions arising hereunder, including the making of any modifications in the form of the Notes which do not affect the substance thereof, which would not reasonably be expected to, individually or in the aggregate, materially adversely affect the rights or interests of the Specified Creditors;
 - (f) evidencing the succession, or successive successions, of any other Person to the Issuer Trustee and the covenants of and obligations

assumed by any such successor in accordance with the provisions of this Indenture;

- (g) providing for altering the provisions of this Indenture in respect of the exchange or transfer of Notes; and
- (h) any other purposes considered appropriate by the Indenture Trustee which would not reasonably be expected to, individually or in the aggregate, materially adversely affect the rights or interests of the Specified Creditors (which determination shall be made without regard to the availability of any Credit Enhancement); provided that, in any case, the Rating Agency Condition shall be satisfied;

provided, however, that the Indenture Trustee or the NIP Agent may, in its sole discretion, decline to enter into any such deed or supplemental indentures which may not afford to it adequate protection at such time when it becomes operative.

- (2) It shall not be necessary for the consent of the Noteholders under this Section 14.01 or, unless otherwise provided in any Related Supplement, the other Related Specified Creditors whose consent is required as contemplated in this indenture, to approve the particular form of any proposed deed or indenture supplemental hereto, 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 shall be subject to such reasonable requirements as the Indenture Trustee may prescribe from time to time.
- (3) Any one of the purposes in this Section 14.01 and in any Related Supplement may from time to time be exercised independently or in combination with one or more other purposes in this Section 14.01 and such Related Supplement and none of the purposes in this Section 14.01 and such Related Supplement are exclusive of or dependent on any of the other purposes.
- (4) Any Supplement executed in accordance with Section 2.03 shall not be considered a deed or indenture supplemental hereto for the purposes of this Section 14.01.

Section 14.02 Automatic Amendment.

Upon the Issuer Trustee ceasing to be the trustee of the Trust, this Indenture will be automatically amended to delete any reference to the name of the trustee so ceasing to be the trustee of the Trust and to substitute therefor the name or names of the successor trustee or trustees as the continuing trustee or trustees of the Trust, as the case may be.

Section 14.03 Amendments to Agreements.

- (1) The Indenture Trustee will from time to time, upon receipt of a Written Order, enter into or consent to, as applicable, any proposed amendment, supplementation, modification, restatement or waiver of, or any proposed postponement of compliance with, any provision of any Programme Agreement to which it is a party or with respect to which the Trust is required to obtain the prior consent of the Indenture Trustee in accordance with the terms hereof, which action or consent, as applicable, is to be taken or given by the Indenture Trustee without the necessity of obtaining the consent of the Specified Creditors, if, in the opinion of the Indenture Trustee, such amendment, supplementation, modification, restatement, waiver or postponement (i) is necessary or advisable in order to incorporate, reflect or comply with any legislation applicable to the parties to any such Programme Agreement; or (ii) would not reasonably be expected to, individually or in the aggregate, materially adversely affects the rights or interests of the Specified Creditors; provided that, if any such amendment or waiver affects the amount or timeliness of payment to any Specified Creditor or otherwise materially adversely affects the rights or interests of any Specified Creditor, then (i) if such Specified Creditor is a Noteholder, subject to Section 11.11(2), such amendment, supplementation, modification, restatement, waiver or postponement shall not be made without the receipt by the Indenture Trustee of an Extraordinary Resolution of the applicable affected Noteholders; and (ii) if such Specified Creditor is not a Noteholder, such amendment, supplementation, modification, restatement, waiver or postponement shall not be made without the written consent of such affected Specified Creditor, except, in each case, to the extent required to incorporate, reflect or comply with any applicable legislation as referred to above. The Indenture Trustee shall provide notice to the related Rating Agencies of any such amendment or waiver.
- (2) Notwithstanding anything in Section 14.03(1) to the contrary, the Indenture Trustee may decline to enter into or consent to, as applicable, any proposed amendment, supplementation, modification, restatement or waiver of, or any proposed postponement of compliance with, any provision of any Programme Agreement contemplated in Section 14.03(1) that adversely affects its own rights, duties or immunities under this Indenture or otherwise.
- (3) It shall not be necessary for the consent of the Specified Creditors under this Section 14.03, to approve the particular form of any proposed amendment, supplementation, modification, restatement, waiver or postponement, 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 shall be subject to such reasonable requirements as the Indenture Trustee may prescribe from time to time.

Section 14.04 Determination of Material Adverse Effect.

At any time that the Indenture Trustee is required to make a determination as to whether any amendment, supplementation, modification, restatement, waiver or postponement of any term of this Indenture or any of the Programme Agreements would reasonably be expected to materially adversely affect the rights or interests of any Specified Creditor it may, without limitation, conclusively rely upon, (i) if the matter relates to the rights or interests of Noteholders in connection with Notes which are then rated, the written consent of the Related Rating Agencies; (ii) if the matter relates to the rights or interests of any Specified Creditor other than the Noteholders, the written consent of such affected Specified Creditor; or (iii) a favourable opinion of Counsel. The receipt of any of the foregoing shall, again, without limitation, be conclusive proof that the respective Specified Creditors will not be materially adversely affected by the amendment or waiver to the Programme Agreements.

**ARTICLE FIFTEEN
NOTICES**

Section 15.01 Notice to Trust and NIP Agent.

Any notice, document or other communication required or permitted to be given or delivered to the Trust, the Issuer Trustee or the NIP Agent hereunder will be in writing and will be given by delivery to the addresses indicated below or by facsimile transmission at such addresses and such notice shall, if given after the normal business hours of the recipient, be deemed to have been given on the next Business Day:

To the Trust:

CARDS II Trust
c/o The Canada Trust Company
in its capacity as Issuer Trustee for
CARDS II Trust
79 Wellington Street West
8th Floor, P.O. Box 1
Toronto-Dominion Centre
Toronto, Ontario
M5K 1A2

Attention: Vice President
Corporate Trust and Registered Plan Services
Facsimile No.: (416) 983-2044

with a copy to:

Canadian Imperial Bank of Commerce, as
Administrative Agent for CARDS II Trust
BCE Place, 161 Bay Street
5th Floor
Toronto, Ontario
M5J 2S8

Attention: Canadian Securitization Group
Facsimile No.: (416) 956-6220

To the NIP Agent:

Canadian Imperial Bank of Commerce
BCE Place
161 Bay Street
5th Floor
Toronto, Ontario
M5J 2S8

Attention: Debt Management Service
Facsimile No.: (416) 594-7007

Section 15.02 Notice to Indenture Trustee.

Any notice, document or other communication required or permitted to be given or delivered to the Indenture Trustee hereunder will be in writing and will be given by delivery or by facsimile transmission addressed to the Indenture Trustee at: [Suite 1101, 4 King Street West, Toronto, Ontario, M5H 1B6](#), Attention: [Senior Trust Officer](#); Facsimile No.: (416) 360-1711/1727. Any such notice delivered after normal business hours shall be deemed to have been given on the next Business Day.

Section 15.03 Notice to Noteholders.

Any notice, document or other communication required or permitted to be given or delivered hereunder to the holders of Notes in registered form will be deemed to be validly given if sent to a destination within Canada by first class mail and if sent to a destination outside of Canada by airmail, postage prepaid in each case, or sent by facsimile transmission and confirmed by first class mail in the case of a destination within Canada and airmail in the case of a destination outside of Canada, addressed in each case to the Noteholder at its post office address appearing in the Note Register. Any such notice, document or other communication required or permitted to be given hereunder to the holder of Notes in bearer form shall be deemed to be validly given if advertised in at least two daily newspapers of general circulation, one of which shall be distributed on a national basis at least once

in each of two successive weeks. Every notice sent by mail will be deemed to have been given on the fifth Business Day following the mailing of the same, unless at the time or within five Business Days following the mailing of the same, postal service is disrupted in which case notice shall be effectively given only when received or in the case of advertisement, on the day following the day on which it is first advertised. Every notice sent by facsimile transmission after the normal business hours of the recipient shall be deemed to have been given on the next Business Day. The Indenture Trustee shall be entitled to rely, and act upon, on any direction, order, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission.

Section 15.04 Notice to Other Specified Creditors.

Any notice, document or other communication required or permitted to be given or delivered to (i) a Credit Enhancer will be given in accordance with the Related Credit Enhancement Agreement; (ii) the Administrative Agent will be given in accordance with the Administration Agreement; (iii) the Originator and the Custodian will be given in accordance with the Pooling and Servicing Agreement; (iv) a Servicer will be given in accordance with the Related Servicing Agreement; and (v) a counterparty to a Hedging Agreement will be given in accordance with the Related Hedging Agreement.

Section 15.05 Notice to Rating Agencies.

Any notice, document or other communication required or permitted to be given or delivered to the Rating Agencies hereunder will be in writing and will be given by delivery to the applicable address provided to the Trust by the Rating Agencies or by facsimile transmission. Any such notice delivered after normal business hours shall be deemed to have been given on the next Business Day.

Section 15.06 Change of Address.

Any Person referenced in this Article Fifteen may from time to time notify any other interested Person, in accordance with the provisions hereof, of any change of address which thereafter, until changed by like notice, shall be the address of such Person for all purposes of this Indenture.

**ARTICLE SIXTEEN
GENERAL**

Section 16.01 Evidence of Rights of Specified Creditors.

Any request, direction, notice, consent or other instrument which this Indenture may require or permit to be executed by the Specified Creditors may be in any number of concurrent instruments of similar tenor and may be signed or executed by the Specified Creditors in person or by attorney duly appointed in

writing. The Indenture Trustee may act and rely upon either of the following as proof of the execution of any instrument or of a writing appointing an attorney:

- (a) the certificate of a notary public or other officer, authorized to take acknowledgements of deeds to be recorded at the place where the certificate was made, to the effect that the Person signing the instrument or writing acknowledged to him the execution thereof; or
- (b) an affidavit of a witness of the execution.

Section 16.02 Limitation of Liability of Issuer Trustee.

- (1) This Indenture, and every deed, transfer, assignment, agreement or other instrument made pursuant hereto including, without limitation, the Notes, made or purporting to be made by or creating an obligation of the Trust or the Issuer Trustee on behalf of, or as trustee of, the Trust shall be deemed and construed for all purposes as if made by the Issuer Trustee, in and only in its capacity as trustee of the Trust. Any liability of the Issuer Trustee hereunder or thereunder is non-recourse to the Issuer Trustee in its personal capacity and limited solely to the assets of the Trust. No other property or assets of the Issuer Trustee, whether owned by it in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Indenture and any other such deed, transfer, assignment, agreement or other instrument. There will be no further liability against the Issuer Trustee.
- (2) Without limiting the generality of the provisions contained in Section 16.02(1), but except as otherwise expressly agreed to by the Indenture Trustee, 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 16.03 No Petition.

Notwithstanding any prior termination of this Indenture, each Specified Creditor and its respective successors and assigns (whether absolutely or by way of security), by accepting the benefits of this Indenture, hereby covenants and agrees that, except in the case of the Indenture Trustee in connection with the enforcement of its rights and remedies under Article 9 or, except in the case of a Specified Creditor, as provided for in Section 10.01, they will not at any time before or within one year and one day after the termination of this Indenture institute against the Trust any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under any Canadian federal or provincial or foreign bankruptcy,

insolvency, arrangement or similar laws, now or hereafter in effect, or otherwise take any action to appoint a Receiver of the Trust or any substantial part of the Collateral, or order the winding-up or liquidation of the affairs of the Issuer Trustee.

Section 16.04 Foreign Currency Obligations.

The Trust shall make payment relative to each Note in the currency (the “**Original Currency**”) in which the Trust is required to pay such Note. If the Trust makes payment relative to any Note to the Indenture Trustee or a Noteholder in a currency (the “**Other Currency**”) other than the Original Currency (whether voluntarily or pursuant to an order or judgment of a court or tribunal of any jurisdiction), such payment shall constitute a discharge of the liability of the Trust in respect of such Note only to the extent of the amount of the Original Currency which such Person is able to purchase at Toronto, Ontario with the amount such Person receives on the date of receipt in accordance with its normal practice. If the amount of the Original Currency which such Person is able to purchase is less than the amount of such currency originally due to it in respect of such Note, the Trust shall indemnify and save such Person harmless from and against any loss or damage arising as a result of such deficiency. This indemnity shall constitute an obligation separate and independent from the other obligations contained herein or otherwise, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by such Person and shall continue in full force and effect notwithstanding any judgment or order in respect of any amount due hereunder or under any judgment or order.

Section 16.05 Administrative Agent.

The parties hereto acknowledge that, pursuant to the Administration Agreement, the Administrative Agent will perform certain covenants of the Trust and the Issuer Trustee under this Indenture and the other Programme Agreements.

Section 16.06 Execution in Counterparts.

This Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument.

Section 16.07 Formal Date.

For the purposes of convenience, this Indenture may be referred to as bearing formal date of September 16, 2004 irrespective of the actual date of execution hereof.

Section 16.08 Delivery of Executed Copies.

Each party acknowledges delivery of a fully executed copy of this Indenture.

IN WITNESS WHEREOF the parties hereto have duly executed this Indenture.

CARDS II TRUST, by 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

BNY TRUST COMPANY OF CANADA, as Indenture Trustee

By: (signed) "Henry Hamilton"

Name: Henry Hamilton

Title: Authorized Signatory

CANADIAN IMPERIAL BANK OF COMMERCE, as NIP Agent

By: (signed) "Jeff MacKay"

Name: Jeff MacKay

Title: Authorized Signatory

By: (signed) "Bill Quinn"

Name: Bill Quinn

Title: Authorized Signatory