

CONFIDENTIAL

AMENDED AND RESTATED
TRUST AGREEMENT
OF
WASHINGTON MUTUAL PREFERRED FUNDING TRUST II

Dated as of December 13, 2006

among

WASHINGTON MUTUAL PREFERRED FUNDING LLC
as Grantor,

WILMINGTON TRUST COMPANY
as Delaware Trustee

WILMINGTON TRUST COMPANY
as Property Trustee

and

THE HOLDERS OF THE TRUST SECURITIES FROM TIME TO TIME

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This AMENDED AND RESTATED TRUST AGREEMENT (this "*Trust Agreement*") is dated as of December 13, 2006, among Washington Mutual Preferred Funding LLC, a Delaware limited liability company, as grantor (the "*Grantor*"), Wilmington Trust Company, as Delaware trustee (the "*Delaware Trustee*"), Wilmington Trust Company, as property trustee (the "*Property Trustee*" and, together with the Delaware Trustee, the "*Trustees*"), and the Holders (as defined herein) of the Trust Securities (as defined herein) from time to time.

WITNESSETH:

WHEREAS, the Trustees and the Grantor established Washington Mutual Preferred Funding Trust II (the "*Trust*") under the Delaware Statutory Trust Act, 12 *Del. C.* §§ 3801 *et seq.* (as amended from time to time, the "*Statutory Trust Act*"), pursuant to a trust agreement, dated as of December 4, 2006 (the "*Original Trust Agreement*"), and a Certificate of Trust filed with the Secretary of State of the State of Delaware on 4, 2006;

WHEREAS, the Trust proposes to issue its Fixed-to-Floating Rate Perpetual Non-cumulative Trust Securities, liquidation preference \$100,000 per security, and aggregate liquidation preference \$500,000,000 (the "*Trust Securities*"), representing a Like Amount (as defined below) of the Fixed-to-Floating Rate Perpetual Non-cumulative Preferred Securities, Series 2006-C, liquidation preference \$1,000 per security, and aggregate liquidation preference \$500,000,000 (the "*Series 2006-C Company Preferred Securities*") to be issued by the Grantor;

WHEREAS, (i) the Grantor will deliver the Series 2006-C Company Preferred Securities to WMB in exchange for a portfolio of payment option adjustable rate mortgages (the "*Option ARMS*"), and (ii) WMB will deliver the Series 2006-C Company Preferred Securities to the Property Trustee for deposit in the Trust as the initial Trust Estate (as defined below);

WHEREAS, the Trustees and the Grantor desire to continue the Trust for the sole purpose of issuing and selling the Trust Securities representing a Like Amount of the Series 2006-C Company Preferred Securities and, accordingly, the Trustees and the Grantor desire to amend and restate in its entirety the Original Trust Agreement; and

WHEREAS, the Trustees and the Grantor desire that the Trust continue as a statutory trust under the Statutory Trust Act, governed by this Trust Agreement;

NOW, THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the parties hereto declare that the Trust Estate shall be held in trust for the benefit of the Holders and agree to amend and restate in its entirety the Original Trust Agreement as follows:

ARTICLE I
DEFINITIONS

Section 1.01. *Definitions and Interpretation.* In this Trust Agreement, unless the context otherwise requires:

- (a) capitalized terms used in this Trust Agreement have the respective meanings assigned to them in this Section 1.01;
- (b) a term defined anywhere in this Trust Agreement has the same meaning throughout;
- (c) all references to "*the Trust Agreement*" or "*this Trust Agreement*" are to this Trust Agreement as modified, supplemented or amended from time to time;
- (d) all references in this Trust Agreement to Articles and Sections are to Articles and Sections of this Trust Agreement, unless otherwise specified; and
- (e) a reference to the singular includes the plural and vice versa.

"*Affiliate*" means, with respect to a specified Person, any Person directly or indirectly controlling, controlled by or under common control with the specified Person.

"*Beneficial Owner*" means each Person who is the beneficial owner of Book-Entry Trust Securities as reflected in the records of the Clearing Agency or, if a Clearing Agency Participant is not the Beneficial Owner, then as reflected in the records of a Person maintaining an account with such Clearing Agency (directly or indirectly, in accordance with the rules of such Clearing Agency).

"*Benefit Plan Investor*" has the meaning specified in Section 3.05(b).

"*Book-Entry Transfer*" means transfer or delivery of beneficial interests in Book-Entry Trust Securities in accordance with the rules and procedures of the Clearing Agency (including in the case of DTC, book-entry transfers and deliveries through DTC's Deposit/Withdrawal at Custodian DWAC system).

"*Book-Entry Trust Securities*" means Trust Securities the ownership and transfer of which shall be made through Book-Entry Transfers by a Clearing Agency as set forth in Sections 3.02 and 3.03.

"*Business Combination*" has the meaning specified in Section 4.08(e).

“*Business Day*” means a day on which banks are open for business in New York, New York, U.S.A., London, England, Seattle, Washington, U.S.A., and Wilmington, Delaware, U.S.A.

“*Certificate*” means a certificate issued hereunder and evidencing the amount of Trust Securities (by aggregate liquidation preference) set forth on the face of such certificate, substantially in the form of *Exhibit B*.

“*Clearing Agency*” means an organization registered as a “clearing agency” pursuant to Section 17A of the Exchange Act. DTC will be the initial Clearing Agency.

“*Clearing Agency Participant*” means a broker, dealer, bank, other financial institution or other Person for whom from time to time the Clearing Agency effects book-entry transfers and pledges of interests in securities deposited with the Clearing Agency.

“*Code*” means the Internal Revenue Code of 1986, as amended.

“*Company Distribution*” means a Distribution, as such term is defined in the Grantor LLC Agreement.

“*Conditional Exchange*” has the meaning specified in Section 4.08.

“*Corporate Office*” means the office of the Property Trustee at which at any particular time its business, in respect of matters governed by this Trust Agreement, shall be administered, which at the date of this Trust Agreement is located at c/o Wilmington Trust Company, Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890.

“*Definitive Certificate*” means any definitive registered Certificates issued in exchange for all or a part of the Global Certificate.

“*Delaware Trustee*” has the meaning specified in the preamble to this Trust Agreement.

“*Deposit Agreement*” means the Deposit Agreement, dated as of December 13, 2006 (as amended or supplemented from time to time), among (i) WMI, (ii) Mellon Investor Services, LLC, as shares depository, and (iii) the holders from time to time of WMI Depository Receipts.

“*Depository*” means the depository for DTC, which initially will be Wilmington Trust Company.

“*Depository Shares*” means the depository shares issuable upon a Conditional Exchange pursuant to the Deposit Agreement, each representing 1/1000th interest in one share of Series L WMI Preferred Stock.

“DTC” means The Depository Trust Company.

“Distribution Payment Date” means, with respect to the Trust Securities, each Business Day on which the Property Trustee receives payment of any Company Distribution; *provided, however*, that if the Property Trustee receives any Company Distribution after 2:00 P.M., New York time, on a Business Day, then the related Distribution Payment Date shall be the next succeeding Business Day.

“ERISA” has the meaning specified in Section 3.05(b).

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Exchange Agreement” means the Exchange Agreement, dated as of December 13, 2006, by and among WMI, Mellon Investor Services, LLC, as depository, Mellon Investor Services LLC, as registrar, and the Trust.

An “Exchange Event” occurs when (i) WMB becomes undercapitalized under the OTS’ “prompt corrective action” regulations at 12 C.F.R. Part 565 (and including any successor regulations), (ii) WMB is placed into conservatorship or receivership, or (iii) the OTS, in its sole discretion, anticipates WMB becoming undercapitalized in the near term or takes a supervisory action that limits the payment of dividends by WMB, and in connection therewith, directs a Conditional Exchange.

“Global Certificate” means the global trust certificate(s) representing the Trust Securities issued in the name of the Nominee and held by the Depository that includes the legend set forth in *Exhibit A*, and any other legends required by the Clearing Agency.

“Grantor” has the meaning specified in the preamble to this Trust Agreement.

“Grantor LLC Agreement” means the Limited Liability Company Agreement of the Grantor, as amended and restated as of the Issue Date and as further modified, amended and supplemented from time to time.

“Holder” of a Trust Security means the Person in whose name a Trust Security is registered on the Register maintained by the Registrar and Transfer Agent for such purposes.

“Independent Manager” means the Independent Manager of the Grantor (as defined in the Grantor LLC Agreement).

“Investment Company” means an investment company as defined in the Investment Company Act.

“Investment Company Act” means the Investment Company Act of 1940, as amended.

“*Issue Date*” means the date of initial issuance of the Series 2006-C Company Preferred Securities and the Trust Securities, expected to be on or about December 13, 2006.

“*Like Amount*” means (i) when used with respect to the number of Series 2006-C Company Preferred Securities in which a Holder of Trust Securities has a beneficial interest, a number of Series 2006-C Company Preferred Securities having the same aggregate liquidation preference as such Trust Securities (*i.e.*, 100 Series 2006-C Company Preferred Securities for each Trust Security), and (ii) when used in connection with a Conditional Exchange of one or more Trust Securities for Depository Shares, a number of Depository Shares representing Series L WMI Preferred Stock having an aggregate liquidation preference equal to the aggregate liquidation preference of such Trust Securities (*i.e.*, for each Trust Security, 100 Depository Shares).

“*Liquidation Claim Amount*” means the Liquidation Claim Amount, as such term is defined in the Grantor LLC Agreement.

“*Nominee*” means the nominee for DTC, which initially will be Cede & Co.

“*Offering Circular*” means the final Offering Circular, dated December 6, 2006, relating to the offer and sale of the Trust Securities.

“*Opinion of Counsel*” means the written opinion of counsel, who may be counsel to the Grantor or any of its Affiliates, and who shall be reasonably acceptable to the Trustees.

“*Option ARMs*” has the meaning specified in the recitals to this Trust Agreement.

“*Original Trust Agreement*” has the meaning specified in the recitals to this Agreement.

“*OTS*” means the United States Office of Thrift Supervision or any successor United States Federal bank or thrift regulatory authority agency that is the primary supervisory agency for WMB.

“*Paying Agent*” means the Person from time to time appointed and acting as Paying Agent as provided in Section 4.05, which will initially be Wilmington Trust Company.

“*Person*” means any individual, general partnership, limited partnership, corporation, limited liability company, joint venture, trust, business trust, cooperative or association and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so admits.

“*Property Trustee*” has the meaning specified in the preamble to this Trust Agreement.

“*Purchase Agreement*” means the purchase agreement, dated December 6, 2006 (as amended, modified or supplemented from time to time), among (i) WMI, (ii) WMB, (iii) the Grantor, (iv) the Trust and (v) Goldman, Sachs & Co., as representative of the Purchasers, pursuant to which, among other things, at the Time of Delivery the Purchasers designated therein will purchase newly issued Trust Securities from the Trust.

“*Purchasers*” has the meaning specified in the Purchase Agreement.

“*Qualified Institutional Buyer*” has the meaning specified in Section 3.05(a).

“*Qualified Purchaser*” has the meaning specified in Section 3.05(a).

“*Redemption Date*” means, with respect to the Trust Securities, each Business Day on which the Grantor deposits with the Paying Agent on behalf of the Trust the aggregate amount payable upon redemption of all Series 2006-C Company Preferred Securities held by the Trust to be redeemed on such day; *provided* that if the Paying Agent on behalf of the Trust receives such amounts payable upon redemption after 2:00 P.M., New York time, on a Business Day, then the related Redemption Date shall be the next succeeding Business Day.

“*Register*” has the meaning specified in Section 3.03(a).

“*Registrar and Transfer Agent*” means any bank or trust company appointed under the Trust Agency Agreement to register Trust Securities and transfers thereof as herein provided, which shall initially be Wilmington Trust Company; *provided* that the Grantor shall have the power, in the Trust Agency Agreement, to remove the Registrar and Transfer Agent and, upon removal or resignation of the Registrar and Transfer Agent, appoint a successor Registrar and Transfer Agent.

“*Securities Act*” means the Securities Act of 1933, as amended.

“*Series 2006-C Company Preferred Securities*” has the meaning specified in the recitals to this Trust Agreement.

“*Series 2006-C Company Preferred Securities Certificates*” means the certificates evidencing the Series 2006-C Company Preferred Securities held by the Property Trustee from time to time under this Trust Agreement for the benefit of the Holders.

“*Series L WMI Preferred Stock*” means the Series L Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock, no par value and liquidation preference \$1,000,000 per share, of WMI to be issued pursuant to the Exchange Agreement upon the occurrence of a Conditional Exchange.

“*Statutory Trust Act*” has the meaning specified in the recitals to this Trust Agreement.

“*Substitute Preferred Stock*” means a class or series of equity securities of a Successor Entity having the preferences, limitations and relative rights in its articles or certificate of incorporation or other constituent documents that are substantially similar to those set forth in the articles of amendment to WMI’s articles of incorporation establishing the Series L WMI Preferred Stock.

“*Successor Depository Share*” means a depository share substantially similar to a Depository Share but representing an interest in the Substitute Preferred Stock.

“*Successor Entity*” means a corporation designated by the Board of Directors of WMI (i) that is the surviving, resulting or receiving corporation, as applicable, in any Business Combination, (ii) the securities of which are received in a Business Combination by some or all holders of WMI voting shares or (iii) that the Board of Directors of WMI determines to be an acquirer of WMI in a Business Combination.

“*Time of Delivery*” has the meaning specified in the Purchase Agreement.

“*Trust*” has the meaning specified in the recitals to this Trust Agreement.

“*Trust Agency Agreement*” has the meaning specified in Section 5.03(b)(iv).

“*Trust Agreement*” has the meaning specified in the preamble to this Agreement.

“*Trust Distributions*” has the meaning specified in Section 4.04.

“*Trust Estate*” means all right, title and interest of the Trust in, to and under the Series 2006-C Company Preferred Securities from time to time held by the Trustees hereunder, and all distributions and payments with respect thereto. “*Trust Estate*” shall not include any amounts paid or payable to the Trustees pursuant to this Trust Agreement, including, without limitation, fees; expenses and indemnities.

“*Trust Securities*” has the meaning specified in the recitals to this Trust Agreement.

“*Trustees*” means the Delaware Trustee and the Property Trustee, acting in their capacities as trustees hereunder, subject to all the rights, privileges and protections of the Trustees hereunder and under the Statutory Trust Act and any successor trustees appointed pursuant to the terms hereof and thereof.

“*University Street*” means University Street, Inc., a Washington corporation.

“*U.S. Dollar*” and “*\$*” mean the lawful currency of the United States from time to time.

“*U.S. Person*” means (i) an individual citizen or resident of the United States, (ii) a corporation, company or partnership organized in or under the laws of the United

States or any state thereof or the District of Columbia, (iii) an estate, the income of which is subject to United States federal income tax regardless of source or (iv) a trust if a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust.

“WMB” means Washington Mutual Bank, a federally chartered savings bank and an indirect wholly-owned subsidiary of WMI.

“WMP” means Washington Mutual, Inc., a Washington corporation.

ARTICLE II ORGANIZATION

Section 2.01. *Continuation of Trust Appointment of Trustees.*

(a) *Name.* The Trust continued hereby shall be known as “Washington Mutual Preferred Funding Trust II”, in which name the Trust may engage in the transactions contemplated hereby, make and execute contracts and other instruments and sue and be sued.

(b) *Office.* The address of the principal office of the Trust is the Corporate Office.

(c) *Governing Instrument.* The Trust continued hereby shall constitute a statutory trust under the Statutory Trust Act and this Trust Agreement shall constitute the governing instrument of the Trust.

(d) *Purpose.* The Trust exists for the sole purposes of (i) holding the Series 2006-C Company Preferred Securities, (ii) issuing Trust Securities representing a Like Amount of the Series 2006-C Company Preferred Securities to be held by the Trust, (iii) passing through Company Distributions received by the Trust to Holders of Trust Securities, (iv) passing through to Holders of Trust Securities redemption payments and liquidation and other distributions (if any) received by the Trust on the Series 2006-C Company Preferred Securities, and (v) performing functions necessary or incidental thereto, including entering into the Grantor LLC Agreement and becoming a member of the Grantor and entering into and performing duties under related documents, in all events without causing the Trust to be classified as other than a grantor trust for U.S. federal income tax purposes. The Trust may not issue any securities other than the Trust Securities.

(e) *Delaware Trustee.* The Trust hereby appoints Wilmington Trust Company as Delaware Trustee of the Trust and Wilmington Trust Company hereby accepts such appointment.

(f) *Property Trustee.* The Trust hereby appoints Wilmington Trust Company as Property Trustee of the Trust and Wilmington Trust Company hereby accepts such appointment.

(g) *Authority.* The Trust shall have the power and authority and is hereby authorized to undertake the purposes of the Trust set forth in Section 2.01(d) and the actions set forth in Section 5.03(b)(iv-v). Subject to the limitations provided in this Trust Agreement and to the specific duties of the Property Trustee, the Trustees shall have exclusive and complete authority to carry out the purposes of the Trust. An action taken by the Trustees in accordance with their respective powers shall constitute the act of, and serve to bind, the Trust. In dealing with the Trustees acting on behalf of the Trust, no person shall be required to inquire into the authority of the Trustees to bind the Trust. Persons dealing with the Trust are entitled to rely conclusively on the power and authority of the Trustees as set forth in this Trust Agreement.

(h) *Delivery of the Trust Estate.* WMB hereby delivers to the Property Trustee for deposit as the initial Trust Estate in the Trust one or more Series 2006-C Company Preferred Securities Certificates representing Series 2006-C Company Preferred Securities with an aggregate liquidation preference of \$500,000,000 for the benefit of the Holders, in consideration for the amount of \$490,000,000 contemporaneously being paid by the Trust to WMB pursuant to Section 2(d) of the Purchase Agreement.

(i) *Beneficial Owners of the Trust Estate.* Each Holder is intended by the Grantor to be the beneficial owner of a Like Amount of Series 2006-C Company Preferred Securities represented by the Trust Securities held by such Holder.

(j) *Receipt of the Trust Estate.* The Property Trustee hereby acknowledges receipt of one or more Series 2006-C Company Preferred Securities Certificates representing Series 2006-C Company Preferred Securities having an aggregate liquidation preference of \$500,000,000 registered in the name of the Trust, and its acceptance on behalf of the Trust of the Series 2006-C Company Preferred Securities evidenced thereby, and declares that the Trust shall hold such Series 2006-C Company Preferred Securities for the benefit of the Holders pursuant to the terms of the Trust Agreement.

(k) *Trust Irrevocable.* Subject to Section 6.02, the Trust shall be irrevocable.

Section 2.02. *Trust Account.* The Property Trustee shall establish a non-interest bearing trust account with a banking institution authorized to exercise corporate trust powers and having a combined capital and surplus of at least \$50,000,000 and subject to supervision or examination by federal, state or District of Columbia authority, entitled "Washington Mutual Preferred Funding Trust II – Corporate Trust Account". All distributions received by the Property Trustee on behalf of the Trust in respect of the Series 2006-C Company Preferred Securities will be deposited in such account by the Property Trustee until distributed as provided in Article IV. On the Issue Date, the Property Trustee shall pay the proceeds received by it from the sale of the Trust

Securities to WMB in exchange for the delivery by WMB to the Property Trustee of the Series 2006-C Company Preferred Securities.

Section 2.03. *Title to Trust Estate.* Legal title to the Trust Estate shall be vested at all times in the Trust except where applicable law in any jurisdiction requires title to any part of the Trust Estate to be vested in a trustee or trustees, in which case title shall be deemed to be vested in the Property Trustee, a co-trustee and/or a separate trustee, as the case may be.

Section 2.04. *Situs of Trust.* The situs of the Trust shall be in the State of Delaware. The account described in Section 2.02 shall be maintained with a bank in the State of Delaware or the State of New York. The Trustees shall cause the books and records of the Trust to be maintained at the Corporate Office. The Trust Estate shall be held in the State of Delaware. Notwithstanding the foregoing, the Trustees may transfer such of the books and records of the Trust to a co-trustee appointed pursuant to Section 5.11 or to such agents as they may appoint in accordance with Section 7.05, as shall be reasonably necessary (and for so long as may be reasonably necessary) to enable such co-trustee or agents to perform the duties and obligations for which such co-trustee or agents may be so employed.

Section 2.05. *Powers of Trustees Limited.* The Trustees shall have no power to create, assume or incur indebtedness or other liabilities in the name of the Trust other than as set forth in this Trust Agreement. The Trustees shall have full power to conduct the business of the Trust of holding the Series 2006-C Company Preferred Securities for the Holders and taking the other actions provided for in this Trust Agreement.

Section 2.06. *Liability of Holders of Trust Securities.* Holders of Trust Securities shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

ARTICLE III
FORM OF TRUST SECURITIES; EXECUTION AND DELIVERY,
TRANSFER AND SURRENDER OF TRUST SECURITIES

Section 3.01. *Form and Transferability of Trust Securities.*

(a) *Designation.* 5,000 Trust Securities, liquidation preference \$100,000 per security and aggregate liquidation preference \$500,000,000, are hereby designated, for identification purposes only as the Fixed-to-Floating Rate Perpetual Non-cumulative Trust Securities.

(b) *Form.* Except as otherwise required by the Clearing Agency, the Trust Securities shall be substantially in the form set forth in *Exhibit B*, with the appropriate insertions, modifications and omissions, as hereinafter provided.

(c) *No Fractional Trust Securities.* Fractional Trust Securities shall not be issued. All Trust Securities shall be dated the date of their execution or countersignature.

(d) *Legends.* Trust Securities may be endorsed with, or have incorporated in the text thereof, such legends or recitals or changes not inconsistent with the provisions of this Trust Agreement as may be required by the Trustees or required to comply with any applicable law or regulation, or with the rules and regulations of any securities exchange upon which the Trust Securities may be listed or to conform with any usage with respect thereto; *provided* that each Trust Security shall, upon issuance and transfer, bear the legends required by *Exhibit A*, and such required legends shall not be removed from such certificates.

(e) *Title.* Title to any Trust Security that is properly endorsed or accompanied by a properly executed instrument of transfer or endorsement shall be transferable by delivery with the same effect as in the case of a negotiable instrument; *provided* that until the transfer shall be registered on the Register as provided in Section 3.03, the Trust, the Trustees, the Registrar and Transfer Agent, the Paying Agent and the Grantor may, notwithstanding any notice to the contrary, treat the Holder thereof set forth in the Register at such time as the absolute owner thereof for the purpose of determining the Person entitled to distributions or to any notice provided for in this Trust Agreement and for all other purposes.

(f) *Signatures.* Trust Securities shall be executed on behalf of the Trust by the manual signature of a duly authorized signatory of the Property Trustee; *provided* that such signature may be a facsimile if a Registrar and Transfer Agent shall have countersigned the Trust Security by manual signature of a duly authorized signatory of the Registrar and Transfer Agent. No Trust Security shall be entitled to any benefit under this Trust Agreement or be valid or obligatory for any purpose unless it shall have been executed as provided in the preceding sentence. The Registrar and Transfer Agent shall record on the Register each Trust Security executed as provided above and delivered as hereinafter provided. Trust Securities bearing the signatures of individuals who were, at the time when such signatures shall have been affixed, authorized to sign on behalf of the Property Trustee shall be validly issued notwithstanding that such individuals or any of them shall have ceased to be so authorized prior to the delivery of such Trust Securities or did not hold such offices at the date of delivery of such Trust Securities.

Section 3.02. *Issuance of Trust Securities; Book-Entry Issuance.*

(a) *Execution of Global Certificate.* The Property Trustee, having received on behalf of the Trust one or more Series 2006-C Company Preferred Securities Certificates representing Series 2006-C Company Preferred Securities with an aggregate liquidation preference of \$500,000,000 and having acknowledged such receipt in Section 2.01(j), subject to the terms and conditions of this Trust Agreement, shall, on behalf of the Trust, issue Trust Securities in an aggregate amount equal to the Like Amount of Series 2006-C Company Preferred Securities so delivered in denominations of \$100,000 (by liquidation

preference) and integral multiples thereof and execute one or more Global Certificates representing such Trust Securities, in fully registered form and registered in the name of the Nominee, and deposit such Global Certificates with the Depository on or about the Issue Date and instruct DTC to credit the account of each purchaser with the amount of Trust Securities being purchased by it.

Unless and until Definitive Certificates have been issued pursuant to Section 3.03(e):

- (i) the provisions of this Section 3.02(a) shall be in full force and effect;
- (ii) the Trust, the Trustees, the Registrar and Transfer Agent and any Paying Agent shall be entitled to deal with the Clearing Agency for all purposes of this Trust Agreement (including, without limitation, payment of Trust Distributions on the Trust Securities and receiving approvals, votes or consents hereunder) as the sole Holder of the Trust Securities, and shall have no obligation to the Beneficial Owners;
- (iii) to the extent that the provisions of this Section 3.02(a) conflict with any other provisions of this Trust Agreement, the provisions of this Section 3.02(a) shall control; and
- (iv) the rights of the Beneficial Owners shall be exercised only through the Clearing Agencies and shall be limited to those established by law and agreements between such Beneficial Owners and the Clearing Agency and/or the Clearing Agency Participants, and the Clearing Agency shall receive and transmit payments of Trust Distributions on the Trust Securities to such Clearing Agency Participants and make book-entry transfers among the Clearing Agency Participants; *provided* that solely for the purposes of determining whether the Holders of the requisite amount of Trust Securities have voted on any matter provided for in this Trust Agreement, so long as Definitive Certificates have not been issued pursuant to Section 3.03(e), the Trustees may conclusively rely on, and shall be fully protected in relying on, any written instrument (including a proxy) delivered to the Trustees by the Clearing Agency setting forth the Beneficial Owners' votes or assigning the right to vote on any matter to any other Persons either in whole or in part.

(b) *Notices to Clearing Agency.* Whenever a notice or other communication to the Holders is required under this Trust Agreement, unless and until Definitive Certificates shall have been issued pursuant to Section 3.03(e), the Trustees shall give all

such notices and communications specified herein to be given to the Holders to the Clearing Agency, and shall have no notice obligations to the Beneficial Owners.

(c) *Appointment of Successor Clearing Agency.* If the Clearing Agency elects to discontinue its services as securities depository with respect to the Trust Securities, the Grantor shall use its best efforts to appoint a successor Clearing Agency with respect to the Trust Securities.

Section 3.03. *Registration, Transfer and Exchange of Trust Securities.*

(a) *Register.* The Trustees shall cause a register (the "*Register*") to be kept at the office of the Registrar and Transfer Agent, with copies available at such other places as the Trustees may from time to time deem advisable, in which, subject to such reasonable regulations as the Trustees and the Registrar and Transfer Agent may prescribe, the Registrar and Transfer Agent shall provide for the registration of Trust Securities and of transfers and exchanges (except as set forth in Section 4.08) of Trust Securities as herein provided.

(b) *Registration of Transfers.* Subject to the terms and conditions of this Trust Agreement, the Registrar and Transfer Agent shall register the transfers on the Register from time to time of Trust Securities upon any surrender to the Property Trustee of such Trust Securities by a Holder in person or by a duly authorized attorney, properly endorsed or accompanied by a properly executed instrument of transfer or endorsement, together with evidence of the payment of any transfer taxes as may be required by law. Upon such surrender, the Property Trustee shall execute a new Trust Security representing a Like Amount of Series 2006-C Company Preferred Securities in accordance with Section 3.01(f) and deliver the same to or upon the order of the Person entitled thereto.

(c) *Conditions to Transfer.*

- (i) As a condition precedent to the registration of the transfer of any Trust Security, the Registrar and Transfer Agent may require (A) production of proof satisfactory to it as to the identity and genuineness of any signature; (B) compliance with such regulations, if any, as the Trustees or the Registrar and Transfer Agent may establish not inconsistent with the provisions of this Trust Agreement; and (C) such other information as the Registrar and Transfer Agent may reasonably request.
- (ii) Neither the Trustees nor the Registrar and Transfer Agent shall be required to register or cause to be registered the transfer of Trust Securities after such Trust Securities have been called for redemption.

(d) *Transfer Charges.* No service charge shall be charged to a Holder for any registration of transfer of Trust Securities, but the Trustees or the Registrar and Transfer Agent shall require, prior to registration, payment (or the giving of such indemnity as the Registrar and Transfer Agent may require) of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer of Trust Securities.

(e) *Definitive Certificates.*

- (i) Definitive Certificates evidencing the beneficial interests in the Global Certificate will be issued only in the circumstances described in the Offering Circular under the caption “Book-Entry Issuance—Form, Denomination, Transfer and Book-Entry Procedures—Special Situations When the Global Security Will Be Terminated”. Upon surrender of the Global Certificates by the Clearing Agency, accompanied by registration instructions, the Registrar will cause to be prepared Definitive Certificates for delivery in accordance with instructions of the Clearing Agency.
- (ii) Definitive Certificates may be transferred in whole or, subject to Section 3.01(c), in part upon the surrender of the Definitive Certificates, together with the form of transfer endorsed thereon duly completed and executed, at the specified office of the Registrar and Transfer Agent. In the case of registration of transfer of only part of a Definitive Certificate, a new Definitive Certificate in respect of the balance not transferred will be issued to the transferor within seven Business Days of receipt of such form of transfer, by uninsured post at the risk of the Holder to the address of the Holder appearing in the Register. Each new Definitive Certificate to be issued upon a registration of transfer of a Definitive Certificate will, within seven Business Days of receipt of such form of transfer, be sent by uninsured post at the risk of the Holder entitled to the Definitive Certificate to such address as may be specified in such form of transfer.
- (iii) No Holder of a Definitive Certificate may require the transfer of a Definitive Certificate to be registered during the period of 15 days ending on the close of business on the day of mailing of any notice of redemption to Holders.
- (iv) All transfers of Definitive Certificates and entries on the Register will be made subject to the provisions concerning transfers of Trust Securities set out in the Trust Agency Agreement and in this Trust Agreement relating to the Trust Securities.

(f) *No Transfer in Violation of Restrictions.* Any purported transfer of a Trust Security in violation of the restrictions set forth in the legend required by *Exhibit A* or otherwise not in accordance with this Trust Agreement or the Trust Agency Agreement, to the fullest extent permitted by applicable law, shall be void and the Registrar and Transfer Agent shall not register any such transfer if it becomes aware of such violation. Unless and until the circumstances in the Offering Circular under the caption “Book-Entry Issuance—Form, Denomination, Transfer and Book-Entry Procedures—Special Situations When the Global Security Will Be Terminated” apply (and, as a consequence, the Trust Securities are no longer represented by the Global Certificates), (i) Trust Securities may not be recorded on the Register as owned of record by any Person other than the Clearing Agency (initially DTC) or its Nominee, and (ii) transfers by Beneficial Owners of beneficial interests in the Global Securities may be made only as provided in the Trust Agency Agreement.

Section 3.04. *Mutilated, Lost or Stolen Trust Securities.* If (i) any mutilated Trust Security shall be surrendered to the Registrar and Transfer Agent, or if the Registrar and Transfer Agent shall receive evidence to its satisfaction of the destruction, loss or theft of any Trust Security, and (ii) there shall be delivered to the Registrar and Transfer Agent, the Grantor, the Trust and the Trustees such security or indemnity as may be required by them to hold each of them harmless, then in the absence of notice that such Trust Security shall have been acquired by a bona fide or protected purchaser, the Property Trustee shall sign and the Registrar and Transfer Agent shall authenticate and make available for delivery, in exchange for or in lieu of any mutilated, destroyed, lost or stolen Trust Security, a new Trust Security representing a Like Amount of the Series 2006-C Company Preferred Securities. In connection with the issuance of any new Trust Security, the Grantor or the Registrar and Transfer Agent may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith. Any duplicate Trust Security issued pursuant to this Section shall constitute conclusive evidence of a Trust Security corresponding to that evidenced by the lost, stolen or destroyed Trust Security, as if originally issued, whether or not the lost, stolen or destroyed Trust Security shall be found at any time.

Section 3.05. *Restrictions on Transfers of Trust Securities.*

(a) *Securities Act.* The Trust Securities may not be offered, sold or otherwise transferred, except to a Person who is both a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act (a “*Qualified Institutional Buyer*”) and a “qualified purchaser” within the meaning of Section 2(a)(51) of the 1940 Act and the rules and regulations thereunder (a “*Qualified Purchaser*”) acquiring for its own account or for the account of a Person who is both a Qualified Institutional Buyer and a Qualified Purchaser and each such Person and account for which such Person is purchasing (i) is not a broker-dealer that owns and invests on a discretionary basis less than \$25 million in securities of issuers that are not its affiliated Persons, (ii) is not a plan referred to in paragraph (a)(1)(i)(D) or (a)(1)(E) of Rule 144A, or a trust fund referred to in paragraph (a)(1)(i)(F) of Rule 144A that holds the assets of such plan, if investment decisions with

respect to the plan are made by the beneficiaries of such plan, (iii) was not formed for the purpose of investing in the Trust, (iv) will hold at least \$300,000 liquidation preference of Trust Securities (*i.e.*, at least three Trust Securities) in the case of each initial investor and will hold and transfer at least \$100,000 liquidation preference of Trust Securities (*i.e.*, at least one Trust Security) in the case of each subsequent investor and (v) understands that the Trust may receive a list of participants holding positions in the Trust Securities from the Clearing Agency, and the Trust Securities shall bear a legend to this effect (as set forth on *Exhibit A*). Each Holder (by purchasing a Trust Security) and each Beneficial Owner (by purchasing a beneficial interest in a Trust Security) (i) acknowledges that the offer and sale of the Trust Securities have not been and will not be registered under the Securities Act, (ii) acknowledges and agrees that the Trust will not be registered as an Investment Company, and (iii) acknowledges that by purchasing Trust Securities or interests therein, it makes each of the representations, warranties and agreements set forth in the Offering Circular under the caption "Notice to Investors—Representations of Purchasers" to be made by purchasers. The Trust or the Grantor on its behalf covenants and agrees to take each of the actions and steps specified in the Offering Circular under the caption "Notice to Investors" to be taken by the Trust (it being understood that the Trust is identified as the "Trust" in the Offering Circular), including, without limitation, those set forth under the sub-captions "—Reminder Notices," "—DTC Actions With Respect to the Trust Securities," "—Euroclear Actions With Respect to the Trust Securities," "—Clearstream Actions With Respect to the Trust Securities," "—Bloomberg Screened, Etc.," "—CUSIP" and "—Legends".

(b) *ERISA*. Each purchaser or transferee of Trust Securities (including the Holders and Beneficial Owners of the Trust Securities) agrees that (i) either: (x) the purchaser or transferee is not (A) an "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("*ERISA*") that is subject to Title I of *ERISA*, (B) a plan, account or other arrangement that is subject to Section 4975 of the Code, or (C) any entity whose underlying assets include "plan assets" of any of the foregoing by reason of investment by an employee benefit plan or other plan in such entity (each of the foregoing, a "Benefit Plan Investor"), or (y) the purchaser or transferee is an insurance company general account that represents, warrants and covenants that, at the time of acquisition and throughout the period it holds the Trust Securities, (A) it is eligible for and meets the requirements of Department of Labor Prohibited Transaction Class Exemption 95-60, (B) less than 25% of the assets of such general account are (or represent) assets of a Benefit Plan Investor and (C) it is not a person who has discretionary authority or control with respect to the assets of the Trust or any person who provides investment advice for a fee (direct or indirect) with respect to such assets, or any affiliate of such a person and would not otherwise be excluded under 29 C.F.R. § 2510.3-101(f)(1) and (ii) either (x) the purchaser is not a governmental plan, foreign plan, church plan or other plan subject to law that is substantially similar to Section 406 of *ERISA* or Section 4975 of the Code ("*Similar Law*") or (y) its purchase and holding of the Trust Securities will not constitute or result in a non-exempt violation of *Similar Law*.

Section 3.06. *Cancellation and Destruction of Surrendered Certificates.* All Trust Securities surrendered to the Registrar and Transfer Agent shall be cancelled by the Registrar and Transfer Agent. Except as prohibited by applicable law or regulation, the Registrar and Transfer Agent may destroy such cancelled Trust Securities or otherwise dispose of them in accordance with its usual practices.

ARTICLE IV
DISTRIBUTIONS AND OTHER RIGHTS OF HOLDERS OF
TRUST SECURITIES

Section 4.01. *Periodic Distributions on Trust Securities.* Whenever (and to the extent) the Trust shall receive any payment representing a distribution on the Series 2006-C Company Preferred Securities, the Trust, acting directly or through the Paying Agent, shall distribute such amounts to Holders on the record date fixed pursuant to Section 4.04, in proportion to the amount (by aggregate liquidation preference) of Trust Securities held by such Holders.

Section 4.02. *Redemptions of Trust Securities.*

(a) Whenever the Grantor shall elect to redeem Series 2006-C Company Preferred Securities in accordance with the Grantor LLC Agreement, the Grantor shall give the Property Trustee, the Registrar and Transfer Agent and the Paying Agent not less than 30 nor more than 60 calendar days' prior notice thereof, unless otherwise agreed in writing with the Property Trustee. The Paying Agent will mail the notice of redemption of the Series 2006-C Company Preferred Securities and the proposed simultaneous redemption of the Trust Securities to be redeemed in connection therewith not less than 30 calendar days nor more than 60 calendar days prior to the date fixed for redemption of the Series 2006-C Company Preferred Securities to the Holders of the Trust Securities.

(b) No defect in the notice of redemption or in the mailing or delivery thereof shall affect the validity of the redemption proceedings. The Grantor shall provide the Trustees, the Registrar and Transfer Agent and the Paying Agent with such notice, and each such notice shall state (i) the Redemption Date, (ii) the redemption price at which the Trust Securities and the Series 2006-C Company Preferred Securities are to be redeemed, (iii) that all outstanding Trust Securities are to be redeemed or, in the case of a redemption of fewer than all outstanding Trust Securities in connection with a partial redemption of the Series 2006-C Company Preferred Securities, the amount (by aggregate liquidation preference) of such Trust Securities to be so redeemed and (iv) the place or places where Trust Securities to be redeemed are to be surrendered for redemption.

(c) In the event that fewer than all the outstanding Trust Securities are to be redeemed, the Trust Securities to be redeemed (in increments of \$100,000 liquidation reference) shall be selected not more than 60 days prior to the date fixed for redemption by lot or *pro rata* (as nearly as may be practicable without creating fractional Trust Securities) or by any other equitable method determined by the Property Trustee;

provided that if the Trust Securities are then evidenced by a Global Certificate, such method satisfies any requirements of the Depository or Clearing Agency. The Grantor shall promptly notify the Registrar and Transfer Agent and the Paying Agent for the Trust Securities in writing of the Trust Securities selected for redemption.

(d) On the Redemption Date for any Series 2006-C Company Preferred Securities, *provided* that the Grantor shall then have deposited with the Paying Agent on behalf of the Trust the aggregate amount payable upon redemption of all Series 2006-C Company Preferred Securities held by the Trust to be redeemed on such date, the Paying Agent, on behalf of the Trust, shall redeem Trust Securities representing a Like Amount of Series 2006-C Company Preferred Securities at the same redemption price at which the Series 2006-C Company Preferred Securities are being redeemed by the Grantor (using the funds so deposited with the Paying Agent, on behalf of the Trust).

(e) Notice having been given by the Paying Agent and funds deposited as aforesaid, from and after the Redemption Date (unless the Grantor shall have failed to redeem the Series 2006-C Company Preferred Securities to be redeemed by it as set forth in the Grantor's notice provided for in this Section 4.02), the Trust Securities called for redemption shall be deemed no longer to be outstanding and all rights of the Holders (except the right to receive the redemption price in cash upon surrender of Trust Securities) shall cease and terminate. Upon surrender in accordance with said notice of the Trust Securities endorsed or assigned for registration of transfer, if the Registrar and Transfer Agent and the Paying Agent shall so require, the Holders of such Trust Securities shall receive the redemption price distributed by the Grantor in respect of the Like Amount of Series 2006-C Company Preferred Securities represented thereby.

Section 4.03. *Distributions in Liquidation of Grantor.*

(a) In the event the Grantor is dissolved, the Trust will be dissolved. The Trustees shall take such acts as may be required by law to cause the Trust to be dissolved, and, after satisfaction of creditors of the Trust, if any, as required by applicable law, the Property Trustee will distribute, or cause to be distributed, to the Holders the Liquidation Claim Amount, *provided* that the Grantor shall have deposited with the Paying Agent on behalf of the Trust such Liquidation Claim Amount. Thereupon, the Trust will be terminated. The provisions of this Section 4.03 shall survive any termination of this Trust Agreement, in whole or in part.

(b) In the event of any voluntary or involuntary dissolution, liquidation or winding up of the Trust, the Holders will be entitled to receive the Like Amount of the Series 2006-C Company Preferred Securities, or the proceeds of those Series 2006-C Company Preferred Securities, after satisfaction of creditors of the Trust, if any.

Section 4.04. *Fixing of Record Date for Holders.* Each periodic distribution on the Trust Securities in respect of Company Distributions on the Series 2006-C Company Preferred Securities ("*Trust Distributions*") will be payable to the Holders of record as they appear on the Register on the corresponding record date. The record date for Trust

Distributions or a redemption payment will be the first calendar day in the month of the relevant periodic distribution date or, if any such day is not a Business Day, the next day that is a Business Day. Whenever any other distribution shall become payable, or whenever the Trustees shall receive notice of any meeting at which holders of the Series 2006-C Company Preferred Securities are entitled to vote or of which holders of the Series 2006-C Company Preferred Securities are entitled to notice, the Trustees shall in each such instance fix a record date (which shall be the same date as the record date fixed by the Grantor with respect to the Series 2006-C Company Preferred Securities, of which the Grantor shall promptly inform the Trustees in writing) for the determination of the Holders who shall be entitled (i) to receive such distribution and (ii) to receive notice of, and to give instructions for the exercise of voting rights at, any such meeting.

Section 4.05. Payment of Trust Distributions.

(a) The Grantor shall appoint one or more Paying Agents for the purpose of paying Trust Distributions on, and the redemption price of, the Trust Securities. Wilmington Trust Company is hereby appointed as the Paying Agent. The Corporate Office is designated as the place of payment of Trust Distributions on, the redemption price of, and other payments in relation to the Trust Securities. The appointment and designation of each Paying Agent shall remain in effect until changed by the Grantor or until the resignation of such Paying Agent upon 30 days' written notice to the Trustees and the Grantor. Upon removal or resignation of the Paying Agent, the Grantor shall appoint a successor (which shall be a bank or a trust company acceptable to the Trustees) to act as the Paying Agent pursuant to the terms of the Trust Agency Agreement.

(b) Payments in respect of the Trust Securities shall be made to the address of the Holder entitled thereto as such address shall appear on the Register. The Nominee shall be the registered Holder in the case of Trust Securities evidenced by Global Certificates. Payments made to the Nominee shall be made by wire transfer, and the Clearing Agency will credit the relevant amount to the accounts of its participants on the applicable Distribution Payment Dates and Redemption Dates. Payments in respect of Trust Securities not evidenced by a Global Certificate shall be made by wire transfer, direct deposit or check mailed to the address of the Holder entitled thereto as such address shall appear on the Register. The Grantor shall pay Company Distributions on, and the redemption price of, the Series 2006-C Company Preferred Securities directly to the Paying Agent for distribution to the Holders of Trust Securities in accordance with the terms of this Trust Agreement and the Trust Agency Agreement as then in effect with the Paying Agent. The Grantor will confirm to the Paying Agent by 3:00 p.m. (New York time) on the second Business Day before each Distribution Payment Date that irrevocable instructions have been issued by it for such payment to be made to the Paying Agent.

Section 4.06. Voting Rights.

(a) If at any time the Property Trustee is notified in writing that holders of the Series 2006-C Company Preferred Securities shall be entitled to vote pursuant to the

terms of the Grantor LLC Agreement, the Property Trustee shall (i) notify the Holders of such right (including a description of the subject matter of the vote and related circumstances), (ii) request specific written direction of each Holder as to the vote with respect to the Series 2006-C Company Preferred Securities represented by such Trust Security, and (iii) vote or cause to be voted the Like Amount of Series 2006-C Company Preferred Securities represented by such Trust Security in accordance with such specific direction. Upon receipt of written notice of any meeting at which the holders of the Series 2006-C Company Preferred Securities are entitled to vote, the Property Trustee shall, as soon as practicable thereafter, mail to the Holders a notice, which notice shall be provided by the Grantor and shall contain (i) such information as is contained in such notice of meeting, (ii) a certification in the form attached as *Exhibit D*, pursuant to which each Holder will be required to certify as to its status as a U.S. Person as defined in this Trust Agreement, (iii) a statement that the Holders at the close of business on a specified record date fixed pursuant to Section 4.04 will be entitled, subject to any applicable provision of law or of this Trust Agreement, to direct the Property Trustee as to the exercise of the voting rights appertaining to the Like Amount of Series 2006-C Company Preferred Securities represented by their respective Trust Securities, and (iv) a brief statement as to the manner in which such specific directions may be given. Subject to receipt by the Property Trustee of a certification by the Holder in the form attached as *Exhibit D* confirming that such Holder is a U.S. Person, upon the written direction of each such Holder on such record date, the Property Trustee shall vote or cause to be voted the Like Amount of the Series 2006-C Company Preferred Securities represented by such Holder's Trust Securities in accordance with the instructions set forth in such direction. The Grantor hereby agrees to take all reasonable action that may be deemed necessary by the Property Trustee in order to enable the Property Trustee to vote such Series 2006-C Company Preferred Securities or cause such Series 2006-C Company Preferred Securities to be voted. In the absence of specific instructions from the Holder, the Property Trustee shall vote or cause to be voted such Series 2006-C Company Preferred Securities represented by such Trust Security in the same manner, on a proportionate basis, as it was directed to vote all other Series 2006-C Company Preferred Securities in respect of such matter.

(b) Voting rights available to Holders under this Trust Agreement may be exercised only by a U.S. Person that is a Beneficial Owner of a Trust Security or by a U.S. Person acting as irrevocable agent with discretionary powers for the Beneficial Owner of a Trust Security that is not a U.S. Person. Holders that are not U.S. Persons must irrevocably appoint a U.S. Person with discretionary powers to act as their agent with respect to such voting rights. Each Holder will be required to submit to the Property Trustee a certification in the form attached as *Exhibit D* hereto in connection with such Holder's exercise of voting rights available to Holders under this Trust Agreement.

(c) Neither WMI nor any Person known by the Trustees to be an Affiliate of WMI will be entitled to vote any Series 2006-C Company Preferred Securities that it holds or beneficially owns.

Section 4.07. *Enforcement of Rights.* The Property Trustee shall have the power and authority (subject to the Trustees' rights, privileges and protections in Section 5.03 and elsewhere herein) to enforce any of the Trust's rights in respect of the Series 2006-C Company Preferred Securities for the benefit of the Holders as a group.

Section 4.08. *Conditional Exchange.*

(a) If the OTS so directs upon the occurrence of an Exchange Event, each Trust Security then outstanding shall be exchanged automatically for a Like Amount of newly issued Depositary Shares (the "*Conditional Exchange*"). Upon the occurrence of a Conditional Exchange,

- (i) each Holder of Trust Securities shall be unconditionally obligated to surrender to WMI any Certificates representing the Trust Securities owned by such Holder on the date and time provided in the next succeeding paragraph;
- (ii) effective on such date and time, the Trustees shall (or shall cause the Registrar and Transfer Agent to) record in the Register WMI as owner of all of the Trust Securities, as transferee from the Holders of Trust Securities immediately prior to such date and time; and
- (iii) pursuant to the Exchange Agreement, WMI shall be unconditionally obligated to issue to each such Holder, in exchange for each such Trust Security surrendered, a Like Amount of Depositary Shares.

(b) The Conditional Exchange shall occur as of 8:00 A.M., New York time, on the date for such exchange set forth in the applicable OTS directive, or, if such date is not set forth in the directive, as of 8:00 A.M., New York time, on the earliest possible date such exchange could occur consistent with the directive, as evidenced by the issuance by WMI of a press release prior to such time. As of the time of the Conditional Exchange, all rights of the exchanging holders of Trust Securities as each Holder of Trust Securities shall be unconditionally obligated to surrender to WMI and all rights of the exchanging Holders of Trust Securities as beneficiaries of the Trust shall cease, and such Persons shall be, for all purposes, solely holders of Depositary Shares, and WMI shall be the holder of all outstanding Trust Securities.

(c) Within 30 days of the occurrence of an Exchange Event and in connection therewith, the issuance by the OTS of a directive requiring a Conditional Exchange, the Grantor shall mail or cause to be mailed to each of the Holders of record of the Trust Securities immediately prior to such Conditional Exchange notice setting forth (i) the occurrence of an Exchange Event and directive requiring a Conditional Exchange and (ii) instructions where such Holders of record shall deliver the Certificates representing the Trust Securities in exchange for Depositary Shares. WMI shall, pursuant to the Exchange Agreement, deliver to each such Holder of record of the Trust Securities a Like

Amount of Depositary Shares upon surrender of the Certificates representing Trust Securities. Any such notice to the Holders of record of Trust Securities shall be addressed to each such Holder at the address of such Holder appearing in the Register and the time of mailing of such notice shall be deemed to be the time of the giving thereof. Until certificates representing the Depositary Shares are delivered or in the event such replacement certificates are not delivered for any reason (including, without limitation, failure by the Holder thereof to surrender such Certificates), any Certificates previously representing Trust Securities shall be deemed for all purposes to represent Depositary Shares.

(d) Holders of Trust Securities, by purchasing Trust Securities (whether in connection with the initial offering of the Trust Securities or in the secondary market), will be deemed to have agreed to be bound by the unconditional obligation to exchange Trust Securities for a Like Amount of Depositary Shares as provided in this Section 4.08.

(e) In the event WMI, prior to the Conditional Exchange, effects, or is, the subject of a merger, consolidation, statutory share exchange, sale of all or substantially all of its assets or other form of business combination, (i) in which WMI is not the surviving, resulting or receiving corporation thereof or (ii) if WMI is the surviving or resulting corporation, shares representing a majority of WMI's total voting power are either converted or exchanged into securities of another Person or into cash or other property (any such transaction in either (i) or (ii) being a "*Business Combination*"), then, WMI may, at the election of the Board of Directors of WMI prior to the effectiveness of such Business Combination, assign, effective upon the consummation of such Business Combination, all of its obligations and rights under the Exchange Agreement with respect to the issuance of Series L WMI Preferred Stock to a Successor Entity that has Substitute Preferred Stock and, as a result of such assignment, all references to WMI, WMI Preferred Stock, and Depositary Shares in the Exchange Agreement and herein shall become and be deemed to be references to such Successor Entity, to such Substitute Preferred Stock, and to a Successor Depositary Share, respectively. This paragraph shall apply to any subsequent Business Combination *mutatis mutandis*.

ARTICLE V
THE TRUSTEES

Section 5.01. *Delaware Trustee Eligibility.* If required by the Statutory Trust Act, there shall be one Trustee that shall act as Delaware Trustee, and that shall be:

- (a) a natural person who is a resident of the State of Delaware; or
- (b) if not a natural person, an entity that has its principal place of business in the State of Delaware, that is a U.S. Person, and that otherwise meets the requirements of applicable Delaware law; *provided* that, if the Property Trustee has its principal place of business in the State of Delaware and otherwise meets the requirements of Delaware law, then the Property Trustee may also be the Delaware Trustee.

Section 5.02. *Property Trustee Eligibility.* There shall at all times be one trustee that shall act as Property Trustee, that shall:

- (a) not be an Affiliate of the Grantor;
- (b) be a corporation organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000 and subject to supervision or examination by federal, state, territorial or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of such federal or state supervising or examining authority, then for the purposes of this Section 5.02, 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 conditions so published.

Section 5.03. *Obligations of the Trustees.*

- (a) The Trustees do not assume any obligation, nor shall they be subject to any liability, under this Trust Agreement or any Trust Security, to Holders other than for gross negligence or willful misconduct in the performance of such duties as are specifically assigned to the Trustees in this Trust Agreement.
- (b) The Property Trustee shall:
 - (i) make available for inspection by Holders, at the Corporate Office and at such other places as the Trustees may from time to time deem advisable during normal business hours, any reports and communications received from the Grantor by the Trust as the holder of the Series 2006-C Company Preferred Securities;
 - (ii) promptly upon request from time to time by the Grantor, cause the Registrar and Transfer Agent to furnish to the Trustees a list as of a recent date, of the names, addresses and holdings of all Persons in whose names Trust Securities are registered on the Register;
 - (iii) promptly upon request by a Holder or Beneficial Owner, furnish to any such requesting Holder or any proposed purchaser from such Holder or Beneficial Owner the information with respect to the Trust that is required by paragraph (d)(4)(i) of Rule 144A under the Securities Act, until the earlier of (A) the redemption in full of the Trust Securities or (B) the Conditional Exchange; *provided* that the Grantor has provided such information with respect to the Trust to the Property Trustee.
 - (iv) cause their authorized signatories to execute and deliver on behalf of the Trust (A) an Agency Agreement for Fixed-to-Floating Rate

Perpetual Non-cumulative Trust Securities of the Trust, dated as of December 13, 2006 (the "*Trust Agency Agreement*"), among the Trust, the Grantor and Wilmington Trust Company, as Paying Agent and Registrar and Transfer Agent, (B) the Exchange Agreement, (D) a Cross-Receipt, dated December 13, 2006, between the Trust and WMB, (E) a Cross-Receipt, dated December 13, 2006, between the Trust and Goldman, Sachs & Co., (F) an Officer's Certificate, dated December 13, 2006, relating to the Investment Company Act, (G) the Global Certificates and any Definitive Certificates issued in exchange therefor as required by this Trust Agreement, and (H) any and all additional documents to which the Trust is a party as may be desirable in connection with the operation of the Trust and the issue and sale of the Trust Securities, as the Grantor shall direct the Trustees in writing;

- (v) cause their authorized signatories to execute and deliver, on behalf of the Trust, the Second Amendment and Restatement of the Grantor LLC Agreement, dated as of December 13, 2006, of the Grantor LLC Agreement, and cause the Trust to become a member of the Grantor; and
- (vi) perform the duties and obligations of the Property Trustee under the documents to which the Property Trustee is a party.

(c) The Trustees shall not be under any obligation to appear in, prosecute or defend any action, suit or other proceeding with respect to the Series 2006-C Company Preferred Securities or Trust Securities that in their opinion may involve them in expense or liability, unless indemnity satisfactory to them against all expense and liability be furnished as often as may be required.

(d) In the event that the Trustees are uncertain as to the application or interpretation of any provision of this Trust Agreement or must choose between alternative courses of action, the Trustees may by written notice, request instructions from the Grantor, and the Trustees shall take and be protected in taking such action as may be directed by the Grantor; *provided* that, if the Trustees do not receive instructions within ten days or such shorter time as is set forth in such notice, the Trustees shall be under no duty to take or refrain from taking such action and shall be fully protected in any course of action taken by it in good faith not inconsistent with this Trust Agreement as it shall deem advisable and in the interest of the Holders.

(e) The Trustees shall not be liable to any Holder or any other party having an interest hereunder for any action or any failure to act by it in reliance upon the advice of or information from legal counsel, accountants, any Holder, or any other Person believed by it in good faith to be competent to give such advice or information. The Trustees may conclusively rely and shall be protected from any and all liability in acting upon any

written notice, request, direction or other document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(f) The Trustees and their respective Affiliates may own, buy, sell or deal in any class of securities of the Grantor and its Affiliates and in Trust Securities or become pecuniarily interested in any transaction in which the Grantor or its Affiliates may be interested or contract with or lend money to or otherwise act as fully or as freely as if it were not a Trustee hereunder. The Trustees and their respective Affiliates may also act as transfer agent or registrar of any of the securities of the Grantor and its Affiliates, or act in any other capacity for the Grantor or its Affiliates.

(g) The Trustees (and their respective officers, directors, employees and agents) make no representation nor shall they have any liability for or responsibility with respect to the issuance of the Trust Securities (except for its authorized signatures thereon) or any instruments referred to therein or herein, or as to the correctness of any statement made therein or herein; *provided* that the Trustees are responsible for the representations and warranties made by the Trustees in Section 5.04.

(h) The Trustees assume no responsibility for the correctness of the description of this Trust Agreement that appears in the Trust Securities, which can be taken as a statement of the Grantor summarizing certain provisions of this Trust Agreement. Notwithstanding any other provision herein or in the Trust Securities, the Trustees make no warranties or representations as to the validity, genuineness or sufficiency of the Trust Securities, as to the validity or sufficiency of this Trust Agreement, as to the value of the Trust Securities or as to any right, title or interest of the Holders, except for the express representations and warranties made by the Trustees in Section 5.04.

(i) Notwithstanding anything herein or in any other document to the contrary, to the maximum extent provided in Section 3803(b) of the Statutory Trust Act, a Trustee of the Trust, when acting in such capacity, shall not be personally liable to any Person other than the Trust and the Holders and Beneficial Owners for any act, omission or obligation of the Trust or any other trustee or other agent or representative of the Trust.

(j) The duties and obligations of the Trustees shall be determined solely by the express provisions of this Trust Agreement and the Trustees shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Trust Agreement, and no implied covenants or obligations shall be read into this Trust Agreement against the Trustees.

(k) No provision of this Trust Agreement shall require either of the Trustees to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that the repayment of such funds or liability is not reasonably assured to it under the terms of this Trust Agreement or indemnity reasonably satisfactory to such Trustee against such risk or liability is not reasonably assured to it.

(l) Neither of the Trustees shall be liable for any action taken, suffered or omitted to be taken by it in good faith, without gross negligence, and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Trust Agreement.

(m) No provision of this Trust Agreement shall be deemed to impose any duty or obligation on the part of the Trustees to perform any acts or exercise any right, power, duty or obligation conferred or imposed on it, in any jurisdiction in which it shall be illegal, or in which the Trustee shall be unqualified or incompetent in accordance with applicable law, to perform any such act or acts, or to exercise any such right, power, duty or obligation. No permissive power or authority available to the Trustees shall be construed to be a duty.

(n) In the exercise or administration of their obligations hereunder, the Trustees (i) may act directly or, at the expense of the Trust, through agents or attorneys, and the Trustees shall not be liable for the default or misconduct of such agents or attorneys if such agents or attorneys shall have been selected by the Trustees in good faith, and (ii) may, at the expense of the Trust, consult with counsel, accountants and other experts, and shall not be liable for anything done, suffered or omitted in good faith by the Trustees in accordance with the advice or opinion of any such counsel, accountants or other experts.

(o) The rights, privileges, immunities and benefits given to each Trustee hereunder, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, such Trustee in each of its capacities hereunder.

(p) In no event shall the Trustees be obligated to perform on behalf of the Trust the actions specified in Section 5.08.

Section 5.04. *Representations and Warranties of the Trustees.* The Trustees hereby represent and warrant as follows:

(a) The Delaware Trustee hereby represents and warrants that: (i) the Delaware Trustee has been duly organized and is validly existing and in good standing as a Delaware banking corporation with trust powers under the laws of the State of Delaware, with full power, authority and legal right under such laws to execute, deliver and carry out the terms of this Trust Agreement; (ii) this Trust Agreement has been duly authorized, executed and delivered by the Delaware Trustee; and (iii) this Trust Agreement constitutes a valid and binding obligation of the Delaware Trustee enforceable against the Delaware Trustee in accordance with its terms subject to equitable principles and bankruptcy, insolvency, moratorium, receivership and other similar laws affecting the enforcement of creditors' rights generally.

(b) The Property Trustee hereby represents and warrants that: (i) the Property Trustee has been duly organized and is validly existing and in good standing as a Delaware banking corporation with trust powers under the laws of the State of Delaware,

with full power, authority and legal right under such laws to execute, deliver and carry out the terms of this Trust Agreement; (ii) this Trust Agreement has been duly authorized, executed and delivered by the Property Trustee; and (iii) this Trust Agreement constitutes a valid and binding obligation of the Property Trustee enforceable against the Property Trustee in accordance with its terms subject to equitable principles and bankruptcy, insolvency, moratorium, receivership and other similar laws affecting the enforcement of creditors' rights generally.

Section 5.05. *Resignation and Removal of the Trustees; Appointment of Successor Trustees.*

(a) Either or both of the Trustees may at any time resign as Trustee hereunder by notice of its or their election to do so delivered to the Grantor, such resignation to take effect upon the appointment of a successor Trustee or Trustees and the successor Trustee's or successor Trustees' acceptance of such appointment as hereinafter provided; *provided* that, in the event that any Trustee shall at any time cease to be eligible in accordance with the provisions of Section 5.01 or 5.02, as applicable, such Trustee shall resign immediately, in the manner and with the effect specified in this Section.

(b) Either or both Trustees may at any time be removed by the Independent Manager by notice of such removal delivered to such Trustee or Trustees, such removal to take effect upon the appointment of a successor Trustee or Trustees and the successor Trustee's or successor Trustees' acceptance of such appointment as hereinafter provided.

(c) In the event that either or both of the Trustees acting hereunder shall at any time resign or be removed, the Grantor shall, within 45 days after the delivery of the notice of resignation or removal, as the case may be, appoint a successor Trustee or Trustees, which shall meet the eligibility requirements set forth in Sections 5.01 and 5.02, as applicable. If a successor Trustee or Trustees shall not have been appointed in 45 days, the resigning or removed Trustee or Trustees may petition a court of competent jurisdiction to appoint a successor Trustee or successor Trustees, and the expenses of such proceeding shall be borne by the Grantor. Every successor Trustee shall execute and deliver to its predecessor and to the Grantor an instrument in writing accepting its appointment hereunder, and thereupon the resigning or removed Trustee or Trustees shall be fully released and discharged of the trusts and duties of the Trustee or Trustees, as applicable, hereunder and such successor Trustee or Trustees, without any further act or deed, shall become fully vested with all the rights, powers, duties and obligations of its predecessor and for all purposes shall be the Trustee or Trustees, as applicable, under this Trust Agreement, and such predecessor, upon payment of all sums due to it and on the written request of the Grantor, shall promptly execute and deliver an instrument transferring to such successor all rights and powers of such predecessor hereunder, shall duly assign, transfer and deliver all rights, title and interest in the Series 2006-C Company Preferred Securities and any moneys or property held hereunder to such successor and shall deliver to such successor a list of the Holders of all outstanding Trust

Securities and any other information contained in the Register. Any successor Trustee shall promptly mail notice of its appointment to the Holders.

(d) Any resignation or renewal of either of the Trustees and appointment of a successor trustee or trustees pursuant to this Section 5.05 shall not become effective until acceptance of appointment by the successor trustee or trustees, as applicable.

(e) Any Person into or with which either of the Trustees may be merged, consolidated or converted, or any Person succeeding to all or substantially all of the corporate trust business of either Trustee, shall be the successor of such Trustee without the execution or filing of any document or any further act, provided such Person shall be eligible under the provisions of Sections 5.01 and 5.02, as applicable.

Section 5.06. *Trust Notices and Reports.* The Grantor agrees that it will give timely notice to the Trustees and the Paying Agent of any record date for the Series 2006-C Company Preferred Securities, which record date shall become the record date with respect to the Trust Securities pursuant to Section 4.04. All notices and reports (including financial statements) required by law or by the Grantor LLC Agreement to be furnished to holders of the Series 2006-C Company Preferred Securities shall be delivered to the Trustees and to the Holders of the Certificates, which shall initially be the Clearing Agency for communication by the Clearing Agency to the Beneficial Owners. Such transmission will be at the expense of the Grantor and the Grantor will provide the Trustees with such number of copies of such documents as the Trustees may reasonably request. In addition, the Trustees will likewise transmit, at the Grantor's expense, such other documents as may be requested by the Grantor.

Section 5.07. *Tax Status of Trust.*

(a) Notwithstanding any other provisions of this Trust Agreement, the Trustees shall not have the power to vary the investment of the Holders within the meaning of Treasury Regulation Section 1.7701-4(c).

(b) It is intended, and the parties hereto agree to use their commercially reasonable efforts to ensure, that the Trust shall constitute a grantor trust under the Code and shall not be an Investment Company.

(c) Holders will be treated as owning interests in the Trust Estate and each Holder hereby agrees to treat the Trust as a grantor trust for U.S. federal income tax purposes. In purchasing the Trust Securities or any interest therein, each Holder and Beneficial Owner agrees with the Grantor and the Trustees that the Grantor, the Trustees and the Holders will treat the Holders for all purposes as holders of an undivided interest in the Trust Estate, including the Series 2006-C Company Preferred Securities, and will not treat the Holders or the holders of the Series 2006-C Company Preferred Securities as holders of an underlying interest in WMI or any of its Affiliates or in any other person.

(d) The Grantor shall be responsible for preparing any tax returns or reports of the Trust, and hereby agrees to prepare and file any such tax returns or reports in a timely and accurate manner.

Section 5.08. *Appointment of Grantor to File on Behalf of Trust.* The Grantor is hereby appointed, authorized and directed, if the Grantor deems it necessary, appropriate or convenient to take such action, as the sponsor and agent of the Trust pursuant to Section 3806(b)(7) of the Statutory Trust Act, without any further action, vote or approval of any Trustee or any other Person (and any of the following are hereby confirmed if such action has been taken): (i) to prepare or cause the preparation of an offering circular relating to the offer and sale of the Trust Securities; (ii) to file and execute on behalf of the Trust such applications, reports, surety bonds, irrevocable consents, appointments of attorney for service of process, and other papers and documents as the Grantor, on behalf of the Trust, may deem necessary or desirable to register the Trust Securities under, or obtain for the Trust Securities an exemption from, any state securities or "Blue Sky" laws; (iii) to execute on behalf of the Trust such underwriting or purchase or placement agent agreements with one or more underwriters or managers or placement agents relating to the offering of the Trust Securities; (iv) to execute on behalf of the Trust any depository or agency agreements for the Trust Securities; (v) to execute on behalf of the Trust the Grantor LLC Agreement; (vi) to execute on behalf of the Trust the Exchange Agreement; and (vii) to execute on behalf of the Trust any and all other documents, papers and instruments as may be desirable in connection with any of the foregoing.

Section 5.09. *Indemnification by the Grantor.* To the fullest extent permitted by law, the Grantor agrees to indemnify and defend the Trustees, the Registrar and Transfer Agent and the Paying Agent and their respective directors, officers, employees and agents against, and hold each of them harmless from, any liability, costs and expenses (including reasonable attorneys' fees) that may arise out of or in connection with such Person's acceptance and performance of its powers and duties in respect of this Trust Agreement and the Grantor LLC Agreement, except, with respect to any such Person, for any liability arising out of gross negligence, bad faith or willful misconduct on the part of such Person.

Section 5.10. *Fees, Charges and Expenses.* The Company shall be liable for all fees (as set forth in a separate fee agreement), charges or expenses of the Trustees or any agent of the Trustees acting hereunder or of any Registrar and Transfer Agent or Paying Agent and no such fees, charges or expenses shall be payable by any other Person; *provided that*, (i) if the Trustees incur fees, charges or expenses for which they are not otherwise liable under Trust Agreement or this (ii) if the Paying Agent or Registrar and Transfer Agent incurs fees, charges or expenses for which it is not otherwise liable under the Trust Agency Agreement, in each case at the request of a Holder or other Person, such Holder or other Person will be liable for such fees, charges and expenses; and *provided further* that if the Grantor does not pay or cause to be paid such fees, charges or expenses in Section 5.09 or this Section 5.10 or can only pay such fees, charges or

expenses in a manner that would allocate such costs against the interests of the holders of the Series 2006-C Company Preferred Securities, WMB will pay such fees, charges or expenses. The provisions of this Section 5.10 shall survive the termination of this Trust Agreement.

Section 5.11. *Appointment of Co-Trustee or Separate Trustee.*

(a) Notwithstanding any other provisions of this Trust Agreement, at any time and from time to time, for the purpose of meeting any legal requirements of any jurisdiction in which any property of the Trust may at the time be located, the Trustees shall have the power and may execute and deliver all instruments, to appoint one or more Persons to act as co-trustee or co-trustees, or separate trustee or separate trustees of all or any part of the Trust, and to vest in such Person or Persons, in such capacity and for the benefit of the Holders, such title to the Trust Estate or any part thereof, and, subject to the other provisions of this Section 5.11, such powers, duties, obligations, rights and trusts as the Trustees may consider necessary or desirable. No co-trustee or separate trustee hereunder shall be required to meet the terms of eligibility as successor Property Trustee under Section 5.02 and no notice to the Holders of the appointment of any co-trustee or separate trustee shall be required.

(b) 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 and exercised or performed by the Trustees shall be exercised or performed by the Trustees 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 Trustees joining in such act), except to the extent that under any laws of any jurisdiction in which any particular act or acts are to be performed, the Trustees 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 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 Trustees;
- (ii) the Trustees shall not be personally liable by reason of any act or omission of any separate trustee or co-trustee; and
- (iii) the Trustees may at any time accept the resignation or removal of any separate trustee or co-trustee.

(c) Any notice, request or other writing given to either Trustee shall be deemed to have been given to each of the Trustees and to 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 Trust Agreement. 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 Trustees or separately, as may be provided therein, subject to all of the provisions of this Trust Agreement, specifically including every provision of this Trust Agreement relating to the conduct of, affecting the liability of, or affording protection to, the Trustees. Every such instrument shall be filed with the Trustees and a copy thereof given to the Grantor.

(d) Any separate trustee or co-trustee may at any time constitute any Trustee as 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 to this Trust Agreement on its behalf and in its name. If any separate trustee or co-trustee shall die, 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 Trustees, to the extent permitted by law, without the appointment of a new or successor separate trustee or co-trustee.

ARTICLE VI
AMENDMENT AND TERMINATION

Section 6.01. *Supplemental Trust Agreement.*

(a) The Grantor and the Trustees may at any time and from time to time enter into one or more agreements supplemental to this Trust Agreement without the consent of the Holders:

- (i) to evidence the succession of another entity to the Grantor and the assumption by any such successor of the covenants of the Grantor herein contained;
- (ii) to add to the covenants of the Grantor for the benefit of the Holders, or to surrender any right or power herein conferred upon the Grantor;
- (iii) (A) to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein or (B) to make any other provisions with respect to matters or questions arising under this Trust Agreement, *provided* that any such action taken under this subsection (iii) shall not materially adversely affect the interests of the Holders;
- (iv) to change the name of the Trust, including the removal of "Washington Mutual" if necessary to make the name of the Trust consistent with a change to the name of WMI, WMB and the Grantor; or
- (v) to cure any ambiguity or correct any manifest error.

(b) Any other amendment or agreement supplemental hereto must be in writing and approved by Holders of a majority (by aggregate liquidation preference) of the Trust Securities then outstanding, *provided* that, for the purpose of such approval, any Trust Securities that are directly or indirectly held or beneficially owned by WMI, University Street, the Grantor or any of their respective Affiliates shall be treated as if they were not outstanding.

(c) The Trustees shall be entitled to receive, and shall be fully protected in relying upon, an officer's certificate and an Opinion of Counsel delivered by the Grantor to the Trustees stating that the execution of any amendment or agreement supplemental hereto pursuant to this Article VI is authorized or permitted by this Trust Agreement and that it will be valid and binding upon the Grantor. Subject to the preceding sentence, the Trustees shall sign such amendment or agreement supplemental hereto if the same does not materially adversely affect the rights, duties, liabilities or immunities of the Trustees. The Trustees may, but shall not be obligated to, execute any amendment or agreement supplemental hereto that affects the Trustees' own rights, duties, liabilities or immunities under this Trust Agreement or otherwise.

(d) The Trustees shall notify the Paying Agent and the Holders of any such amendment of the Trust Agreement within a reasonable period of time.

Section 6.02. *Termination.*

(a) The Trust shall be dissolved on the earliest to occur of: (i) the date that all outstanding Trust Securities have been redeemed and the redemption price thereof has been paid in full, (ii) upon the occurrence of a Conditional Exchange, (iii) the date on which a final distribution has been made in respect of the Series 2006-C Company Preferred Securities and delivery of such distribution has been made to the Holders, (iv) the entry of a decree of judicial dissolution of the Trust by a court of competent jurisdiction, and (v) the date on which the Grantor is dissolved as contemplated in Section 4.03.

(b) The dissolution, winding up and termination of the Trust shall be performed in accordance with Section 3808 of the Statutory Trust Act, and the Trustees shall have the power and authority to wind up the affairs of the Trust in accordance therewith.

(c) This Trust Agreement shall terminate upon the filing of a certificate of cancellation as provided in Section 3810 of the Statutory Trust Act; and upon termination of the Trust in accordance with the foregoing, the respective obligations and responsibilities of the Trustees and the Grantor created hereby shall terminate.

(d) The Trustees shall notify the Paying Agents and the Holders of any such amendment or termination of the Trust Agreement within a reasonable period of time.

ARTICLE VII
MISCELLANEOUS

Section 7.01. *Counterparts.* This Trust Agreement may be executed by the Grantor and the Trustees in separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed an original, but all such counterparts taken together shall constitute one and the same instrument. Copies of this Trust Agreement shall be filed with each of the Trustees and shall be open to inspection during business hours at the Corporate Office by any Holder.

Section 7.02. *Exclusive Benefits of Parties.* This Trust Agreement is for the exclusive benefit of the parties hereto and the Holders of the Trust Securities, and their respective successors and assigns, and shall not be deemed to give any legal or equitable right, remedy or claim to any other Person whatsoever.

Section 7.03. *Invalidity of Provisions.* In case any one or more of the provisions contained in this Trust Agreement or in the Trust Securities should be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof or thereof shall in no way be affected, prejudiced or disturbed thereby.

Section 7.04. *Notices.*

(a) Any notices to be given to the Grantor hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail, by courier or by telecopier, addressed to Washington Mutual Preferred Funding LLC, 1301 Second Avenue, Seattle, WA 98101, Attention: Secretary of Washington Mutual Preferred Funding LLC, Tel: 206-500-4347, Fax: 206-377-2236, or at such other address as the Grantor may give notice to the Trustees.

(b) Any notices to be given to either Trustee or the Trust hereunder or under the Trust Securities shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail, by courier or by telecopier, addressed to Washington Mutual Preferred Funding Trust II, c/o Wilmington Trust Company, at the Corporate Office, Attention: Corporate Trust Administration, Tel: 302-651-1000; Fax: 302-636-4140, or at such other address as the Trustees may give notice to the Grantor and to the Holders.

(c) For so long as the Trust Securities remain in the form of Global Certificates, notices to Holders shall be given by delivery of the relevant notice to the Clearing Agency and any other relevant securities clearing systems identified to the parties hereto in writing for communication by each of them to entitled participants.

(d) Delivery of a notice sent by mail shall be deemed to be effected at the time when the same is deposited, postage prepaid, in a post office letter box. Delivery of a

notice personally delivered or sent by telecopier shall be deemed to be effected at the time it is received.

Section 7.05. *Trustees' Agents.* The Trustees may from time to time appoint agents to act in any respect for the Trustees for the purposes of this Trust Agreement. The Trustees shall have no liability for the acts or omissions of agents selected by it with due care. The Trustees will notify the Grantor prior to any such appointment.

Section 7.06. *Holder Are Parties.* Notwithstanding that Holders have not executed and delivered this Trust Agreement or any counterpart thereof, the Holders from time to time shall be bound by all of the terms and conditions hereof and of the Trust Securities by acceptance of delivery of the Trust Securities.

Section 7.07. ***Governing Law. This Trust Agreement and the Trust Securities and all rights hereunder and thereunder and provisions hereof and thereof shall be governed by, and construed in accordance with, the law of the State of Delaware, without regard to principles of conflict of laws.***

Section 7.08. *Headings.* The headings of articles and sections of this Trust Agreement have been inserted for convenience only and are not to be regarded as part of this Trust Agreement or to have any bearing upon the meaning or interpretation of any provision contained herein.

Section 7.09. *Trust Securities Non-Assessable and Fully Paid.* The Holders shall not be personally liable for obligations of the Trust, the interests in the Trust represented by the Trust Securities shall be non-assessable for any losses or expenses of the Trust or for any reason whatsoever (subject to the obligations of Holders for any payment obligations under this Trust Agreement), and the Trust Securities upon delivery thereof by the Trustees pursuant to this Trust Agreement are and shall be deemed fully paid.

Section 7.10. *No Preemptive Rights.* No Holder shall be entitled as a matter of right to subscribe for or purchase, or have any preemptive right with respect to, any part of any new or additional interest in the Trust, whether now or hereafter authorized and whether issued for cash or other consideration or by way of distribution.

Section 7.11. *Survival.* The rights and protections of each Trustee hereunder, including, without limitation, its right to defense, indemnity, expense reimbursement and compensation for its services hereunder, shall survive resignation or removal of either or both of the Trustees and the termination of the Trust and this Trust Agreement.

Section 7.12. *Concerning the Trustees.* Unless otherwise expressly provided, the documents executed in connection with the transactions contemplated hereby by a representative of either Trustee, shall be deemed executed by such Trustee acting not in its individual capacity, but solely in its capacity as Trustee on behalf of the Trust. In no case shall such Trustee, (or any entity acting as successor or additional trustee or any of

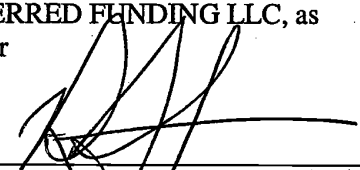
their respective representatives or agents) be personally liable for or on account of any of the statements, representations, warranties, covenants or obligations of or pertaining to the Trust or any other Person.

Section 7.13. *Submission to Jurisdiction.* Each of the Trust and the Grantor irrevocably consents and agrees that any legal action, suit or proceeding against it with respect to its obligations, liabilities or any other matter arising out of or in connection with this Trust Agreement may be brought in the courts of the State of New York or the courts of the United States of America located in The City of New York. Until amounts due and to become due under this Trust Agreement have been paid, each of the Trust and the Grantor hereby irrevocably consents and submits to the non-exclusive jurisdiction of each such court *in personam*, generally and unconditionally with respect to any such action, suit or proceeding for itself and in respect of its properties, assets and revenues. Service of process upon the Grantor in any such action, suit or proceeding shall be made to: National Corporate Research, LTD, 615 South Dupont Highway, Dover, DE 19901. Each of the Trust and the Grantor hereby irrevocably and unconditionally waives, to the fullest extent permitted by law, except as otherwise provided for in this Trust Agreement, any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions, suits or proceedings brought in the United States Federal courts located in The City of New York or the courts of the State of New York and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. The provisions of this Section 7.13 shall survive any termination of this Trust Agreement.

Section 7.14. *Waiver of Jury Trial.* Each of the Trust, Grantor and the Trustees hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Trust Agreement, the Trust Securities or the transactions contemplated hereby.

IN WITNESS WHEREOF, this Trust Agreement is executed as of the date first written above.

WASHINGTON MUTUAL
PREFERRED FUNDING LLC, as
Grantor

By: 
Name: Peter Freilinger
Title: Senior Vice President

WILMINGTON TRUST COMPANY,
not in its individual capacity but solely as
Delaware Trustee

By: _____
Name:
Title:

WILMINGTON TRUST COMPANY,
not in its individual capacity but solely as
Property Trustee

By: _____
Name:
Title:

IN WITNESS WHEREOF, this Trust Agreement is executed as of the date first written above.


WASHINGTON MUTUAL
PREFERRED FUNDING LLC, as
Grantor

By: _____
Name: Peter Freiling
Title: Senior Vice President

WILMINGTON TRUST COMPANY,
not in its individual capacity but solely as
Delaware Trustee

By:  _____
Name:
Title: Michele C. Harra
Financial Services Officer

WILMINGTON TRUST COMPANY,
not in its individual capacity but solely as
Property Trustee

By:  _____
Name:
Title: Michele C. Harra
Financial Services Officer

A&R Trust Agreement of the Trust

WASHINGTON MUTUAL BANK,
solely for the limited purpose set forth in
Section 5.10

By: 

Name: Robert J. Williams
Title: Senior Vice President and
Treasurer

Exhibit A

THIS SECURITY IS ONE OF THE FIXED-TO-FLOATING RATE PERPETUAL NON-CUMULATIVE TRUST SECURITIES ("TRUST SECURITIES") ISSUED BY WASHINGTON MUTUAL PREFERRED FUNDING TRUST II (THE "TRUST"). THE ISSUER OF THIS SECURITY HAS NOT BEEN REGISTERED AS AN INVESTMENT COMPANY UNDER THE U.S. INVESTMENT COMPANY ACT OF 1940, AS AMENDED (THE "INVESTMENT COMPANY ACT"), AND THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND NEITHER THIS SECURITY NOR ANY BENEFICIAL INTERESTS HEREIN MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT TO A PERSON WHO IS BOTH A "QUALIFIED INSTITUTIONAL BUYER" WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT ("QUALIFIED INSTITUTIONAL BUYER") AND A "QUALIFIED PURCHASER" WITHIN THE MEANING OF SECTION 2(a)(51) OF THE INVESTMENT COMPANY ACT AND THE RULES AND REGULATIONS THEREUNDER ("QUALIFIED PURCHASER") ACQUIRING FOR ITS OWN ACCOUNT OR THE ACCOUNT OF A PERSON WHO IS BOTH A QUALIFIED INSTITUTIONAL BUYER AND A QUALIFIED PURCHASER (AN "ELIGIBLE PURCHASER") AND EACH SUCH PERSON AND ACCOUNT FOR WHICH SUCH PERSON IS PURCHASING (A) IS NOT A BROKER-DEALER THAT OWNS AND INVESTS ON A DISCRETIONARY BASIS LESS THAN \$25 MILLION IN SECURITIES OF ISSUERS THAT ARE NOT ITS AFFILIATED PERSONS, (B) IS NOT A PLAN REFERRED TO IN PARAGRAPH (a)(1)(i)(D) OR (a)(1)(i)(E) OF RULE 144A, OR A TRUST FUND REFERRED TO IN PARAGRAPH (a)(1)(i)(F) OF RULE 144A THAT HOLDS THE ASSETS OF SUCH A PLAN, IF INVESTMENT DECISIONS WITH RESPECT TO THE PLAN ARE MADE BY THE BENEFICIARIES OF SUCH PLAN, (C) WAS NOT FORMED FOR THE PURPOSE OF INVESTING IN THE TRUST, (D) WILL HOLD AT LEAST \$300,000 LIQUIDATION PREFERENCE OF TRUST SECURITIES (i.e., AT LEAST THREE TRUST SECURITIES) AND, IF IT TRANSFERS ANY INTEREST IN ANY TRUST SECURITY, WILL TRANSFER AT LEAST \$100,000 LIQUIDATION PREFERENCE OF TRUST SECURITIES (i.e., AT LEAST ONE TRUST SECURITY) IN THE CASE OF EACH INITIAL INVESTOR AND WILL HOLD AND TRANSFER, IF IT TRANSFERS ANY INTEREST IN ANY TRUST SECURITY, AT LEAST \$100,000 LIQUIDATION PREFERENCE OF TRUST SECURITIES (i.e., AT LEAST ONE TRUST SECURITY) IN THE CASE OF EACH SUBSEQUENT INVESTOR AND (E) UNDERSTANDS THAT THE TRUST MAY RECEIVE A LIST OF PARTICIPANTS HOLDING POSITIONS IN THIS SECURITY FROM ONE OR MORE BOOK-ENTRY DEPOSITARIES. EACH PURCHASER OF THIS SECURITY OR ANY BENEFICIAL INTERESTS HEREIN WILL BE DEEMED TO REPRESENT THAT IT AGREES TO COMPLY WITH THE TRANSFER RESTRICTIONS SET FORTH HEREIN AND IN THE AMENDED AND RESTATED TRUST AGREEMENT OF THE TRUST (THE "TRUST AGREEMENT"), AND WILL NOT TRANSFER THIS SECURITY OR ANY BENEFICIAL INTERESTS HEREIN EXCEPT TO AN ELIGIBLE PURCHASER WHO CAN MAKE THE SAME REPRESENTATIONS AND AGREEMENTS ON BEHALF OF ITSELF AND EACH ACCOUNT FOR WHICH IT

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IS PURCHASING. ANY PURPORTED TRANSFER OF THIS SECURITY OR ANY BENEFICIAL INTERESTS HEREIN THAT IS IN BREACH, AT THE TIME MADE, OF ANY TRANSFER RESTRICTIONS SET FORTH HEREIN OR IN THE TRUST AGREEMENT WILL BE VOID *AB INITIO*. IF AT ANY TIME THE TRUST DETERMINES IN GOOD FAITH THAT A HOLDER OR BENEFICIAL OWNER OF THIS SECURITY OR BENEFICIAL INTERESTS HEREIN IS IN BREACH, AT THE TIME GIVEN, OF ANY OF THE TRANSFER RESTRICTIONS SET FORTH HEREIN, THE TRUST SHALL CONSIDER THE ACQUISITION OF THIS SECURITY OR SUCH BENEFICIAL INTERESTS VOID, OF NO FORCE AND EFFECT AND WILL NOT, AT THE DISCRETION OF THE TRUST, OPERATE TO TRANSFER ANY RIGHTS TO THE TRANSFEREE NOTWITHSTANDING ANY INSTRUCTIONS TO THE CONTRARY TO THE TRUST, ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT (THE "*TRANSFER AGENT*"), OR ANY OTHER INTERMEDIARY. IN ADDITION, THE TRUST OR THE TRANSFER AGENT MAY REQUIRE SUCH ACQUIRER OR BENEFICIAL OWNER TO SELL THIS SECURITY OR SUCH BENEFICIAL INTERESTS TO AN ELIGIBLE PURCHASER.

NO SECURITY MAY BE PURCHASED OR TRANSFERRED TO: (I) AN "*EMPLOYEE BENEFIT PLAN*" AS DEFINED IN SECTION 3(3) OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("*ERISA*"), WHETHER OR NOT SUBJECT TO ERISA AND INCLUDING, WITHOUT LIMITATION, FOREIGN OR GOVERNMENTAL PLANS, (II) A PLAN, ACCOUNT OR OTHER ARRANGEMENT THAT IS SUBJECT TO SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "*CODE*"), OR (III) ANY ENTITY WHOSE UNDERLYING ASSETS INCLUDE "*PLAN ASSETS*" OF ANY OF THE FOREGOING BY REASON OF INVESTMENT BY AN EMPLOYEE BENEFIT PLAN OR OTHER PLAN IN SUCH ENTITY (EACH OF THE FOREGOING, A "*BENEFIT PLAN INVESTOR*"), EXCEPT FOR AN INSURANCE COMPANY GENERAL ACCOUNT THAT REPRESENTS, WARRANTS AND COVENANTS THAT, AT THE TIME OF ACQUISITION AND THROUGHOUT THE PERIOD IT HOLDS THE SECURITIES, (I) IT IS ELIGIBLE FOR AND MEETS THE REQUIREMENTS OF DEPARTMENT OF LABOR PROHIBITED TRANSACTION CLASS EXEMPTION 95-60, (II) LESS THAN 25% OF THE ASSETS OF SUCH GENERAL ACCOUNT ARE (OR REPRESENT) ASSETS OF A BENEFIT PLAN INVESTOR AND (III) IT IS NOT A PERSON WHO HAS DISCRETIONARY AUTHORITY OR CONTROL WITH RESPECT TO THE ASSETS OF WAMU DELAWARE OR ANY PERSON WHO PROVIDES INVESTMENT ADVICE FOR A FEE (DIRECT OR INDIRECT) WITH RESPECT TO SUCH ASSETS, OR ANY AFFILIATE OF SUCH A PERSON AND WOULD NOT OTHERWISE BE EXCLUDED UNDER 29 C.F.R. § 2510.3-101(F)(1). IN ADDITION, EACH PURCHASER OR TRANSFEREE OF THIS SECURITY WILL BE REQUIRED TO REPRESENT AND WARRANT (OR, IN CERTAIN CIRCUMSTANCES, WILL BE DEEMED TO REPRESENT AND WARRANT) THAT, FROM THE DATE OF ACQUISITION AND THROUGHOUT THE PERIOD OF HOLDING THIS

SECURITY, EITHER (A) IT IS NOT A GOVERNMENTAL PLAN, FOREIGN PLAN, CHURCH PLAN OR OTHER PLAN SUBJECT TO LAW THAT IS SUBSTANTIALLY SIMILAR TO SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE ("*SIMILAR LAW*") OR (B) ITS PURCHASE AND HOLDING OF THIS SECURITY WILL NOT CONSTITUTE OR RESULT IN A NON-EXEMPT VIOLATION OF SIMILAR LAW.

*[If the Certificate is a Global Certificate, include—*UNLESS THIS SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("*DTC*"), TO THE TRUST OR THE TRANSFER AGENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

Exhibit B

*Exhibit B***(FORM OF FACE OF TRUST SECURITY CERTIFICATE)**

No. _____

Number of Trust Securities: _____

CUSIP No.: _____

WASHINGTON MUTUAL PREFERRED FUNDING TRUST II**TRUST SECURITIES**

This Trust Securities Certificate certifies that [_____] is the registered Holder of the number of Trust Securities set forth above. Each Trust Security represents a beneficial interest in Washington Mutual Preferred Funding Trust II (the "*Trust*"), having a liquidation preference of \$100,000. The Trust Securities are transferable on the Register of the Trust, by the Registrar and Transfer Agent, upon any surrender to the Property Trustee of such Trust Securities in person or by a duly authorized attorney, duly endorsed or accompanied by a properly executed instrument of transfer or endorsement, together with evidence of the payment of any transfer taxes as may be required by law, as provided in Section 3.03(b) of the Trust Agreement (as defined below). The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Trust Securities are set forth in, and this certificate and the Trust Securities represented hereby are issued and shall in all respects be subject to the terms and provisions of the Amended and Restated Trust Agreement of the Trust, dated as of December 13, 2006, (as the same may be amended and restated from time to time, the "*Trust Agreement*"), including the designation of the terms of the Trust Securities as set forth therein. All capitalized terms used herein that are defined in the Trust Agreement have the meaning set forth therein.

Section 4.08 of the Trust Agreement provides for the procedures pursuant to which each Trust Security then outstanding shall be exchanged automatically for a Like Amount of newly issued Depositary Shares if the OTS so directs upon the occurrence of an Exchange Event.

A copy of the Trust Agreement is available for inspection at the offices of the Property Trustee.

Upon receipt of this Certificate, the Holder is bound by the Trust Agreement and is entitled to the benefits thereof.

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IN WITNESS WHEREOF, the Trust has executed this Trust Securities
Certificate.

WASHINGTON MUTUAL PREFERRED
FUNDING TRUST II,

By: Wilmington Trust Company, not in its
individual capacity but solely as Property
Trustee

By: _____
Name:
Title:

Date:

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this instrument, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM: as tenants in common

UNIF GIFT MIN ACT: _____ Custodian _____ (cust)(minor)
Under Uniform Gifts to Minors Act of _____

TENANT: as tenants by the entirety

JT TEN: as joint tenants with right of survivorship and not as tenants
in common

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto

(Please insert Social Security or Taxpayer I.D.
or other Identifying Number of Assignee)

(Please print or type name and address including Postal Zip Code of Assignee)

the Trust Securities Certificates and all rights thereunder, hereby irrevocably constituting and appointing attorney _____, to transfer said Trust Securities Certificates on the Register of the Trust, with full power of substitution in the premises.

Dated:

Signature:

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of Trust Securities Certificates in every particular, without alteration or enlargement or any change whatsoever.

Signature Guarantee:

Exhibit C

Exhibit C

[FORM OF ASSIGNMENT]

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto _____ the Certificate and all rights and interests represented by the Trust Securities evidenced thereby, and hereby irrevocably constitutes and appoints attorney, to transfer the same on the Register of the within-named Trust, with full power of substitution in the premises.

Signature: _____

NOTE: The signature to this assignment must correspond with the name as written upon the face of the Certificate in every particular, without alteration or enlargement or any change whatever.

Dated:

Signature Guarantee:

Exhibit D

CERTIFICATION AS TO U.S. PERSON STATUS

Pursuant to Section 4.06(b) of the Amended and Restated Trust Agreement of Washington Mutual Preferred Funding Trust II (the "Trust Agreement"), voting rights available to Holders under the Trust Agreement may be exercised only by a U.S. Person that is a Beneficial Owner of a Trust Security or by a U.S. Person acting as irrevocable agent with discretionary powers for the Beneficial Owner of a Trust Security that is not a U.S. Person.

Pursuant to Section 4.06 of the Trust Agreement, the undersigned:

Holder agent for the Holder named below

hereby certifies to the Trust that it is:

- 1. An individual citizen or resident of the United States Yes No
- 2. A corporation, company or partnership organized in or under the laws of the United States or any state thereof or the District of Columbia Yes No
- 3. An estate, the income of which is subject to United States Federal income tax regardless of source Yes No
- 4. A trust with respect to which a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust Yes No

Complete if applicable: The undersigned Holder hereby appoints [insert name of agent], a U.S. Person, as its irrevocable agent with discretionary powers to exercise on such Holder's behalf the voting rights available to it under the Trust Agreement.

Complete if applicable: The undersigned has been appointed by [insert name of Holder] as its irrevocable agent with discretionary powers pursuant to Section 4.06(b) of the Trust Agreement.

All capitalized terms used herein that are defined in the Trust Agreement have the meaning set forth therein.

Signature: _____