

**BANK OF AMERICA AUTO GRANTOR TRUST [●]**

**FORM OF AMENDED AND RESTATED TRUST AGREEMENT**

**between**

**BANK OF AMERICA AUTO TRUST [●],  
as the Grantor Trust Seller**

**and**

**[●],  
as the Grantor Trust Trustee**

**Dated as of [●], 2023**

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This **AMENDED AND RESTATED TRUST AGREEMENT** is made as of [●], 2023 (as amended, supplemented or otherwise modified and in effect from time to time, this “Agreement” or this “Trust Agreement”) between BANK OF AMERICA AUTO TRUST [●], a Delaware statutory trust, as the Grantor Trust Seller (the “Grantor Trust Seller”), and [●], as the grantor trust trustee (“[●]” and in such capacity, the “Grantor Trust Trustee”).

## RECITALS

WHEREAS, the Grantor Trust Seller and the Grantor Trust Trustee entered into that certain trust agreement dated as of [●], 2023 (the “Original Trust Agreement”) and filed a certificate of trust with the Secretary of State of the State of Delaware pursuant to which the Grantor Trust (as defined below) was created; and

WHEREAS, the parties have agreed to amend and restate the Original Trust Agreement;

NOW THEREFORE, in consideration of the mutual agreements herein contained, and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

## ARTICLE I

### DEFINITIONS

SECTION 1.1. Capitalized Terms. Except as otherwise defined herein or as the context may otherwise require, capitalized terms used but not otherwise defined herein are defined in Appendix A to the Sale Agreement, dated as of the date hereof (as amended, supplemented, or otherwise modified and in effect from time to time, the “Sale Agreement”), between the Issuer and the Depositor, which also contains rules as to usage that are applicable herein.

SECTION 1.2. Other Interpretive Provisions. All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document delivered pursuant hereto unless otherwise defined therein. For purposes of this Agreement and all such certificates and other documents, unless the context otherwise requires: (a) accounting terms not otherwise defined in this Agreement, and accounting terms partly defined in this Agreement to the extent not defined, shall have the respective meanings given to them under GAAP (*provided*, that, to the extent that the definitions in this Agreement and GAAP conflict, the definitions in this Agreement shall control); (b) terms defined in Article 9 of the UCC as in effect in the State of Delaware and not otherwise defined in this Agreement are used as defined in that Article; (c) the words “hereof,” “herein” and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement; (d) references to any Article, Section, Schedule or Exhibit are references to Articles, Sections, Schedules and Exhibits in or to this Agreement, and references to any paragraph, subsection, clause or other subdivision within any Section or definition refer to such paragraph, subsection, clause or other subdivision of such Section or definition; (e) the term “including” and all variations thereof means “including without limitation”; (f) references to any law or regulation refer to that law or regulation as amended from time to time and include any successor law or regulation; (g) references to any Person include that Person’s successors and assigns; and (h) headings are for purposes of

reference only and shall not otherwise affect the meaning or interpretation of any provision hereof.

## ARTICLE II

### ORGANIZATION

SECTION 2.1. Name. The trust created under the Original Trust Agreement is known as “Bank of America Auto Grantor Trust [●]” (the “Grantor Trust”), in which name the Grantor Trust Trustee, the Administrator or the Servicer (to the extent set forth in the Transaction Documents) may conduct the business of such trust, make and execute contracts and other instruments on behalf of such trust and sue and be sued.

SECTION 2.2. Office. The office of the Grantor Trust shall be in care of the Grantor Trust Trustee at the Corporate Trust Office or at such other address as the Grantor Trust Trustee may designate by written notice to each Certificateholder, the Grantor Trust Seller and the Administrator.

SECTION 2.3. Purposes and Powers. The purpose of the Grantor Trust is, and the Grantor Trust shall have the power and authority, to engage in the following activities:

- (a) to issue the Grantor Trust Certificates pursuant to this Agreement, and to sell, transfer and exchange the Grantor Trust Certificates and to make distributions to the Grantor Trust Certificateholders;
- (b) to acquire the Grantor Trust Estate and to grant, transfer, pledge, mortgage and convey the Grantor Trust Estate pursuant to the Indenture and to hold, manage and distribute to the Grantor Trust Certificateholders any portion of the Grantor Trust Estate released from the Lien of, and remitted to the Grantor Trust pursuant to, the Indenture;
- (c) to enter into and perform its obligations under the Transaction Documents to which it is a party;
- (d) to engage in those activities, including entering into agreements, that are necessary, suitable or convenient to accomplish the foregoing or are incidental thereto or connected therewith; and
- (e) subject to compliance with the Transaction Documents, to engage in such other activities as may be required in connection with conservation of the Grantor Trust Estate and the making of distributions to the Grantor Trust Certificateholders.

Each of the Grantor Trust Trustee and the Administrator, as applicable, is hereby authorized to engage in the foregoing activities on behalf of the Grantor Trust. Neither the Grantor Trust nor any Person acting on behalf of the Grantor Trust shall engage in any activity other than in connection with the foregoing or other than as required or authorized by the terms of this Agreement or the other Transaction Documents.

Notwithstanding anything to the contrary in the Transaction Documents or in any other document, neither the Grantor Trust nor the Grantor Trust Trustee (nor any agent of either person) shall be authorized or empowered to acquire any other investments, reinvest any proceeds of the Grantor Trust or engage in activities other than the foregoing, and, in particular neither the Grantor Trust nor the Grantor Trust Trustee (nor any agent of either person) shall be authorized or empowered to do anything that would cause the Grantor Trust to fail to qualify as a grantor trust for United States federal income tax purposes.

SECTION 2.4. Appointment of the Grantor Trust Trustee. Upon the execution of this Agreement, the Grantor Trust Trustee shall continue as trustee of the Grantor Trust to have all the rights, powers and duties set forth herein.

SECTION 2.5. Initial Capital Contribution of Trust Estate. As of the date of the Original Trust Agreement, the Grantor Trust Seller sold, assigned, transferred, conveyed and set over to the Grantor Trust Trustee the sum of \$1. The Grantor Trust Trustee hereby acknowledges receipt in trust from the Grantor Trust Seller, as of such date, of the foregoing contribution, which shall constitute the initial Grantor Trust Estate and shall be applied in accordance with Section 5.1.

SECTION 2.6. Declaration of Trust.

(a) The Grantor Trust Trustee hereby declares that it will hold the Grantor Trust Estate in trust upon and subject to the conditions set forth herein for the use and benefit of the Grantor Trust Certificateholders, subject to the obligations of the Grantor Trust under the Transaction Documents. It is the intention of the parties hereto that the Grantor Trust constitute a statutory trust under the Statutory Trust Statute and that this Agreement constitute the governing instrument of such statutory trust. It is the intention of the parties hereto that, solely for United States federal income or state and local income, franchise and value added tax purposes, the Grantor Trust will be classified as a grantor trust under subtitle A, chapter 1, subchapter J, part I, subpart E of the Code. The parties agree that, unless otherwise required by appropriate tax authorities, the Grantor Trust will not file or cause to be filed annual or other necessary returns, reports or other forms consistent with the characterization of the Grantor Trust as an entity other than a grantor trust. The parties further agree, unless otherwise required by appropriate taxing authorities or by law, not to take any action or, direct any other party to take any action, inconsistent therewith, including, but not limited to, modifying, or directing any other party to modify, the terms of a Receivable unless the modification is a Permitted Modification. In furtherance of the foregoing, (i) the purpose of the Grantor Trust shall be to protect and conserve the assets of the Grantor Trust, and the Grantor Trust shall not at any time engage in or carry on any kind of business for United States federal income tax purposes or any kind of commercial activity and (ii) the Grantor Trust and Grantor Trust Trustee (upon direction from the Certificateholders) (and any agent of either person) shall take, or refrain from taking, all such action as is necessary to maintain the status of the Grantor Trust as a grantor trust for United States federal income tax purposes. Notwithstanding anything to the contrary in this Agreement or otherwise, neither the Grantor Trust nor the Grantor Trust Trustee (nor any agent of either person) shall (1) acquire any assets or dispose of any portion of the Grantor Trust other than

pursuant to the specific provisions of this Agreement, (2) vary the investment of the Certificateholders within the meaning of Treasury Regulation section 301.7701-4(c) or (3) substitute new investments or reinvest so as to enable the Grantor Trust to take advantage of variations in the market to improve the investment of any Certificateholder. The provisions of this Agreement shall be interpreted consistently with and to further this intention of the parties. No election will be made by or on behalf of the Grantor Trust to be classified as an association taxable as a corporation for United States federal income tax purposes. Effective as of the date hereof, the Grantor Trust Trustee shall have all rights, powers and duties set forth herein and, to the extent not inconsistent herewith, in the Statutory Trust Statute with respect to accomplishing the purposes of the Grantor Trust. It is the intention of the parties hereto that except as expressly stated herein, the affairs of the Trust shall be managed by the Administrator pursuant to the Administration Agreement. The Grantor Trust Trustee has heretofore filed the Certificate of Trust with the Secretary of State of the State of Delaware as required by Section 3810(a) of the Statutory Trust Statute, such filing hereby being ratified and approved in all respects. Notwithstanding anything herein or in the Statutory Trust Statute to the contrary, it is the intention of the parties hereto that (i) the Grantor Trust constitute a “business trust” within the meaning of Section 101(9)(A)(v) of the Bankruptcy Code and (ii) the Grantor Trust be and remain a separate legal entity under Delaware law.

**SECTION 2.7. Organizational Expenses; Liabilities of the Holders.**

(a) The [Depositor] shall pay organizational expenses of the Grantor Trust as they may arise.

(b) No Certificateholder (including the Grantor Trust Seller if the Grantor Trust Seller is or becomes a Certificateholder) shall have any personal liability for any liability or obligation of the Grantor Trust.

**SECTION 2.8. Title to the Trust Estate.** Legal title to all of the Trust Estate shall be vested at all times in the Grantor Trust as a separate legal entity.

**SECTION 2.9. Representations of the Grantor Trust Seller.** The Grantor Trust Seller hereby represents to the Grantor Trust Trustee that:

(a) *Existence and Power.* The Grantor Trust Seller is a statutory trust validly existing and in good standing under the laws of the State of Delaware and has, in all material respects, all power and authority required to carry on its business as it is now conducted. The Grantor Trust Seller has obtained all necessary licenses and approvals in each jurisdiction where the failure to do so would materially and adversely affect the ability of the Grantor Trust Seller to perform its obligations under the Transaction Documents.

(b) *Authorization and No Contravention.* The execution, delivery and performance by the Grantor Trust Seller of the Transaction Documents to which it is a party (i) have been duly authorized by all necessary limited liability company action on the part of the Grantor Trust Seller and (ii) do not contravene or constitute a default under



(A) any applicable law, rule or regulation, (B) its organizational documents or (C) any material indenture or material agreement or other instrument to which it is a party or its property is subject (other than violations which do not affect the legality, validity or enforceability of any of such agreements or which, individually or in the aggregate, would not materially and adversely affect the transactions contemplated by, or the Grantor Trust Seller's ability to perform its obligations under, the Transaction Documents to which it is a party).

(c) *No Consent Required.* No approval or authorization by, or filing with, any Governmental Authority is required in connection with the execution, delivery and performance by the Grantor Trust Seller of any Transaction Document other than (i) UCC filings, (ii) approvals and authorizations that have previously been obtained and filings that have previously been made and (iii) approvals, authorizations or filings which, if not obtained or made, would not have a material adverse effect on the ability of the Grantor Trust Seller to perform its obligations under the Transaction Documents to which it is a party.

(d) *Binding Effect.* Each Transaction Document to which the Grantor Trust Seller is a party constitutes the legal, valid and binding obligation of the Grantor Trust Seller enforceable against the Grantor Trust Seller in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, receivership, conservatorship or other similar laws affecting creditors' rights generally and, if applicable, the rights of creditors of limited liability companies from time to time in effect or by general principles of equity or other similar laws of general application relating to or affecting the enforcement of creditors' rights generally and subject to general principles of equity.

(e) *No Proceedings.* There are no Proceedings pending or, to the knowledge of the Grantor Trust Seller, threatened against the Grantor Trust Seller before or by any Governmental Authority that (i) assert the invalidity or unenforceability of this Agreement or any of the other Transaction Documents, (ii) seek to prevent the issuance of the Notes or the consummation of any of the transactions contemplated by this Agreement or any of the other Transaction Documents or (iii) seek any determination or ruling that would materially and adversely affect the performance by the Grantor Trust Seller of its obligations under this Agreement or any of the other Transaction Documents.

SECTION 2.10. Situs of Grantor Trust. The Grantor Trust shall be located in the State of Delaware (it being understood that the Grantor Trust may have bank accounts located and maintained outside of Delaware).

SECTION 2.11. Covenants of the Grantor Trust Certificateholders. Each Grantor Trust Certificateholder, by becoming an owner of a Grantor Trust Certificate and beneficial owner of the Grantor Trust, hereby acknowledges and agrees (a) that the Grantor Trust Certificateholder is subject to the terms, provisions and conditions of this Agreement, to which the Grantor Trust Certificateholder agrees to be bound; and (b) that it shall not take any position in such Grantor Trust Certificateholder's tax returns inconsistent with Section 2.6 herein.

## ARTICLE III

### CERTIFICATES AND TRANSFER OF CERTIFICATES

SECTION 3.1. Initial Ownership. Upon the formation of the Grantor Trust and until the issuance of the Grantor Trust Certificates, the Grantor Trust Seller is the sole beneficiary of the Grantor Trust and on the Closing Date, upon the issuance of the Grantor Trust Certificates, the Grantor Trust Seller will no longer be a beneficiary of the Grantor Trust, except to the extent that the Grantor Trust Seller is a Certificateholder.

SECTION 3.2. Authorization of the Grantor Trust Certificates. On the date hereof, the Grantor Trust Trustee, at the direction of the Grantor Trust Seller, shall execute and deliver and the Grantor Trust Certificate Registrar shall authenticate, in definitive form, a single Grantor Trust Certificate. The Grantor Trust Certificates shall in the aggregate represent 100% of the Grantor Trust Percentage Interest in the Grantor Trust and shall be fully paid and nonassessable.

SECTION 3.3. Registration of the Grantor Trust Certificates. The Grantor Trust Trustee, in its capacity as “Certificate Registrar” (the “Grantor Trust Certificate Registrar”) shall maintain at its Corporate Trust Office, or at the office of any agent appointed by it and approved in writing by the Certificateholders at the time of such appointment, a register (the “Grantor Trust Certificate Register”) for the registration and transfer of any Certificate. Prior to the due presentment for registration of transfer of any Certificate, the Grantor Trust Trustee and the Grantor Trust Certificate Registrar or any agent of the Grantor Trust Trustee, the Indenture Trustee or the Grantor Trust Certificate Registrar shall treat the Person in whose name any Certificate is registered (as of the applicable Record Date) as the owner of such Certificate for the purpose of receiving distributions on such Certificate and for all other purposes whatsoever. For the avoidance of doubt, a Certificate is not negotiable and the records maintained by the Grantor Trust Certificate Registrar in the Grantor Trust Certificate Register with respect to each Certificate and its related registered owner are intended to cause the Certificates to be issued in registered form, within the meaning of Treasury Regulation sections 5f.103-1(c) (and any successor provision) and 1.871-14, and shall record the Grantor Trust Percentage Interest evidenced by each Certificate. The entries in the Grantor Trust Certificate Register shall be conclusive absent manifest error.

#### SECTION 3.4. Transfer of the Grantor Trust Certificates.

(a) To the fullest extent permitted by applicable law, the sole Grantor Trust Certificateholder shall be the Grantor Trust Seller. Subject to the foregoing, a Grantor Trust Certificateholder may assign, convey or otherwise transfer all or any of its right, title and interest in the related Grantor Trust Certificate, subject to the restrictions set forth herein.

By accepting and holding a Grantor Trust Certificate (or any interest therein), the holder thereof, and any fiduciary acting on behalf of such holder, shall be deemed to have represented and warranted that it is not, and is not purchasing the Certificate (or any interest therein) on behalf of or with any assets of, a Benefit Plan or a governmental, church, non-U.S. or other plan or arrangement that is subject to Similar Law. Subject to the transfer restrictions contained herein and in the Certificates, any Certificateholder may transfer all or any portion of the Grantor

Trust Percentage Interest evidenced by such Certificate upon surrender thereof to the Grantor Trust Trustee accompanied by the documents required by this Section. Such transfer may be made by the registered Certificateholder in person or by his attorney duly authorized in writing upon surrender of the Certificate to the Grantor Trust Trustee accompanied by: (a) a written instrument of transfer in the form of the “Assignment” attached to the Form of Certificate (attached hereto as Exhibit A) and with such signature guarantees and evidence of authority of the Persons signing the instrument of transfer as the Grantor Trust Trustee may reasonably require; provided, however, that the Grantor Trust Trustee shall not require the signature of the Grantor Trust Seller to be medallion guaranteed for the transfers from the Grantor Trust Seller to the applicable transferees on the date hereof. Promptly upon the receipt of such documents and receipt by the Grantor Trust Trustee of the transferor’s Certificate, the Grantor Trust Trustee shall record the name of such transferee as a Certificateholder and its Grantor Trust Percentage Interest in the Grantor Trust Certificate Register and issue, execute and deliver to such Certificateholder a Certificate evidencing such Grantor Trust Percentage Interest. In the event a transferor transfers only a portion of its Grantor Trust Percentage Interest, the Grantor Trust Trustee shall issue, execute and deliver to such transferor a new Certificate evidencing such transferor’s new Grantor Trust Percentage Interest. Subsequent to a transfer of a Grantor Trust Percentage Interest and upon the related issuance of the new Certificate or Certificates, the Grantor Trust Trustee shall cancel and destroy the Certificate surrendered to it in connection with such transfer. The Grantor Trust Trustee may treat the Person in whose name any Certificate is registered as the sole owner of the beneficial interest in the Grantor Trust evidenced by such Certificate.

(b) As a condition precedent to any registration of transfer under this Section 3.4, the Grantor Trust Trustee may require the payment of a sum sufficient to cover the payment of any tax or taxes or other governmental charges required to be paid in connection with such transfer.

(c) The Grantor Trust Certificateholder represents and warrants that it is a “United States person” as defined in Section 7701(a)(30) of the Code and the Administrator agrees to provide the Grantor Trust Trustee and any relevant intermediary with a correct, complete and properly executed Internal Revenue Service Form W-9 (or applicable successor form) for the Grantor Trust Certificateholder.

(d) If a Responsible Officer of the Grantor Trust Trustee has actual knowledge that a transfer or attempted or purported transfer of any Certificate or interest therein was consummated in compliance with the provisions of this Section 3.4 on the basis of a materially incorrect certification from the transferor or purported transferee, the Grantor Trust Trustee will direct the Grantor Trust Certificate Registrar not to register such attempted or purported transfer and, if a transfer has been registered, such transfer shall be absolutely null and void ab initio and shall not operate to transfer any rights to the purported transferee (such purported transferee, a “Disqualified Transferee”) and the last preceding Certificateholder of such Certificateholder that was not a Disqualified Transferee shall be restored to all rights as a Certificateholder thereof retroactively to the date of the purported transfer of such Certificate by such Certificateholder.

SECTION 3.5. Lost, Stolen, Mutilated or Destroyed Certificates. If (i) any mutilated Certificate is surrendered to the Grantor Trust Trustee, or (ii) the Grantor Trust Trustee receives evidence to its satisfaction that any Certificate has been destroyed, lost or stolen, and upon proof of ownership satisfactory to the Grantor Trust Trustee together with such security or indemnity as may be requested by the Grantor Trust Trustee to save it and the Grantor Trust harmless, the Grantor Trust Trustee shall execute and deliver a new Certificate for the same Grantor Trust Percentage Interest as the Certificate so mutilated, destroyed, lost or stolen, of like tenor and bearing a different issue number, with such notations, if any, as the Grantor Trust Trustee shall determine. Upon the issuance of any new Certificate under this Section 3.5, the Grantor Trust or Grantor Trust Trustee may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of the Certificate and any other reasonable expenses (including the reasonable fees and expenses of the Grantor Trust and the Grantor Trust Trustee) connected therewith. Any duplicate Certificate issued pursuant to this Section 3.5 shall constitute complete and indefeasible evidence of ownership in the Grantor Trust, as if originally issued, whether or not the lost, stolen or destroyed Certificate shall be found at any time. The provisions of this Section 3.5 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, defaced, destroyed, lost or stolen Certificates.

SECTION 3.6. Maintenance of Office or Agency. As long as any of the Certificates remain outstanding, the Grantor Trust shall maintain an office or agency where Certificates may be surrendered for registration of transfer or exchange, and where notices and demands to or upon the Grantor Trust in respect of the Certificates and this Agreement may be served. The Grantor Trust hereby initially designates the Corporate Trust Office of the Grantor Trust Certificate Registrar for the foregoing purposes. The Grantor Trust shall give prompt written notice to the Grantor Trust Trustee and the Indenture Trustee of the location, and of any change in the location, of any such office or agency. If at any time the Grantor Trust shall fail to maintain any such office or agency or shall fail to furnish the Grantor Trust Trustee and the Indenture Trustee with the address thereof, such surrenders, notices and demands may be made or served at the applicable Corporate Trust Office, and the Grantor Trust hereby appoints the Grantor Trust Trustee as its agent to receive all such surrenders, notices and demands.

## **ARTICLE IV**

### **ACTIONS BY GRANTOR TRUST TRUSTEE**

SECTION 4.1. Prior Notice to Certificateholders with Respect to Certain Matters. With respect to the following matters, unless the Administrator provides written notice to the Grantor Trust Trustee that the relevant Transaction Document provides that the consent of the Certificateholders shall not be required, the Grantor Trust Trustee shall not take action unless, at least ten (10) Business Days before the taking of such action (or if ten (10) Business Days' advance notice is impracticable, as much advance notice as is practicable), the Grantor Trust Trustee shall have notified the Certificateholders in writing of the proposed action and no Certificateholder shall have notified the Grantor Trust Trustee in writing within such notice period that such Certificateholder has withheld consent or provided alternative direction:

(a) the appointment pursuant to the Servicing Agreement of a successor Servicer;  
or

(b) the appointment pursuant to the Administrative Agency of a successor Administrator.

SECTION 4.2. Action by Certificateholders with Respect to Certain Matters. The Grantor Trust Trustee shall not have the power, except upon the direction of the Majority Certificateholders, to (a) except as expressly provided in the Transaction Documents, sell the Collateral after the termination of the Indenture in accordance with its terms, (b) remove the Administrator under the Administration Agreement pursuant to Section 8 thereof or (c) appoint a successor Administrator pursuant to Section 8 of the Administration Agreement. The Grantor Trust Trustee shall take the actions referred to in the preceding sentence only upon written instructions signed by the Majority Grantor Trust Certificateholders.

SECTION 4.3. Action by Certificateholders with Respect to Bankruptcy.

(a) The Grantor Trust Trustee shall not have the power to commence a voluntary Proceeding in bankruptcy relating to the Grantor Trust until one year and one day after the Note Balance of all Notes has been reduced to zero without the prior written approval of each Grantor Trust Certificateholder and the delivery to the Grantor Trust Trustee by each Grantor Trust Certificateholder of a certificate certifying that such Grantor Trust Certificateholder reasonably believe that the Grantor Trust is insolvent.

(b) The parties hereto stipulate and agree that no Grantor Trust Certificateholder has the power to commence any Bankruptcy Event on the part of the Grantor Trust.

SECTION 4.4. Restrictions on Certificateholders' Power. The Certificateholders shall not direct the Grantor Trust Trustee to take or refrain from taking any action if such action or inaction would be contrary to any obligation of the Grantor Trust or the Grantor Trust Trustee under this Agreement or any of the Transaction Documents or would be contrary to Section 2.3, nor shall the Grantor Trust Trustee be obligated to follow any such direction, if given.

SECTION 4.5. Acts of Certificateholders; Majority Control.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Agreement to be given or taken by Certificateholders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Certificateholders in person or by agents duly appointed in writing; and except as herein otherwise expressly provided such action shall become effective when such instrument or instruments are delivered to the Grantor Trust Trustee, and, where it is hereby expressly required, to the Grantor Trust. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Certificateholders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Agreement and (subject to Article VI) conclusive in favor of the Grantor Trust Trustee and the Grantor Trust, if made in the manner provided in this Section.

(b) The fact and date of the execution by any person of any such instrument or writing may be proved in any manner that the Grantor Trust Trustee deems sufficient.

(c) The ownership of Certificates shall be proved by the Grantor Trust Certificate Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by any Certificateholder shall bind the Holder of every Certificate issued upon the registration thereof or in exchange therefor or in lieu thereof, in respect of anything done, omitted or suffered to be done by the Grantor Trust Trustee or the Grantor Trust in reliance thereon, whether or not notation of such action is made upon such Certificate.

(e) Except as otherwise provided herein, to the extent that there is more than one Certificateholder, any action which may be taken or consent or instructions which may be given by the Certificateholder under this Agreement may be taken by the Majority Grantor Trust Certificateholders at the time of such action.

SECTION 4.6. *Compliance with the FDIC Rule.* The Grantor Trust Trustee shall (i) perform the covenants set forth in Article XII of the Indenture applicable to it and (ii) use reasonable efforts to comply with any request of the Grantor Trust Seller or the Servicer to facilitate compliance with Article XII of the Indenture by the BANA Parties

## **ARTICLE V**

### **APPLICATION OF TRUST FUNDS; CERTAIN DUTIES**

SECTION 5.1. Application of Trust Funds. All proceeds of the Grantor Trust Estate shall be deposited into the Collection Account for distribution in accordance with the Indenture and the other Transaction Documents by the parties identified therein as having responsibility therefor. Any bank account of the Grantor Trust shall constitute part of the Grantor Trust Estate. Funds on deposit, if any, in such account, if not otherwise held uninvested, may only be invested in accordance with the Indenture and the other Transaction Documents. The Issuer, as beneficial owner of the Grantor Trust Estate via its ownership of the Grantor Trust Certificate, directs all applicable parties and otherwise instructs that all proceeds of the Grantor Trust Estate held by the Grantor Trust (and any collections or proceeds thereof) shall be deposited and applied in accordance with the Indenture and the other Transaction Documents (and thus distributed to the Issuer as beneficial owner of the Grantor Trust Certificate).

SECTION 5.2. Reports by Grantor Trust Trustee to Certificateholders.

(a) The Independent Accountant, at the direction of the Seller on behalf of the Grantor Trust, shall prepare any tax returns required to be delivered or filed with the Internal Revenue Service or a Certificateholder, and to prepare any schedules, statements or other information necessary for a Certificateholder to report items on its income tax return. The Administrator shall sign pursuant to the power granted thereto pursuant to Section 2.4, on behalf of the Grantor Trust, the Grantor Trust's tax returns (and tax information statements), if any, unless applicable law requires a Certificateholder or the

Grantor Trust Trustee to sign such documents, in which case such person hereby agrees to sign or authorize the Administrator to sign on its behalf.

(b) The Grantor Trust Trustee, in cooperation with the Independent Accountant, shall: (a) maintain (or cause to be maintained) the books of the Grantor Trust on a calendar year basis and the accrual method of accounting; (b) deliver (or cause to be delivered) to each Certificateholder, as may be required by the Code and applicable Treasury Regulations, such information as may be required (including, if applicable, a trust return U.S. Internal Revenue Service Form 1041, U.S. Internal Revenue Service Form 1099, or reporting for widely held fixed investment trusts under Treasury Regulations Section 1.671-5) to enable each Grantor Trust Certificateholder to prepare its United States federal and state income tax returns.

SECTION 5.3. Withholding. In the event that any withholding tax is imposed on the Grantor Trust's payment (or allocations of income) to a Certificateholder, such tax shall reduce the amount otherwise distributable to the Certificateholder. Any Person with responsibility for distributing proceeds of the Grantor Trust Estate in accordance with the Indenture (the "Grantor Trust Paying Agent") shall not have an obligation to withhold any such amount if and for so long as the Grantor Trust Seller or a U.S. Affiliate of the Grantor Trust Seller is the sole Grantor Trust Certificateholder. Any Grantor Trust Paying Agent is hereby authorized and directed to retain from amounts otherwise distributable to the Grantor Trust Certificateholders sufficient funds for the payment of any tax that is legally owned by the Grantor Trust (but such authorization shall not prevent the Grantor Trust Paying Agent from contesting any such tax in appropriate Proceedings and withholding payment of such tax, if permitted by law, pending the outcome of such Proceedings). The amount of any withholding tax imposed with respect to a Certificateholder shall be treated as cash distributed to such Certificateholder at the time it is withheld by the Grantor Trust and remitted to the appropriate taxing authority. If there is a possibility that withholding tax is payable with respect to any distribution (such as any distribution to a non-U.S. Tax Person), the Grantor Trust Trustee or Grantor Trust Paying Agent may in its sole discretion withhold such amounts in accordance with this Section 5.3.

SECTION 5.4. No Reinvestment. The Grantor Trust Paying Agent shall distribute all amounts collected in respect of the assets of the Grantor Trust and neither the Grantor Trust Paying Agent nor the Grantor Trust Trustee shall apply any such amounts toward the purchase of additional assets on behalf of the Grantor Trust.

## ARTICLE VI

### AUTHORITY AND DUTIES OF GRANTOR TRUST TRUSTEE

SECTION 6.1. General Authority. The Grantor Trust Trustee is authorized and directed to execute and deliver (i) the Transaction Documents to which the Grantor Trust is named as a party and (ii) each certificate or other document attached as an exhibit to or contemplated by the Transaction Documents to which the Grantor Trust or the Grantor Trust Trustee is named as a party and any amendment thereto, in each case, in such form as the Administrator or the Grantor Trust Seller shall approve, as evidenced conclusively by the Grantor Trust Trustee's execution thereof. In addition to the foregoing, the Grantor Trust Trustee is authorized, but shall not be

obligated, to take all actions required of the Grantor Trust pursuant to the Transaction Documents. The Grantor Trust Trustee is further authorized from time to time to take such action as the Grantor Trust Seller, the Administrator or the Majority Grantor Trust Certificateholders recommend or direct in writing with respect to the Transaction Documents, except to the extent that this Agreement expressly requires the consent of each Grantor Trust Certificateholder for such action.

SECTION 6.2. General Duties. It shall be the duty of the Grantor Trust Trustee to discharge (or cause to be discharged) all of its responsibilities pursuant to the terms of this Agreement and the other Transaction Documents and to administer the Grantor Trust in the interest of the Certificateholders, subject to Transaction Documents, and in accordance with the provisions of this Agreement. Notwithstanding the foregoing, the Grantor Trust Trustee shall be deemed to have discharged its duties and responsibilities hereunder and under the Transaction Documents to the extent the Administrator has agreed in the Administration Agreement to perform any act or to discharge any duty of the Grantor Trust or the Grantor Trust Trustee hereunder or under any Transaction Document, and the Grantor Trust Trustee shall not be liable for the default or failure of the Administrator to carry out its obligations under the Administration Agreement and shall have no duty to monitor or supervise the performance of the Administrator or any other Person under the Administration Agreement or any other document. The Grantor Trust Trustee shall have no obligation to administer, service or collect the Receivables or to maintain, monitor or otherwise supervise the administration, servicing or collection of the Receivables. For the avoidance of doubt, the Grantor Trust Trustee shall not be required to perform any of the obligations of the Grantor Trust under any Transaction Document that are required to be performed by the Servicer, the Grantor Trust Seller, the Administrator, the Issuer or the Indenture Trustee.

SECTION 6.3. Action Upon Instruction.

(a) Subject to Article IV, and in accordance with the Transaction Documents, each of the Certificateholders and the Administrator may, by written instruction, direct the Grantor Trust Trustee in the management of the Grantor Trust. Such direction may be exercised at any time by written instruction of the Administrator pursuant to Article IV. Further, with respect to provisions hereunder that provide for instruction by the Certificateholders, if the Grantor Trust Trustee shall have notified the Certificateholders in writing of a proposed action and within ten (10) Business Days of such notice none of the Certificateholders shall have notified the Grantor Trust Trustee in writing that such Certificateholder has withheld consent or provided alternative instruction, the Grantor Trust Trustee, in the place of Certificateholder instruction hereunder, may accept and rely on written instruction of the Administrator. If subsequently the Grantor Trust Trustee receives alternative written instruction from the Certificateholders, such instruction shall control.

(b) Subject to Section 7.1, the Grantor Trust Trustee shall not be required to take any action hereunder or under any Transaction Document if the Grantor Trust Trustee shall have reasonably determined or been advised by counsel that such action is likely to result in liability on the part of the Grantor Trust Trustee or is contrary to the terms hereof or of any Transaction Document or is otherwise contrary to law.



(c) Whenever the Grantor Trust Trustee is unable to decide between alternative courses of action permitted or required by the terms of this Agreement or any Transaction Document or is unsure as to the application of any provision of this Agreement or any Transaction Document or any such provision is ambiguous as to its application, or is, or appears to be, in conflict with any other applicable provision, or in the event that this Agreement permits any determination by the Grantor Trust Trustee or is silent or is incomplete as to the course of action that the Grantor Trust Trustee is required to take with respect to a particular set of facts, the Grantor Trust Trustee shall promptly give notice (in such form as shall be appropriate under the circumstances) to the Certificateholders or the Administrator requesting instruction as to the course of action to be adopted or application of such provision, and to the extent the Grantor Trust Trustee acts or refrains from acting in good faith in accordance with any written instruction of the Majority Grantor Trust Certificateholders or the Administrator (or, if specifically required hereunder, all Certificateholders) received, the Grantor Trust Trustee shall not be liable on account of such action or inaction to any Person. If the Grantor Trust Trustee shall not have received appropriate instruction within ten (10) Business Days of such notice (or within such shorter period of time as reasonably may be specified in such notice or may be necessary under the circumstances) it may, but shall be under no duty to, take or refrain from taking such action, not inconsistent with this Agreement or the Transaction Documents, as it shall deem to be in the best interests of the Certificateholders, and shall have no liability to any Person for such action or inaction.

(d) The Grantor Trust Trustee shall not be personally liable for any distribution made in accordance with the provisions set forth in Section 9.1(b).

**SECTION 6.4. No Duties Except as Specified in this Agreement or in Instructions.** The Grantor Trust Trustee shall not have any duty or obligation to manage, make any payment with respect to, register, record, sell, dispose of, or otherwise deal with the Grantor Trust Estate, or to otherwise take or refrain from taking any action under, or in connection with, any document contemplated hereby to which the Grantor Trust or the Grantor Trust Trustee is a party, except as expressly provided by the terms of this Agreement or in any document or written instruction received by the Grantor Trust Trustee pursuant to Section 6.3; and no implied duties (including fiduciary duties existing at law or in equity) or obligations shall be read into this Agreement or any Transaction Document against the Grantor Trust Trustee. The Grantor Trust Trustee shall have no responsibility for filing any financing or continuation statement or amendment in any public office at any time or to otherwise perfect or maintain the perfection of any security interest or Lien granted to it hereunder or to prepare or file any Commission filing (including any filings required under the Sarbanes-Oxley Act), for the Grantor Trust or to record this Agreement or any Transaction Document. The Grantor Trust Trustee nevertheless agrees that it will, at its own cost and expense, promptly take all action as may be necessary to discharge any Liens on any part of the Trust Estate that result from actions by, or claims against, the Grantor Trust Trustee that are not related to the ownership or the administration of the Trust Estate. The Grantor Trust Trustee shall have no responsibility or liability for or with respect to the genuineness, value, sufficiency or validity of the Trust Estate.

**SECTION 6.5. No Action Except under Specified Documents or Instructions.** The Grantor Trust Trustee shall not manage, control, use, sell, dispose of or otherwise deal with any

part of the Trust Estate except (i) in accordance with the powers granted to and the authority conferred upon the Grantor Trust Trustee pursuant to this Agreement, (ii) in accordance with the Transaction Documents and (iii) in accordance with any document or instruction delivered to the Grantor Trust Trustee pursuant to Section 6.3.

SECTION 6.6. Restrictions. The Grantor Trust Trustee shall not take any action (a) that is inconsistent with the purposes of the Grantor Trust set forth in Section 2.3 or (b) that, to the actual knowledge of a Responsible Officer of the Grantor Trust Trustee, would (i) affect the treatment of the Notes as indebtedness for United States federal income, state and local income and franchise tax purposes, (ii) be deemed to cause a taxable exchange of the Notes for United States federal income or state income or franchise tax purposes or (iii) cause either the Grantor Trust or any portion thereof to be treated as an association or publicly traded partnership taxable as a corporation for United States federal income, state and local income or franchise tax purposes or cause the Grantor Trust to be treated as other than a grantor trust for United States federal income tax purposes. Neither the Grantor Trust Seller, the Administrator nor any Certificateholder shall direct the Grantor Trust Trustee to take action that would violate the provisions of this Section 6.6.

SECTION 6.7. Relevant Trustee. In the performance of its duties and obligations hereunder, [●] (individually and as Grantor Trust Paying Agent) shall be afforded the same rights, protections, indemnities and immunities as the Relevant Trustee under the Transaction Documents.

## ARTICLE VII

### CONCERNING GRANTOR TRUST TRUSTEE

SECTION 7.1. Acceptance of Trusts and Duties. The Grantor Trust Trustee accepts the trusts hereby created and agrees to perform its duties hereunder with respect to such trusts but only upon the terms of this Agreement. The Grantor Trust Trustee also agrees to disburse all moneys actually received by it constituting part of the Trust Estate upon the terms of the Transaction Documents and this Agreement. The Grantor Trust Trustee shall not be personally liable or accountable hereunder or under any Transaction Document under any circumstances notwithstanding anything herein or in the Transaction Documents to the contrary, except (i) for its own willful misconduct, bad faith or gross negligence, (ii) in the case of the inaccuracy of any representation or warranty contained in Section 7.6 expressly made by the Grantor Trust Trustee in its individual capacity, (iii) for liabilities arising from the failure of the Grantor Trust Trustee to perform obligations expressly undertaken by it in the second to last sentence of Section 6.4, or (iv) for taxes, fees or other charges on, based on or measured by, any fees, commissions or compensation received by the Grantor Trust Trustee. In particular, but not by way of limitation (and subject to the exceptions set forth in the preceding sentence) of the foregoing:

(a) The Grantor Trust Trustee shall not be liable for any action it takes or omits to take in accordance with a direction received by it from the Administrator or the required Certificateholders, as the case may be, in accordance with the Transaction Documents;

(b) No provision of this Agreement or any Transaction Document shall require the Grantor Trust Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or under any Transaction Document or in the exercise of any of its rights or powers, if the Grantor Trust Trustee shall have reasonable grounds to believe that repayment of such funds or indemnity reasonably satisfactory to the Grantor Trust Trustee against such risk or liability is not reasonably assured to it;

(c) The Grantor Trust Trustee shall not be liable solely for any action or inaction of the Grantor Trust, the Grantor Trust Seller or the Certificateholders or any other party (or agent thereof) to any Transaction Document, and may assume compliance by such parties with their obligations under this Agreement or any other Transaction Document unless a Responsible Officer of the Grantor Trust Trustee has actual knowledge of or has received written notice to the contrary;

(d) The Grantor Trust Trustee shall not be under any obligation to exercise any of the rights or powers vested in it by this Agreement, or to institute, conduct or defend any litigation under this Agreement or otherwise or in relation to this Agreement or any Transaction Document, at the request, order or direction of any of the Certificateholders or the Administrator, unless such Certificateholders or the Administrator have offered to the Grantor Trust Trustee security or indemnity reasonably satisfactory to the Grantor Trust Trustee against the reasonable costs, expenses and liabilities that may be incurred by it therein or thereby;

(e) The Grantor Trust Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, acts of war or terrorism, civil or military disturbances, pandemics or epidemics, nuclear or natural catastrophes or acts of God; it being understood that the Grantor Trust Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance of their respective obligations as soon as practicable under the circumstances;

(f) Notwithstanding anything to the contrary herein or otherwise, under no circumstances will the Grantor Trust Trustee be liable for special, punitive, indirect or consequential loss or damage of any kind whatsoever (including lost profits);

(g) The Grantor Trust Trustee shall not be deemed to have knowledge or notice of any event or information, including any Event of Default, or be required to act upon any event or information (including the sending of any notice), unless written notice of such event or information is received by a Responsible Officer of the Grantor Trust Trustee and such notice references the event or information. Absent written notice in accordance with this Section or actual knowledge of such event or information by a Responsible Officer of the Grantor Trust Trustee, the Grantor Trust Trustee may assume that no such event has occurred. The Grantor Trust Trustee shall not have any obligation to inquire into, or investigate as to, the occurrence of any such event (including any Event of Default). For purposes of determining the Grantor Trust Trustee's responsibility and

liability hereunder, whenever reference is made in this Trust Agreement to any event (including, but not limited to, an Event of Default), such reference shall be construed to refer only to such event of which the Grantor Trust Trustee has actual knowledge or has received written notice as described in this Section. Knowledge of the Grantor Trust Trustee shall not be attributed or imputed to [●]'s other roles in the transaction (if any);

(h) Under no circumstances shall the Grantor Trust Trustee be personally liable for any representation, warranty, covenant, obligation or indebtedness of the Grantor Trust;

(i) The Grantor Trust Trustee shall not be personally responsible for or in respect of the validity or sufficiency of this Agreement or for the due execution hereof by any Person other than the Grantor Trust Trustee or for the form, character, genuineness, sufficiency, value or validity of the Trust Estate, or for or in respect of the accuracy, validity or sufficiency of any statement of any other party in the Transaction Documents, the Grantor Trust Certificates or any other document supplied to the Grantor Trust Trustee;

(j) The Grantor Trust Trustee shall not be personally liable for any error of judgment made in good faith by any of its officers or employees unless it is proved that such Persons were negligent in ascertaining the pertinent facts; and

(k) The Grantor Trust Trustee shall not be required to investigate any claims with respect to any breach of a representation or warranty under any of the Transaction Documents.

SECTION 7.2. Furnishing of Documents. The Grantor Trust Trustee shall furnish to the Certificateholders promptly upon receipt of a written request therefor, duplicates or copies of all reports, notices, requests, demands, certificates, financial statements and any other instruments furnished to the Grantor Trust Trustee under the Transaction Documents.

SECTION 7.3. Preservation of Information; Communications to Certificateholders.

(a) The Grantor Trust Certificate Registrar shall preserve, in as current a form as is reasonably practicable, the names and addresses of Certificateholders received by the Grantor Trust Trustee in its capacity as the Grantor Trust Certificate Registrar; *provided, however,* that so long as the Grantor Trust Trustee is the Grantor Trust Certificate Registrar, no list separate from the Grantor Trust Certificate Register shall be required to be preserved or maintained.

(b) The Certificateholders may communicate with other Certificateholders with respect to their rights under this Agreement or under the Certificates. Upon receipt by the Grantor Trust Certificate Registrar of any written request by three or more Certificateholders or by one or more Certificateholders holding in the aggregate more than 25% of the Grantor Trust Percentage Interests to receive a copy of the most current list of Certificateholders together with a copy of the communication that the applicant proposes to send, the Grantor Trust Certificate Registrar shall distribute such list to the requesting Certificateholders; *provided,* that the Grantor Trust Certificate Registrar may

elect not to afford the requesting Certificateholders access to the list of Certificateholders if it agrees to mail the desired communication or proxy, on behalf of and at the expense of the requesting Certificateholders, to all Certificateholders. Each Certificateholder or Certificate Owner, by receiving and holding a Certificate or interest therein, shall be deemed to have agreed not to hold the Grantor Trust Certificate Registrar accountable by reason of the disclosure of its name and address, regardless of the source from which such information was derived.

SECTION 7.4. Notice of Events of Default and Servicer Replacement Event. The Grantor Trust Trustee shall promptly give notice to each Certificateholder of any (a) Default or Event of Default of which it has been provided notice pursuant to Section 6.5 of the Indenture and (b) Servicer Replacement Event of which it has been provided notice pursuant to Section 6.1 of the Servicing Agreement.

SECTION 7.5. Representations and Warranties. The Grantor Trust Trustee hereby represents and warrants to the Grantor Trust Seller for the benefit of the Certificateholders, that:

(a) It is a [●] formed and validly existing in good standing under the laws of the United States and having its principal place of business within the State of Delaware. It has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement.

(b) It has taken all corporate action necessary to authorize the execution and delivery by it of this Agreement, and this Agreement will be executed and delivered by one of its officers who is duly authorized to execute and deliver this Agreement on its behalf.

(c) This Agreement constitutes a legal, valid and binding obligation of the Grantor Trust Trustee, enforceable against the Grantor Trust Trustee in accordance with its terms, subject, as to enforceability, to applicable bankruptcy, insolvency, reorganization, conservatorship, receivership, liquidation and other similar laws affecting enforcement of the rights of creditors of banks generally and to equitable limitations on the availability of specific remedies.

(d) Neither the execution nor the delivery by it of this Agreement, nor the consummation by it of the transactions contemplated hereby nor compliance by it with any of the terms or provisions hereof will contravene any federal or Delaware law, governmental rule or regulation governing the banking or trust powers of the Grantor Trust Trustee or any judgment or order binding on it, or constitute any default under its charter documents or by-laws.

SECTION 7.6. Reliance; Advice of Counsel.

(a) The Grantor Trust Trustee shall incur no personal liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it to be signed by the proper party or parties. The Grantor Trust Trustee may accept a certified copy of a resolution of the board of directors or other governing body of

any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect. As to any fact or matter the method of the determination of which is not specifically prescribed herein, the Grantor Trust Trustee may for all purposes hereof rely on a certificate, signed by the president or any vice president or by the treasurer, secretary or other Authorized Officers of the relevant party, as to such fact or matter, and such certificate shall constitute full protection to the Grantor Trust Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon.

(b) In the exercise or administration of the trusts hereunder and in the performance of its duties and obligations under this Agreement or the Transaction Documents, the Grantor Trust Trustee (i) may act directly or through its agents or attorneys pursuant to agreements entered into with any of them, but the Grantor Trust Trustee shall not be personally liable for the conduct or misconduct of such agents, custodians, nominees (including Persons acting under a power of attorney) or attorneys selected in good faith and (ii) may consult with counsel, accountants and other skilled Persons knowledgeable in the relevant area to be selected in good faith and employed by it at the expense of the Grantor Trust. The Grantor Trust Trustee shall not be personally liable for anything done, suffered or omitted in good faith by it in accordance with the written opinion or advice of any such counsel, accountants or other such Persons.

SECTION 7.7. Not Acting in Individual Capacity. Except as provided in this Article VII, in accepting the trusts hereby created, the Grantor Trust Trustee acts solely as the Grantor Trust Trustee hereunder and not in its individual capacity and all Persons having any claim against the Grantor Trust Trustee by reason of the transactions contemplated by this Agreement or any Transaction Document shall look only to the Trust Estate for payment or satisfaction thereof.

SECTION 7.8. The Grantor Trust Trustee May Own Notes. The Grantor Trust Trustee in its individual or any other capacity may become the owner or pledgee of Notes. The Grantor Trust Trustee may deal with the Grantor Trust Seller, the Initial Purchasers, the Indenture Trustee, the Administrator and their respective Affiliates in banking transactions with the same rights as it would have if it were not the Grantor Trust Trustee, and the Grantor Trust Seller, the Initial Purchasers, the Indenture Trustee, the Administrator and their respective Affiliates may maintain normal commercial banking relationships with the Grantor Trust Trustee and its Affiliates.

## ARTICLE VIII

### COMPENSATION AND INDEMNIFICATION OF GRANTOR TRUST TRUSTEE

SECTION 8.1. The Grantor Trust Trustee's Compensation. The Grantor Trust Seller shall cause the Servicer to agree to pay to the Grantor Trust Trustee pursuant to Section 3.10 of the Servicing Agreement from time to time compensation for all services rendered by the Grantor Trust Trustee under this Agreement pursuant to a fee letter between the [Bank] and the Grantor Trust Trustee (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust). The Servicer, pursuant to Section

3.10 of the Servicing Agreement and the fee letter between the [Bank] and the Grantor Trust Trustee, shall reimburse the Grantor Trust Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Grantor Trust Trustee in accordance with any provision of this Agreement (including the reasonable compensation, expenses and disbursements of such agents, experts and counsel as the Grantor Trust Trustee may employ in connection with the exercise and performance of its rights and its duties hereunder), except any such expense as may be attributable to its willful misconduct, gross negligence (other than an error in judgment) or bad faith. To the extent not paid by the Servicer, such fees and reasonable expenses shall be paid by the Grantor Trust in accordance with Sections 8.5 or 5.4(b) of the Indenture, as applicable.

SECTION 8.2. Indemnification. The Grantor Trust Seller shall cause the Servicer to agree to indemnify the Grantor Trust Trustee in its individual capacity and as Grantor Trust Trustee and its successors, assigns, directors, officers, employees and agents (the “Indemnified Parties”) from and against, any and all loss, liability, expense, tax, penalty or claim (including reasonable legal fees and expenses, including legal fees and expenses in connection with enforcement of its rights to indemnity hereunder) of any kind and nature whatsoever which may at any time be imposed on, incurred by, or asserted against the Grantor Trust Trustee in its individual capacity and as Grantor Trust Trustee or any Indemnified Party in any way relating to or arising out of this Agreement, the Transaction Documents, the Grantor Trust Estate, the administration of the Grantor Trust Estate or the action or inaction of the Grantor Trust Trustee hereunder and those incurred in connection with any action, claim or suit brought to enforce the Grantor Trust Trustee’s right to indemnification; *provided, however*, that neither the Grantor Trust Seller nor the Servicer shall be liable for or required to indemnify the Grantor Trust Trustee from and against any of the foregoing expenses or indemnities arising or resulting from (i) its own willful misconduct, gross negligence or bad faith, (ii) the inaccuracy of any representation or warranty contained in Section 7.6 expressly made by the Grantor Trust Trustee in its individual capacity, (iii) liabilities arising from the failure of the Grantor Trust Trustee in its individual capacity to perform obligations expressly undertaken by it in the second to last sentence of Section 6.4 or (iv) taxes, fees or other charges on, based on or measured by, any fees, commissions or compensation received by the Grantor Trust Trustee in its individual capacity. To the extent not paid by the Servicer, such indemnification shall be paid by the Issuing Entity in accordance with, and solely to the extent set forth in Section 8.5(a) or (b) of the Indenture, as applicable. The provisions of this Section 8.2 shall survive the termination of this Agreement and the resignation or removal of the Grantor Trust Trustee.

SECTION 8.3. Payments to the Grantor Trust Trustee. Any amounts paid to the Grantor Trust Trustee pursuant to this Article VIII, the Servicing Agreement and the Indenture shall be deemed not to be a part of the Trust Estate immediately after such payment.

## ARTICLE IX

### TERMINATION OF TRUST AGREEMENT

SECTION 9.1. Dissolution of Grantor Trust.

(a) The Grantor Trust shall wind up and dissolve and this Agreement shall terminate (other than provisions hereof which by their terms survive termination) upon the final distribution by the Grantor Trust and the Grantor Trust Certificate Paying Agent of all moneys or other property or proceeds of the Grantor Trust Estate in accordance with the terms of the Indenture, the Servicing Agreement and Article V hereof. The bankruptcy, liquidation, dissolution, death or incapacity of a Certificateholder shall not (x) operate to terminate this Agreement or the Grantor Trust, nor (y) entitle any such Certificateholder's legal representatives or heirs to claim an accounting or to take any Proceeding in any court for a partition or winding up of all or any part of the Grantor Trust or Trust Estate nor (z) otherwise affect the rights, obligations and liabilities of the parties hereto.

(b) Notice of any dissolution and termination of the Grantor Trust, specifying the Payment Date upon which Certificateholders shall surrender their Certificates to the Grantor Trust Trustee for payment of the final distribution and cancellation, shall be given by the Grantor Trust Trustee to Certificateholders, and if the Grantor Trust Trustee is notified of a redemption of the Notes by the Administrator or the Grantor Trust pursuant to Section 10.1(c) of the Indenture, such notice shall be mailed within five (5) Business Days of the Grantor Trust Trustee's receipt of such notice from the Grantor Trust or Administrator. Each such notice to a Certificateholder shall state the Payment Date upon or with respect to which final payment of the Certificates shall be made upon presentation and surrender of the Certificates at the office of the Grantor Trust Trustee therein designated. The Grantor Trust Trustee shall give such notice to the Grantor Trust Certificate Registrar (if other than the Grantor Trust Trustee) and the Grantor Trust Paying Agent at the time such notice is given to Certificateholders. Upon presentation and surrender of each Certificate, the Grantor Trust Trustee shall cause to be distributed by the Grantor Trust Paying Agent to such Certificateholders, subject to Section 3808 of the Statutory Trust Statute, amounts distributable on such Payment Date pursuant to Article V.

(c) In the event that any of the Certificateholders shall not surrender their Certificates for cancellation within six (6) months after the date specified in the above mentioned written notice. Such Grantor Trust Certificate shall be deemed cancelled.

**SECTION 9.2. Termination of Trust Agreement.** Upon dissolution of the Grantor Trust, the Grantor Trust Trustee shall, at the direction of the Administrator, wind up the business and affairs of the Grantor Trust as required by Section 3808 of the Statutory Trust Statute. Upon the satisfaction and discharge of the Indenture, and receipt of a certificate from the Indenture Trustee stating that all Noteholders have been paid in full and that no Responsible Officer of the Indenture Trustee has actual knowledge or has received written notice of any claims remaining against the Grantor Trust in respect of the Indenture and the Notes, the Administrator, in the absence of actual knowledge of any other claim against the Grantor Trust, shall be deemed to have made reasonable provision to pay all claims and obligations (including conditional, contingent or unmatured obligations) for purposes of Section 3808(e) of the Statutory Trust Statute. The Grantor Trust Certificate Paying Agent, upon surrender of the outstanding Certificates to the Grantor Trust Trustee shall distribute the remaining Trust Estate (if any) in accordance with Article V hereof and, at the written direction and expense of the Administrator,



the Grantor Trust Trustee shall cause the Certificate of Trust to be cancelled by filing a certificate of cancellation with the Delaware Secretary of State in accordance with the provisions of Section 3810 of the Statutory Trust Statute, at which time the Grantor Trust shall terminate and this Agreement (other than Article VIII) shall be of no further force or effect.

SECTION 9.3. Limitations on Termination. Except as provided in Section 9.1, neither the Grantor Trust Seller nor any Certificateholders shall be entitled to revoke or terminate the Grantor Trust.

## ARTICLE X

### SUCCESSOR GRANTOR TRUST TRUSTEES AND ADDITIONAL GRANTOR TRUST TRUSTEES

SECTION 10.1. Eligibility Requirements for the Grantor Trust Trustee. The Grantor Trust Trustee shall at all times be a bank (i) authorized to exercise corporate trust powers, (ii) having a combined capital and surplus of at least \$50,000,000 and (iii) subject to supervision or examination by Federal or state authorities. If such bank shall publish reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purpose of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. The Grantor Trust Trustee shall at all times be an institution satisfying the provisions of Section 3807(a) of the Statutory Trust Statute. In case at any time the Grantor Trust Trustee shall cease to be eligible in accordance with the provisions of this Section, the Grantor Trust Trustee shall resign immediately in the manner and with the effect specified in Section 10.2.

SECTION 10.2. Resignation or Removal of the Grantor Trust Trustee. The Grantor Trust Trustee may at any time resign and be discharged from the trusts hereby created by giving written notice thereof to the Grantor Trust Seller, the Administrator, the Servicer, the Indenture Trustee and each Certificateholder. Upon receiving such notice of resignation, the Grantor Trust Seller and the Administrator, acting jointly, shall promptly appoint a successor Grantor Trust Trustee which satisfies the eligibility requirements set forth in Section 10.1 by written instrument, in duplicate, one copy of which instrument shall be delivered to the resigning Grantor Trust Trustee and one copy to the successor Grantor Trust Trustee. If no successor Grantor Trust Trustee shall have been so appointed and have accepted appointment within thirty (30) days after the giving of such notice of resignation, the resigning Grantor Trust Trustee may petition any court of competent jurisdiction for the appointment of a successor Grantor Trust Trustee; *provided, however*, that such right to appoint or to petition for the appointment of any such successor shall in no event relieve the resigning Grantor Trust Trustee from any obligations otherwise imposed on it under the Transaction Documents until such successor has in fact assumed such appointment.

If at any time the Grantor Trust Trustee shall cease to be eligible in accordance with the provisions of Section 10.1 and shall fail to resign after written request therefor by the Grantor Trust Seller or the Administrator, or if at any time the Grantor Trust Trustee shall be legally unable to act, or shall be adjudged bankrupt or insolvent, or a receiver of the Grantor Trust

Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Grantor Trust Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then the Grantor Trust Seller or the Administrator may remove the Grantor Trust Trustee. If the Grantor Trust Seller or the Administrator shall remove the Grantor Trust Trustee under the authority of the immediately preceding sentence, the Grantor Trust Seller and the Administrator, acting jointly, shall promptly appoint a successor Grantor Trust Trustee by written instrument, in duplicate, one copy of which instrument shall be delivered to the outgoing Grantor Trust Trustee so removed and one copy to the successor Grantor Trust Trustee and shall pay all fees owed to the outgoing Grantor Trust Trustee.

Any resignation or removal of the Grantor Trust Trustee and appointment of a successor Grantor Trust Trustee pursuant to any of the provisions of this Section shall not become effective until acceptance of appointment by the successor Grantor Trust Trustee pursuant to Section 10.3 and payment of all fees and expenses owed to the outgoing Grantor Trust Trustee. The Grantor Trust Seller shall provide (or shall cause to be provided) notice of such resignation or removal of the Grantor Trust Trustee to each of the Rating Agencies.

**SECTION 10.3. Successor Grantor Trust Trustee.** Any successor Grantor Trust Trustee appointed pursuant to Section 10.2 shall execute, acknowledge and deliver to the Grantor Trust Seller, the Administrator and to its predecessor Grantor Trust Trustee an instrument accepting such appointment under this Agreement, and thereupon the resignation or removal of the predecessor Grantor Trust Trustee shall become effective and such successor Grantor Trust Trustee, without any further act, deed or conveyance, shall become fully vested with all the rights, powers, duties and obligations of its predecessor under this Agreement, with like effect as if originally named as the Grantor Trust Trustee. The predecessor Grantor Trust Trustee shall upon payment of its fees and expenses deliver to the successor Grantor Trust Trustee all documents and statements and monies held by it under this Agreement; and the Grantor Trust Seller and the predecessor Grantor Trust Trustee shall execute and deliver such instruments and do such other things as may reasonably be required for fully and certainly vesting and confirming in the successor Grantor Trust Trustee all such rights, powers, duties and obligations.

No successor Grantor Trust Trustee shall accept appointment as provided in this Section unless at the time of such acceptance such successor Grantor Trust Trustee shall be eligible pursuant to Section 10.1.

Upon acceptance of appointment by a successor Grantor Trust Trustee pursuant to this Section, the Grantor Trust Seller shall mail (or shall cause to be mailed) notice of the successor of such Grantor Trust Trustee to the Certificateholders, Indenture Trustee, the Noteholders and each of the Rating Agencies. If the Grantor Trust Seller shall fail to mail (or cause to be mailed) such notice within ten (10) days after acceptance of appointment by the successor Grantor Trust Trustee, the successor Grantor Trust Trustee shall cause such notice to be mailed at the expense of the Grantor Trust Seller. Any successor Grantor Trust Trustee appointed pursuant to this Section 10.3 shall promptly file an amendment to the Certificate of Trust with the Secretary of State identifying the name and the principal place of business of such successor Grantor Trust Trustee in the State of Delaware.

SECTION 10.4. Merger or Consolidation of the Grantor Trust Trustee. Any Person into which the Grantor Trust Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Grantor Trust Trustee shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of the Grantor Trust Trustee, shall, without the execution or filing of any instrument or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding, be the successor of the Grantor Trust Trustee hereunder; *provided* that such Person shall be eligible pursuant to Section 10.1; and *provided, further*, that the Grantor Trust Trustee shall file an amendment to the Certificate of Trust of the Grantor Trust, if required by applicable law, and mail notice of such merger or consolidation to the Grantor Trust Seller and the Administrator.

SECTION 10.5. Appointment of Co-Trustee or Separate Trustee. Notwithstanding any other provisions of this Agreement, at any time, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Trust Estate may at the time be located, the Grantor Trust Seller and the Grantor Trust Trustee acting jointly shall have the power and shall execute and deliver all instruments to appoint one or more Persons approved by the Grantor Trust Trustee to act as co-trustee, jointly with the Grantor Trust Trustee, or separate trustee or separate trustees, of all or any part of the Trust Estate, and to vest in such Person, in such capacity, such title to the Trust Estate, or any part thereof, and, subject to the other provisions of this Section, such powers, duties, obligations, rights and trusts as the Grantor Trust Seller and the Grantor Trust Trustee may consider necessary or desirable. If the Grantor Trust Seller shall not have joined in such appointment within fifteen (15) days after the receipt by it of a request to do so, the Grantor Trust Trustee alone shall have the power to make such appointment. No co-trustee or separate trustee under this Agreement shall be required to meet the terms of eligibility as a successor trustee pursuant to Section 10.1 and no notice of the appointment of any co-trustee or separate trustee shall be required pursuant to Section 10.3.

Each separate trustee and co-trustee shall, to the extent permitted by law, be appointed and act subject to the following provisions and conditions:

(i) all rights, powers, duties and obligations conferred or imposed upon the Grantor Trust Trustee shall be conferred upon and exercised or performed by the Grantor Trust Trustee and such separate trustee or co-trustee jointly (it being understood that such separate trustee or co-trustee is not authorized to act separately without the Grantor Trust Trustee joining in such act), except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed, the Grantor Trust Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations (including the holding of title to the Trust Estate or any portion thereof in any such jurisdiction) shall be exercised and performed singly by such separate trustee or co-trustee, but solely at the direction of the Grantor Trust Trustee;

(ii) no trustee under this Agreement shall be personally liable by reason of any act or omission of any other trustee under this Agreement; and

(iii) the Grantor Trust Seller and the Grantor Trust Trustee acting jointly may at any time accept the resignation of or remove any separate trustee or co-trustee.

Any notice, request or other writing given to the Grantor Trust Trustee shall be deemed to have been given to each of the then separate trustees and co-trustees, as effectively as if given to each of them. Every instrument appointing any separate trustee or co-trustee shall refer to this Agreement and the conditions of this Article. Each separate trustee and co-trustee, upon its acceptance of the trusts conferred, shall be vested with the estates or property specified in its instrument of appointment, either jointly with the Grantor Trust Trustee or separately, as may be provided therein, subject to all the provisions of this Agreement, specifically including every provision of this Agreement relating to the conduct of, affecting the liability of, or affording protection to, the Grantor Trust Trustee. Each such instrument shall be filed with the Grantor Trust Trustee and copies thereof given to the Grantor Trust Seller and the Administrator.

Any separate trustee or co-trustee may at any time appoint the Grantor Trust Trustee, its agent or attorney-in-fact with full power and authority, to the extent not prohibited by law, to do any lawful act under or in respect of this Agreement on its behalf and in its name. If any separate trustee or co-trustee shall become incapable of acting, resign or be removed, all of its estates, properties, rights, remedies and trusts shall vest in and be exercised by the Grantor Trust Trustee, to the extent permitted by law, without the appointment of a new or successor trustee. The Grantor Trust Trustee shall have no obligation to determine whether a co-trustee or separate trustee is legally required in any jurisdiction in which any part of the Trust Estate may be located.

## **ARTICLE XI**

### **MISCELLANEOUS**

#### **SECTION 11.1. Amendments.**

(a) Any term or provision of this Agreement may be amended by the Grantor Trust Seller and the Grantor Trust Trustee, each at the direction of the Administrator, without the consent of the Indenture Trustee, any Noteholder, the Grantor Trust, the Retained Interest Lender or any other Person subject to the satisfaction of one of the following conditions:

(i) The Grantor Trust Seller (or the Administrator on its behalf) delivers an Opinion of Counsel or an Officer's Certificate to the Indenture Trustee to the effect that such amendment will not materially and adversely affect the interests of the Noteholders; or

(ii) The Rating Agency Condition is satisfied with respect to such amendment and the Grantor Trust Seller notifies the Indenture Trustee in writing that the Rating Agency Condition is satisfied with respect to such amendment.

(b) Any term or provision of this Agreement may also be amended from time to time by the Grantor Trust Seller and the Grantor Trust Trustee, at the direction of the

Administrator for the purpose of conforming the terms of this Agreement to the description thereof in the Offering Memorandum or, to the extent not contrary to the Offering Memorandum, to the description thereof in the Private Placement Memorandum without the consent of the Indenture Trustee, any Noteholder, any Certificateholder the Grantor Trust, the Retained Interest Lender or any other Person, provided, however, that the Grantor Trust Seller shall provide written notification of the substance of such amendment to the Indenture Trustee and promptly after execution of any such amendment, the Grantor Trust Seller shall furnish a copy of such amendment to the Indenture Trustee.

(c) This Agreement may also be amended from time to time by the Grantor Trust Seller and the Grantor Trust Trustee, with the consent of the (i) Holders of Notes evidencing not less than a majority of the Note Balance of the Outstanding Notes of the Controlling Class and (ii) the Majority Certificateholders, for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Agreement or of modifying in any manner the rights of the Noteholders or the Certificateholders. It will not be necessary for the consent of Noteholders or Certificateholders to approve the particular form of any proposed amendment or consent, but it will be sufficient if such consent approves the substance thereof. The manner of obtaining such consents (and any other consents of Noteholders and Certificateholders provided for in this Agreement) and of evidencing the authorization of the execution thereof by Noteholders and Certificateholders will be subject to such reasonable requirements as the Indenture Trustee and Grantor Trust Trustee may prescribe, including the establishment of record dates pursuant to the Depository Agreement.

(d) Prior to the execution of any amendment pursuant to this Section 11.1, the Grantor Trust Seller shall provide written notification of the substance of such amendment to each Rating Agency and the Grantor Trust Trustee; and promptly after the execution of any such amendment, the Grantor Trust Seller shall furnish a copy of such amendment to each Rating Agency, the Grantor Trust Trustee, the Grantor Trust and the Indenture Trustee; provided, that no amendment pursuant to this Section 11.1 shall be effective which materially and adversely affects the rights, protections or duties of the Indenture Trustee without the prior written consent of such Person.

(e) Prior to the execution of any amendment pursuant to this Section 11.1, the Grantor Trust Trustee shall be entitled to receive and conclusively rely upon an Opinion of Counsel stating that the execution of such amendment is authorized or permitted by this Agreement and an Officer's Certificate of the Grantor Trust Seller or the Administrator that all conditions precedent to the execution and delivery of such amendment have been satisfied; provided, that no amendment pursuant to this Section 11.1 shall be effective which materially and adversely affects the rights, protections or duties of the Grantor Trust Trustee without the prior written consent of the Grantor Trust Trustee (which consent shall not be unreasonably withheld or delayed).

(f) Notwithstanding subsections (a) and (b) of this Section 11.1, this Agreement may only be amended by the Grantor Trust Seller and the Grantor Trust Trustee, each at the direction of the Administrator, if (i) the Majority Certificateholders or, if 100% of the

aggregate Percentage Interests is then beneficially owned by the Bank and/or its Affiliates, such Person (or Persons), consent to such amendment or (ii) such amendment shall not, as evidenced by an Officer's Certificate of the Grantor Trust Seller or an Opinion of Counsel delivered to the Grantor Trust Trustee and Indenture Trustee, materially and adversely affect the interests of the Certificateholders. In determining whether 100% of the aggregate Percentage Interests is then beneficially owned by the Bank and/or its Affiliates for purposes of clause (i), any party shall be entitled to rely on an Officer's Certificate or similar certification of the Bank or any Affiliate thereof to such effect. For the avoidance of doubt, no consent of the Certificateholders or delivery of any such Opinion of Counsel or Officer's Certificate shall be required in connection with an amendment to this Agreement pursuant to subsection (b) of this Section 11.1.

(g) Notwithstanding anything herein to the contrary, for purposes of classifying the Grantor Trust as a grantor trust under the Code, no amendment shall be made to this Agreement that would (i) result in a variation of the investment of the beneficial owners of the Certificates for purposes of the United States Treasury Regulation section 301.7701-4(c) without the consent of Noteholders evidencing at least a majority of the Note Balance of the Outstanding Notes of the Controlling Class and the Majority Certificateholders or (ii) cause the Grantor Trust (or any part thereof) to be classified as other than a grantor trust for United States federal income tax purposes without the consent of all of the Noteholders and all of the Certificateholders.

**SECTION 11.2. No Legal Title to Trust Estate in Grantor Trust Certificateholders.** Neither the Grantor Trust Seller nor any Grantor Trust Certificateholder shall have legal title to any part of the Trust Estate. Each Certificateholder shall be entitled to receive distributions with respect to its undivided Grantor Trust Percentage Interest therein only in accordance with Articles V and IX. No transfer, by operation of law or otherwise, of any right, title or interest of a Certificateholder to and in its ownership interest in the Trust Estate shall operate to terminate this Agreement or the trusts hereunder or entitle any transferee to an accounting or to the transfer to it of legal title to any part of the Trust Estate.

**SECTION 11.3. Limitations on Rights of Others.** The provisions of this Agreement are solely for the benefit of the Grantor Trust Trustee, the Grantor Trust Seller, the Administrator, the Certificateholders and, to the extent expressly provided herein, the Indenture Trustee and the Noteholders, and nothing in this Agreement, whether express or implied, shall be construed to give to any other Person any legal or equitable right, remedy or claim in the Trust Estate or under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

**SECTION 11.4. Notices.** Unless otherwise expressly specified or permitted by the terms hereof, all demands, notices and communications hereunder shall be in writing and shall be delivered or mailed by registered or certified first-class United States mail, postage prepaid, hand delivery, prepaid courier service, or by facsimile or e-mail (if an applicable e-mail address is provided on Schedule I to the Sale Agreement), and addressed in each case as specified on Schedule I to the Sale Agreement, or at such other address as shall be designated by any of the specified addressees in a written notice to the other parties hereto. Any notice required or permitted to be mailed to any Certificateholder shall be given by first class mail, postage prepaid, at the address of such Certificateholder as shown in the Grantor Trust Certificate Register.

Delivery shall occur only upon receipt or reported tender of such communication by an officer of the recipient entitled to receive such notices located at the address of such recipient for notices hereunder and, with respect to delivery via e-mail, upon confirmation from the recipient that such notice has been received; provided, however, that any notice to a Certificateholder mailed within the time and manner prescribed in this Agreement shall be conclusively presumed to have been duly given, whether or not such Certificateholder shall receive such notice; provided, further, that any demand, notice or communication hereunder to any Rating Agency shall be deemed to be delivered if a copy of such demand, notice or communication has been posted on any website maintained by the Bank pursuant to a commitment to any Rating Agency relating to the Notes in accordance with 17 C.F.R. 240.17g-5(a)(3).

SECTION 11.5. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 11.6. Counterparts and Electronic Signature. This Agreement shall be valid, binding, and enforceable against a party only when executed by an authorized individual on behalf of the party by means of (i) an electronic signature that complies with the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, and/or any other relevant electronic signatures law, in each case to the extent applicable; (ii) an original manual signature; or (iii) a faxed, scanned, or photocopied manual signature. Each electronic signature or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each party hereto shall be entitled to conclusively rely upon, and shall have no liability with respect to, any electronic signature or faxed, scanned, or photocopied manual signature of any other party and shall have no duty to investigate, confirm or otherwise verify the validity or authenticity thereof. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall, together, constitute but one and the same instrument. Notwithstanding the foregoing, with respect to any notice provided for in this Agreement or any instrument required or permitted to be delivered hereunder, any party hereto receiving or relying upon such notice or instrument shall be entitled to request execution thereof by original manual signature as a condition to the effectiveness thereof. The Grantor Trust Seller agrees to give the Grantor Trust Trustee notice if such party uses an electronic signature service (such as DocuSign) in order to execute this Agreement or any related document.

SECTION 11.7. Successors and Assigns. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Grantor Trust Seller, the Grantor Trust Trustee and its successors and each Certificateholder and its successors and permitted assigns, all as herein provided. Any request, notice, direction, consent, waiver or other instrument or action by a Certificateholder shall bind the successors and assigns of such Certificateholder.

#### SECTION 11.8. No Petition.

(a) To the fullest extent permitted by applicable law, each of the Grantor Trust Trustee (in its individual capacity and as the Grantor Trust Trustee by entering into this Agreement), the Grantor Trust Seller, each Certificateholder, by accepting a Certificate, and the Indenture Trustee and each Noteholder or Note Owner by accepting the benefits of this Agreement, hereby covenants and agrees that prior to the date which is one year and one day after payment in full of all obligations of each Bankruptcy Remote Party in respect of all securities issued by the Bankruptcy Remote Parties (i) such party shall not authorize any Bankruptcy Remote Party to commence a voluntary winding-up or other voluntary case or other Proceeding seeking liquidation, reorganization or other relief with respect to such Bankruptcy Remote Party or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect in any jurisdiction or seeking the appointment of an administrator, a trustee, receiver, liquidator, custodian or other similar official with respect to such Bankruptcy Remote Party or any substantial part of its property or to consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other Proceeding commenced against such Bankruptcy Remote Party, or to make a general assignment for the benefit of, its creditors generally, any party hereto or any other creditor of such Bankruptcy Remote Party, and (ii) such party shall not commence, join or institute against, with any other Person, any Proceeding against such Bankruptcy Remote Party under any bankruptcy, reorganization, arrangement, liquidation or insolvency law or statute now or hereafter in effect in any jurisdiction. Without limiting the foregoing, in no event shall the Grantor Trust Trustee authorize, institute or join in any bankruptcy or similar Proceeding described in the preceding sentence other than in accordance with Section 4.3; *provided, however*, nothing in this Section shall prevent the Grantor Trust Trustee from (i) filing a proof of claim in any such Proceeding or (ii) from commencing against the Grantor Trust or any of its property any legal action which is not a bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation Proceeding.

(b) The Grantor Trust Seller's obligations under this Agreement are obligations solely of the Grantor Trust Seller and will not constitute a claim against the Grantor Trust Seller to the extent that the Grantor Trust Seller does not have funds sufficient to make payment of such obligations. In furtherance of and not in derogation of the foregoing, each of the Grantor Trust Trustee (in its individual capacity and as the Grantor Trust Trustee), by entering into or accepting this Agreement, each Certificateholder, by accepting a Certificate, and the Indenture Trustee and each Noteholder or Note Owner, by accepting the benefits of this Agreement, hereby acknowledges and agrees that such Person has no right, title or interest in or to the Other Assets of the Grantor Trust Seller. To the extent that, notwithstanding the agreements and provisions contained in the preceding sentence, each of the Grantor Trust Trustee, the Indenture Trustee, each Noteholder or Note Owner and each Certificateholder either (i) asserts an interest or claim to, or benefit from, Other Assets, or (ii) is deemed to have any such interest, claim to, or benefit in or from Other Assets, whether by operation of law, legal process, pursuant to applicable provisions of insolvency laws or otherwise (including by virtue of Section 1111(b) of the Bankruptcy Code or any successor provision having similar effect under the Bankruptcy Code), then such Person further acknowledges and agrees that any



such interest, claim or benefit in or from Other Assets is and will be expressly subordinated to the indefeasible payment in full of the other obligations and liabilities, which, under the terms of the relevant documents relating to the securitization or conveyance of such Other Assets, are entitled to be paid from, entitled to the benefits of, or otherwise secured by such Other Assets (whether or not any such entitlement or security interest is legally perfected or otherwise entitled to a priority of distributions or application under applicable law, including insolvency laws, and whether or not asserted against the Grantor Trust Seller), including the payment of post-petition interest on such other obligations and liabilities. This subordination agreement will be deemed a subordination agreement within the meaning of Section 510(a) of the Bankruptcy Code. Each of the Grantor Trust Trustee (in its individual capacity and as the Grantor Trust Trustee), by entering into or accepting this Agreement, each Certificateholder, by accepting a Certificate, and the Indenture Trustee and each Noteholder or Note Owner, by accepting the benefits of this Agreement, hereby further acknowledges and agrees that no adequate remedy at law exists for a breach of this Section and the terms of this Section may be enforced by an action for specific performance. The provisions of this Section will be for the third party benefit of those entitled to rely thereon and will survive the termination of this Agreement.

SECTION 11.9. Information Request. The Grantor Trust Trustee shall provide any information regarding the Grantor Trust in its possession reasonably requested by the Servicer, the Administrator, the Grantor Trust Seller or any of their Affiliates, in order to comply with or obtain more favorable treatment under any current or future law, rule, regulation, accounting rule or principle.

SECTION 11.10. Headings. The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

SECTION 11.11. GOVERNING LAW. **THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.**

SECTION 11.12. Waiver of Jury Trial. To the extent permitted by applicable law, each party hereto irrevocably waives all right of trial by jury in any Proceeding or counterclaim based on, or arising out of, under or in connection with this Agreement, any other Transaction Document, or any matter arising hereunder or thereunder.

SECTION 11.13. Information to Be Provided by the Grantor Trust Trustee. The Grantor Trust Trustee shall provide the Grantor Trust Seller, the Bank and the Servicer (each, a “Transaction Party” and, collectively, the “Transaction Parties”) with (i) notification, as soon as practicable and in any event within five (5) Business Days, of all demands communicated to a Responsible Officer of the Grantor Trust Trustee for the purchase, repurchase or replacement of any Receivable pursuant to Section 3.4 of the Purchase Agreement, and (ii) promptly upon reasonable request in writing by a Transaction Party, any other information in the Grantor Trust

Trustee's possession reasonably requested by a Transaction Party to facilitate compliance by the Transaction Parties with Rule 15Ga-1 under the Exchange Act. In no event shall the Grantor Trust Trustee be deemed to be a "securitizer" as defined in Section 15G(a) of the Exchange Act with respect to the transactions contemplated by the Transaction Documents, nor shall it have any responsibility for making any filing to be made by a securitizer under the Exchange Act with respect to the transactions contemplated by the Transaction Documents. Such notification to be substantially in the form of Exhibit B hereto.

SECTION 11.14. Third-Party Beneficiaries. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns and [●], in its capacity as Grantor Trust Paying Agent shall be an express third-party beneficiary hereof and may enforce the provisions hereof as if it were a party hereto. Except as otherwise provided in this Section, no other Person will have any right hereunder.

SECTION 11.1. Corporate Transparency Act. The Corporate Transparency Act (31 U.S.C. § 5336) and its implementing regulations (collectively, the "CTA") may require the Grantor Trust to file certain reports with the Financial Crimes Enforcement Network, a bureau of the U.S. Department of Treasury, after the date of this Agreement. It shall be the Administrator's duty and not the Grantor Trust Trustee's duty to cause the Grantor Trust to make such filings and to cause the Grantor Trust to comply with its obligations under the CTA, if any. The parties hereto agree that for purposes of the CTA, the Certificateholders are and shall be deemed to be the sole direct owners of the Grantor Trust, and acknowledge that the Grantor Trust Trustee acts solely as a directed trustee hereunder and that one or more Controlling Parties of the Administrator (and not of the Grantor Trust Trustee) are and shall be deemed to be the parties with the power and authority to exercise substantial control over the Grantor Trust.

**[Remainder of Page Intentionally Left Blank]**

IN WITNESS WHEREOF, the parties hereto have caused this Trust Agreement to be duly executed by their respective officers hereunto duly authorized as of the day and year first above written.

[●],  
as Grantor Trust Trustee

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

**BANK OF AMERICA AUTO TRUST [●]**

By: [●], not in its individual capacity but solely as  
Owner Trustee

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

Acknowledged and Agreed:

[●], as Grantor Trust Paying Agent

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

## FORM OF GRANTOR TRUST CERTIFICATE

NUMBER \_\_\_\_\_ Principal Amount of this Grantor Trust Certificate: \$[\_\_\_\_\_]

R-\_\_\_\_\_ Aggregate Amount of all Grantor Trust Certificates: \$100,000 (which shall be  
 deemed to be the equivalent of 100,000 units)

Grantor Trust Percentage Interest of this Grantor Trust Certificate: [\_\_\_\_\_] %

CUSIP NO. \_\_\_\_\_

ISIN \_\_\_\_\_

BANK OF AMERICA AUTO GRANTOR TRUST [●]

## GRANTOR TRUST CERTIFICATE

THIS GRANTOR TRUST CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OR ANY OTHER APPLICABLE SECURITIES OR “BLUE SKY” LAWS OF ANY STATE OR OTHER JURISDICTION, AND MAY NOT BE RESOLD, ASSIGNED, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE REGISTRATIN REQUIREMENTS OF THE SECURITIES ACT OR ANY OTHER APPLICABLE SECURITIES OR “BLUE SKY” LAWS, PURSUANT TO AN EXEMPTION THEREFROM OR IN A TRANSACTION NOT SUBJECT THERETO.

**(This Certificate does not represent an interest in or obligation of Bank of America Auto Receivables Securitization, LLC, Bank of America, National Association or any of their respective Affiliates, except to the extent described below.)**

THIS GRANTOR TRUST CERTIFICATE IS NOT NEGOTIABLE.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE SOLE GRANTOR TRUST CERTIFICATHOLDER SHALL BE THE GRANTOR TRUST SELLER.

THE HOLDER OF THIS GRANTOR TRUST CERTIFIFCATE REPRESENTS AND WARRANTS THAT IT IS A “UNITED STATES PESON” AS DEFINED IN SECTION 7701(a)(30) OF THE CODE AND WILL PROVIDE THE GRANTOR TRUST TRUSTEE WITH A CORRECT, COMPLETE AND PROPERLY EXECUTED INTERNAL REVENUE SERVICE FORM W-9 (OR APPLICABLE SUCCESSOR FORM). IF THE HOLDER OF THIS GRANTOR TRUST CERTIFICATE (OTHER THAN THE GRANTOR TRUST SELLER) FAILS TO PROVIDE THE GRANTOR TRUST TRUSTEE WITH THE PROPERLY COMPLETED AND SIGNED TAX CERTIFCIATIONS SPECIFIED ABOVE, THE ACQUISITION OF ITS INTEREST IN THIS GRANTOR TRUST CERTIFICATE SHALL BE VOID *AB INITIO*.

THIS CERTIFIES THAT \_\_\_\_\_ is the registered owner of a \_\_\_\_% nonassessable, fully-paid, Grantor Trust Percentage Interest in BANK OF AMERICA AUTO GRANTOR TRUST [●], a Delaware statutory trust (the “Grantor Trust”) formed by

BANK OF AMERICA AUTO TRUST [●], a Delaware statutory trust, as Grantor Trust Seller (the “Grantor Trust Seller”).

The Grantor Trust was created pursuant to a Trust Agreement dated as of [●], 2023, as amended and restated as of [●], 2023, the “Grantor Trust Agreement”), between the Grantor Trust Seller and the [●], as Grantor Trust Trustee (the “Grantor Trust Trustee”), a summary of certain of the pertinent provisions of which is set forth below. To the extent not otherwise defined herein, the capitalized terms used herein have the meanings assigned to them in Appendix A to the Sale Agreement, dated as of [●], 2023, between the Grantor Trust Seller and the Bank of America Auto Receivables Securitization, LLC, as the same may be amended or supplemented from time to time.

This Certificate is issued under and is subject to the terms, provisions and conditions of the Trust Agreement, to which Grantor Trust Agreement the holder of this Certificate by virtue of the acceptance hereof assents and by which such holder is bound. The provisions and conditions of the Grantor Trust Agreement are hereby incorporated by reference as though set forth in their entirety herein.

**THIS GRANTOR TRUST CERTIFICATE SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.**

By accepting this Grantor Trust Certificate, the Grantor Trust Certificateholder hereby covenants and agrees that prior to the date which is one year and one day after payment in full of all obligations of each Bankruptcy Remote Party in respect of all securities issued by the Bankruptcy Remote Parties such Person shall not commence, join or institute against, with any other Person, any proceeding against such Bankruptcy Remote Party under any bankruptcy, reorganization, liquidation or insolvency law or statute now or hereafter in effect in any jurisdiction.

By accepting and holding this Grantor Trust Certificate (or any interest herein), the holder hereof, and any fiduciary acting on behalf of a holder, shall be deemed to have represented and warranted that it is not acquiring this Grantor Trust Certificate (or any interest herein) on behalf of or with any assets of, (i) an “employee benefit plan” as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), which is subject to Title I of ERISA, (ii) a “plan” as described by Section 4975(e)(1) of the U.S. Internal Revenue Code of 1986, as amended (the “Code”), which is subject to Section 4975 of the Code, (iii) any entity deemed to hold the plan assets of any of the foregoing by reason of such employee benefit plan’s or plan’s investment in the entity or (iv) any governmental, church, non-U.S. or other plan or arrangement that is subject to any federal, state, local or other law that is substantially similar to Title I of ERISA or Section 4975 of the Code.

It is the intention of the parties to the Grantor Trust Agreement that, for purposes of United States federal, state and local income and franchise tax purposes, the Grantor Trust will be treated as a grantor trust under subtitle A, chapter 1, subchapter J, part I, subpart E of the

Code. By accepting this Grantor Trust Certificate, the Grantor Trust Certificateholder consents to and agrees to take no action inconsistent with, the foregoing intended tax treatment.

By accepting this Certificate, the Certificateholder acknowledges that this Certificate represents a Grantor Trust Percentage Interest only and does not represent interests in or obligations of the Grantor Trust Seller, the Servicer, the Administrator, the Grantor Trust Trustee, the Indenture Trustee or any of their respective Affiliates and no recourse may be had against such parties or their assets, except as expressly set forth or contemplated in this Grantor Trust Certificate, the Grantor Trust Agreement or any other Transaction Document.

Each Certificateholder, by acceptance of this Certificate, acknowledges and agrees that the purpose of Article XII of the Indenture is to facilitate compliance with the FDIC Rule by the Bank, the Grantor Trust Seller, the Servicer and the Grantor Trust (collectively, the “BANA Parties”) and that the interpretations of the requirements of the FDIC Rule may change over time, whether due to interpretive guidance provided by the FDIC or its staff, consensus amount participants in the asset-backed securities markets, advice of counsel, or otherwise, and agrees that the provisions set forth in Article XII of the Indenture shall have the effect and meanings that are appropriate under the FDIC Rule as such effect and meanings change over time on the basis of evolving interpretations of the FDIC Rule.

IN WITNESS WHEREOF, the Grantor Trust has caused this Grantor Trust Certificate to be duly executed.

BANK OF AMERICA AUTO GRANTOR TRUST  
[●],

By: [●], not in its individual capacity, but solely as  
Grantor Trust Trustee

Dated: \_\_\_\_\_

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

## GRANTOR TRUST CERTIFICATE REGISTRAR'S CERTIFICATE OF AUTHENTICATION

This is the Grantor Trust Certificate referred to in the within-mentioned Grantor Trust Agreement.

[●], not in its individual capacity but solely as  
Grantor Trust Certificate Registrar

By: \_\_\_\_\_  
Authenticating Agent



**ASSIGNMENT**

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

PLEASE INSERT SOCIAL SECURITY  
OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

[\_\_\_\_\_]

---

(Please print or type name and address, including postal zip code, of assignee)

---

the within Grantor Trust Certificate, (**Asset Backed Grantor Trust Certificate No. R-[\_\_]**  
**issued by BANK OF AMERICA AUTO GRANTOR TRUST [●],**) and all rights thereunder,  
hereby irrevocably constituting and appointing

\_\_\_\_\_ Attorney to transfer said Grantor Trust Certificate on the books of  
the Grantor Trust Certificate Registrar, with full power of substitution in the premises

Dated: \_\_\_\_\_, 20[\_\_]

[\_\_\_\_\_]

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

**FORM OF NOTICE OF REQUESTS TO REPURCHASE RECEIVABLES**

[\_\_\_\_], 20[ ]

[Grantor Trust Seller]

[Servicer]

Re: BANK OF AMERICA AUTO GRANTOR TRUST [●], – Notice of Requests to Repurchase Receivables

Reference is hereby made to the Amended and Restated Trust Agreement, dated as of [●], 2023 (the “Trust Agreement”), between Bank of America Auto Trust [●], as grantor trust seller (the “Grantor Trust Seller”), and [●], as grantor trust trustee (the “Grantor Trust Trustee”). Capitalized terms used herein and not otherwise defined shall have the meanings assigned such terms in the Trust Agreement. This Notice is being delivered pursuant to Section 11.13 of the Trust Agreement.

The Grantor Trust Trustee hereby certifies as to the checked option below:

[ ] During the period from and including [\_\_\_\_\_] to but excluding [\_\_\_\_\_] , the Grantor Trust Trustee received no requests from the holders of any of the Notes or Certificates outstanding during that period requesting that any Receivables be purchased, repurchased or replaced with respect to such Notes or Certificates.

[ ] During the period from and including [\_\_\_\_\_] to but excluding [\_\_\_\_\_] , the Grantor Trust Trustee received one or more requests from the holders of any of the Notes or Certificates outstanding during that period requesting that any Receivables be purchased, repurchased or replaced with respect to such Notes or Certificates. Copies of such requests received in writing are attached hereto, and details of any such requests received orally are as set forth below:

Date of Request

Number of Receivables

Aggregate Principal Balance of Receivables Subject to Request

[REMINDER OF PAGE INTENTIONALLY LEFT BLANK]

[•],  
not in its individual capacity  
but solely as Grantor Trust Trustee

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