

February 6, 2008



PARTICIPATION AGREEMENT FOR DISTRESSED TRADES

COLLATERAL ANNEX

The following is the Collateral Annex for Participations published by the LSTA as of _____, 2007 (this "Annex"), which (if made applicable) forms part of the Participation Agreement for Distressed Trades entered into by the parties hereto on the date hereof (the "Participation Agreement") governing the Transaction described in the Transaction Specific Terms.

SECTION 1. Definitions. Capitalized terms used in this Annex shall have the respective meanings ascribed thereto in Section 1 of the Standard Terms, as supplemented by Section A of the relevant Transaction Specific Terms, and as otherwise may be provided in other provisions of this Annex. Terms defined in the Credit Agreement and not otherwise defined in this Annex shall have the same meanings in this Annex as in the Credit Agreement. Except as otherwise expressly set forth herein, each reference herein to "the Agreement," "this Agreement," "herein," "hereunder" or "hereof" shall be deemed a reference to the Participation Agreement. If there is any inconsistency between the Transaction Specific Terms and the provisions of the Standard Terms or this Annex, the Transaction Specific Terms shall govern and control.

"Buyer Collateral" means all property, whether now owned or hereafter acquired, in which a Lien is granted or purports to be granted to Seller by Buyer pursuant to this Agreement.

"Collateral Account" means a securities account or deposit account established by Buyer (i) with Seller or (ii) with a Custodian and subject to a Control Agreement if requested by Seller, in each case entitled "Collateral Account in favor of" Seller, into which Buyer has transferred or will transfer any Eligible Collateral specified from time to time pursuant hereto together with any renewal or replacement thereof. If both a securities account and a deposit account are established by Buyer for purposes of making deliveries of Eligible Collateral hereunder, "**Collateral Account**" shall mean either or both of such accounts collectively, as the context may require.

"Collateral Shortfall" on any day means the amount (if any) by which (x) the sum of the Upfront Amount (if any) and the Unfunded Commitments exceeds (y) the sum of the Fully Funded Participation Amount and the aggregate value (determined as provided in the definition of Eligible Collateral) of all Eligible Collateral held in the Collateral Account. For purposes of this definition:

"Fully Funded Participation Amount" on any day means the percentage specified in Schedule 1 of the lesser of (i) the market value (as determined by Seller in its reasonable discretion) and (ii) the principal amount of the Participation (assuming for this purpose that on such date Buyer has failed to

pay a Funding Advance, and Seller has funded such Funding Advance, in an amount equal to the Unfunded Commitments);

"Required Upfront Percentage" means the Required Upfront Percentage (if any) specified in the trade confirmation relating to the Participation or, if a Trigger Event has occurred, such higher percentage as Seller may determine in its sole discretion, which higher percentage shall be effective one Business Day after the date on which Buyer is notified thereof;

"Upfront Amount" means the Required Upfront Percentage of the Unfunded Commitments; and

"Unfunded Commitments" means that part of the Commitments that has not been funded in the form of loans, advances, letter of credit disbursements or otherwise under the Credit Agreement.

"Control Agreement" means an agreement, in form and substance satisfactory to Seller, among Buyer, Seller and the Custodian on whose books the Collateral Account is maintained pursuant to which the Custodian agrees (i) if the Collateral Account is a securities account, to comply solely with entitlement orders (within the meaning of Section 8-102(a)(8) of the UCC) originated by Seller with respect to the Collateral Account and (ii) if the Collateral Account is a deposit account, to comply solely with instructions originated by Seller directing disposition of the funds in such Collateral Account, in each case without further consent of Buyer, and to subordinate to the Security Interests all Liens and rights of set-off that the Custodian may have against the Collateral Account (except any right to deduct its normal operating charges and any uncollected funds previously credited thereto).

"Custodian" means an Entity chosen by Seller that is a securities intermediary (if the Collateral Account is a securities account) or a bank (if the Collateral Account is a deposit account).

"Eligible Collateral" means United States dollars and, if specified in Schedule 1, Treasury Securities and Agency Notes. For purposes of this definition, "Treasury Securities" means U.S. Dollar-denominated senior debt securities of the United States of America issued by the U.S. Treasury Department and backed by the full faith and credit of the United States of America, and "Agency Notes" means U.S. Dollar-denominated fixed rate, non-amortizing, non-mortgage-backed, senior debt securities of fixed maturity, rated Aaa by Moody's and AAA by Standard & Poor's and issued by any of the Federal Home Loan Banks (including their consolidated obligations issued through the Office of Finance of the Federal Home Loan Bank System), the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. The value of any United States dollars shall be the amount thereof. The value of any other Eligible Collateral shall be the bid price obtained by Seller multiplied by the applicable percentage set forth in (or the value otherwise determined pursuant to) Schedule 1.

"Event of Default" means (i) the failure of Buyer to comply with or perform any agreement or obligation to be complied with or performed by Buyer in accordance with this Agreement, which failure has not been cured within five Business Days (or two Business Days for a funding failure) of Buyer having been so notified by Seller; (ii) a representation made or repeated or deemed to have been made or repeated by Buyer in this Agreement proves to have been incorrect or misleading in any material respect; (iii) Buyer (1) becomes insolvent or is unable to pay its debts as they become due; (2) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (3) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or

other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (4) has a resolution passed for its winding-up, official management or liquidation; (5) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (6) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (7) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (6) (inclusive); or (8) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or (iv) the expiration or termination of this Annex or the failing or ceasing of this Annex to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of Buyer under the Participation to which this Annex relates without the consent of Seller, or Buyer disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, this Annex.

"Lien" means a lien, pledge, hypothecation, encumbrance, charge, security interest, claim, option or right of any Entity.

"Minimum Transfer Amount" means \$250,000, unless another amount is specified in Schedule 1.

"Proceeds" means all proceeds of, and all other profits, products, rents or receipts, in whatever form, arising from the collection, sale, lease, exchange, assignment or other disposition of, or other realization upon, any Buyer Collateral, including without limitation all claims of Buyer against third parties for loss of, damage to or destruction of any Buyer Collateral, in each case whether now existing or hereafter arising.

"Return Amount" means as of any date of determination the amount by which (x) the sum of the Fully Funded Participation Amount and the aggregate value (determined as provided in the definition of Eligible Collateral) of all Eligible Collateral held in the Collateral Account exceeds (y) the sum of the Upfront Amount (if any) and the Unfunded Commitments. The Return Amount will be deemed to be zero whenever the calculation in the preceding sentence yields a number less than zero.

"Secured Obligations" means all obligations of Buyer hereunder.

"Security Interests" means the security interests in the Buyer Collateral granted by Buyer hereunder.

"Trigger Event" has the meaning (if any) specified in Schedule 1.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York; *provided* that, if perfection or the effect of perfection or non-perfection or the priority of any Security Interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, **"UCC"** means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for

purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority

SECTION 2. Security Interest.

2.1 To secure its obligations to pay any Funding Advance and any other amounts due hereunder and to perform its other Secured Obligations hereunder, Buyer hereby pledges, assigns and grants to Seller a first priority continuing security interest in, lien on and right of set-off against, all of its right, title and interest, whether now owned or hereafter acquired, in, to and under:

- (i) the Participation;
- (ii) the Collateral Account, all Eligible Collateral held in or credited to the Collateral Account from time to time and all other assets from time to time held therein or credited thereto and all security entitlements with respect to any of the foregoing;
- (iii) all interest, cash, monies and other property from time to time received, receivable or otherwise distributed or distributable in respect of, or in exchange for, any or all such Buyer Collateral; and
- (iv) all Proceeds of the Buyer Collateral described in the foregoing clauses (i), (ii) and (iii).

Subject to Section 2.4(ii), any interest, cash, monies or other property (as described in Section 2.1(iii) above) received, receivable or otherwise distributed or distributable in respect of, or in exchange for, any or all such Buyer Collateral shall be promptly deposited by Buyer into the Collateral Account.

2.2 The Security Interests are granted as security only and shall not subject Seller to, or transfer or in any way affect or modify, any obligation or liability of Buyer with respect to any of the Buyer Collateral or any transaction in connection therewith. Buyer and Seller agree that (i) all Buyer Collateral held in or credited to the Collateral Account will, to the extent the Collateral Account is a securities account, be treated as a financial asset for purposes of the UCC, and (ii) Seller has exclusive control of the Collateral Account. Buyer hereby authorizes Seller to file a UCC financing statement naming Buyer, as debtor, and Seller, as secured party, and covering the Buyer Collateral in the jurisdictions and filing locations deemed appropriate by Seller to perfect Seller's security interest in the Buyer Collateral.

2.3 Buyer represents, warrants, covenants and agrees (as of the Effective Date) that: (i) Buyer's exact legal name is that indicated on the signature page hereof and Buyer is the type of organization specified in Schedule 1 organized solely under the laws of the jurisdiction specified in Schedule 1 as to which such jurisdiction must maintain a public record showing the organization to have been organized; (ii) without providing at least 30 days' prior written notice to Seller, Buyer will not change its name, legal status or location in a manner that would alter the information provided in (i) above; (iii) Buyer shall not sell, exchange, assign, pledge, mortgage or otherwise dispose of, grant any option with respect to, or suffer to exist any right of any Entity in or claim by any Entity to, the Buyer Collateral, or any Lien on the Buyer Collateral in favor of any Entity, other than Seller; (iv) Buyer owns all the Buyer Collateral, free and clear of any Lien other than the Security Interests; (v) Buyer has not performed any acts that might prevent Seller from enforcing any of the provisions hereof or that would limit Seller in any such enforcement; (vi) no financing statement, security agreement or similar or equivalent document or

instrument covering all or any part of the Buyer Collateral owned by Buyer is on file or of record in any jurisdiction in which such filing or recording would be effective to perfect or record a Lien on such Buyer Collateral; (vii) the creation and perfection of the Security Interests by Buyer are within its corporate powers and have been duly authorized by all necessary corporate and, if required, stockholder action; and (viii) the Security Interests constitute valid and, upon crediting of the Buyer Collateral to the Collateral Account (subject to any filing which may be required in respect of the Participation), perfected first priority security interests in the Buyer Collateral securing the Secured Obligations.

2.4 *Collateral Account.* On or prior to the date hereof, the Collateral Account shall have been established and Buyer shall have deposited in the Collateral Account an amount of Eligible Collateral equal to the Upfront Amount, if any. From time to time thereafter, Buyer shall transfer into the Collateral Account Eligible Collateral requested by Seller in an amount equal to the Collateral Shortfall, if the Collateral Shortfall exceeds the Minimum Transfer Amount. In the case of a request by Seller, if notice thereof is given before 12:00 Noon (New York time) on a Business Day, Buyer shall transfer the requested amount of Eligible Collateral into the Collateral Account on the same day. If notice is given after 12:00 Noon (New York time) on any Business Day, then Buyer shall transfer such amount before 12:00 Noon (New York time) on the following Business Day. Notwithstanding the foregoing, if Buyer disputes Seller's determination of the Fully Funded Participation Amount and notifies Seller of such dispute by the close of business on the Business Day on which Seller requests a delivery of Buyer Collateral pursuant to this Section 2.4, then Seller will seek three bid quotes as of such date from parties that regularly act as dealers in Funded Loans, and will use the arithmetic mean of such quotes to determine the Fully Funded Participation Amount, *provided* that if Seller cannot obtain three quotes, then fewer than three quotes may be used, and if no quotes are available, then Seller's original reasonable determination of the Fully Funded Participation Amount will be used; *provided further* that Buyer shall deliver on or prior to the time specified in this Section 2.4 Eligible Collateral in an amount equal to such portion of the Collateral Shortfall with respect to which there is no dispute. So long as any Secured Obligation remains outstanding and until the Security Interests shall have been terminated:

(i) If the Collateral Account is established with Seller, cash credited to the Collateral Account shall bear interest for each day at the Federal Funds Rate. All such interest shall be computed on the basis of the actual number of days elapsed over a year of 360 days. Each applicable Federal Funds Rate shall be determined by Seller, and its determination thereof will be conclusive absent manifest error. In all other cases, cash credited to the Collateral Account shall bear interest in accordance with the terms governing the Collateral Account.

(ii) So long as no Event of Default shall have occurred and be continuing, interest accrued on Eligible Collateral credited to the Collateral Account shall be paid by Seller to Buyer in arrears on or as promptly as reasonably practicable after the first Business Day of each month, and upon such payment the Security Interests in such interest so paid shall be released with no further action by any person.

(iii) So long as no Event of Default shall have occurred and be continuing, Buyer may from time to time request the redelivery of any Buyer Collateral held in the Collateral Account prior to the satisfaction of all its obligations to Seller, *provided* that (x) it has delivered or caused to be delivered to Seller alternate Eligible Collateral acceptable to Seller prior to such redelivery and (y) there will be no Collateral Shortfall after giving effect to such redelivery. In the case of a request by Buyer,

subject to satisfaction of the conditions set forth in the first sentence of this clause (iii), if notice thereof is given before 12:00 Noon (New York time) on a Business Day, Seller shall transfer or, if the Collateral Account is maintained on the books of a Custodian, instruct the Custodian to transfer the requested amount of Buyer Collateral as directed by Buyer on the next succeeding Business Day, and if notice is given after 12:00 Noon (New York time) on any Business Day, then Seller shall transfer or instruct the Custodian to transfer, as applicable, such amount before 12:00 Noon (New York time) on the second succeeding Business Day.

(iv) Unless an Event of Default has occurred and is continuing, or a Funding Notice has been received by Seller with respect to a borrowing of funds in respect of the Commitments or Agent Expenses, on the last Business Day of each calendar quarter, if the Return Amount as of that date equals or exceeds the Minimum Transfer Amount, then Seller shall transfer to Buyer Eligible Collateral with a value (determined as provided in the definition of Eligible Collateral) equal to the applicable Return Amount (rounded down to the nearest integral multiple of \$10,000).

(v) Except as otherwise provided by the provisions of Sections 2.4(ii), (iii) and (iv) and Section 2.9, no amount shall be paid or released to or for the account of, or withdrawn by or for the account of, Buyer or any other person from the Collateral Account.

(vi) If an Event of Default shall have occurred and be continuing, Seller may (A) retain all cash then held by it in the Collateral Account and all interest accrued thereon, and/or (B) withdraw any amounts held in the Collateral Account and apply such amounts as provided in Section 2.8.

(vii) The Collateral Account shall be subject to such applicable laws and regulations of any appropriate banking or governmental authority as may now or thereafter be in effect.

(viii) If the Collateral Account is established with Seller, Seller shall have the right to freely transfer, assign, invest, commingle, hypothecate, pledge or otherwise dispose of any Buyer Collateral transferred into or otherwise credited to the Collateral Account from time to time.

2.5 *Remedies Upon Event of Default.*

If an Event of Default shall have occurred and be continuing, Seller may exercise (or cause its agents or co-agents, if any, to exercise) any or all of the remedies available to it (or to such agents or co-agents) under this Agreement or applicable law.

Without limiting the generality of the foregoing, if an Event of Default shall have occurred and be continuing, Seller may exercise, in addition to all other rights and remedies given by law or this Agreement, all the rights and remedies of a secured party under the UCC (whether or not in effect in the jurisdiction where such rights are exercised and whether or not the UCC applies to the affected Buyer Collateral) with respect to any Buyer Collateral and, in addition, Seller may, without being required to give any notice, except as herein provided or as may be required by mandatory provisions of law, withdraw any or all cash held in the Collateral Account and apply such cash as provided in Section 2.8. Buyer acknowledges and agrees that Buyer Collateral in the form of securities may decline speedily in value and is of a type customarily sold on a recognized market, and, accordingly, Buyer is not entitled to prior notice of any sale of such Buyer Collateral by Seller, except any notice that is required under applicable law and which

cannot be waived. Buyer agrees that it will execute and deliver such documents and take such other action as Seller deems necessary or advisable in order that any such sale or other disposition may be made in compliance with law.

2.6 *Fees and Expenses; Indemnification.*

(i) Buyer will forthwith upon written demand pay to Seller:

(A) the amount of any taxes that Seller may have been required to pay by reason of the Security Interests or to free any of the Buyer Collateral from any Lien thereon;

(B) the amount of any and all reasonable and documented out-of-pocket expenses, including reasonable and documented fees and expenses of counsel, that Seller may incur in connection with (x) the administration or enforcement of this Agreement, including such reasonable and documented expenses as are incurred to preserve the value of the Buyer Collateral or the validity, perfection, rank or value of any Security Interest, and all expenses of protecting, insuring, handling and maintaining any Buyer Collateral, (y) the collection, sale or other disposition of any Buyer Collateral or (z) the exercise by Seller of any of its rights or powers under this Agreement; and

(C) the amount required to indemnify Seller for, or hold it harmless and defend it against, any loss, liability or expense (including the reasonable and documented out-of-pocket fees and expenses of its counsel and any agents or co-agents appointed by it hereunder) incurred or suffered by Seller in connection with this Annex, except to the extent that such loss, liability or expense arises from Seller's gross negligence or willful misconduct, as determined by final judgment of a court of competent jurisdiction.

Any such amount not paid to Seller within 10 days of written demand will bear interest for each day thereafter until paid at a rate per annum equal to the sum of 2% plus the Federal Funds Rate for such day.

(ii) If any transfer tax, documentary stamp tax or other tax is payable in connection with any transfer or other transaction provided for in this Agreement, Buyer will pay such tax and provide any required tax stamps to Seller or as otherwise required by law.

2.7 *Limitation on Duty of Seller in Respect of Buyer Collateral.* Beyond the exercise of reasonable care in the custody and preservation thereof, Seller will have no duty as to any Buyer Collateral in its possession or control or in the possession or control of any agent or bailee or any income therefrom or as to the preservation of rights against prior parties or any other rights pertaining thereto. Seller will be deemed to have exercised reasonable care in the custody and preservation of the Buyer Collateral in its possession or control if Seller has treated such Buyer Collateral as if it held such Buyer Collateral solely for its own account, and will not be liable or responsible for any loss or damage to any of the Buyer Collateral, or for any diminution in the value thereof, by reason of any act or omission of any agent or bailee selected by Seller in good faith, except to the extent that such liability arises from Seller's gross negligence or willful misconduct.

2.8 *Application of Proceeds.* If an Event of Default shall have occurred and be continuing, Seller may apply (a) the proceeds of any sale or other disposition of all or any part of the Buyer Collateral and (b) any cash held in the Collateral Account, first, to such Secured Obligations and in such order as Seller shall determine in its sole discretion, until payment in full of all Secured Obligations shall have been made, and second, after all Secured Obligations have been paid in full, to pay to Buyer or its successors or assigns, or as a court of competent jurisdiction may direct, any surplus then remaining from such proceeds and cash.

2.9 *Release Of Security Interests and Collateral.* When (i) all commitments to advance funds under the Participation Agreement shall have expired or been terminated, and (ii) all outstanding Secured Obligations shall have been paid in full, the Security Interests granted hereunder shall be released with no further action by any person and all rights to each item of Buyer Collateral shall revert to Buyer. In addition, Seller may at any time, in its sole discretion, at the written request of Buyer, release any Buyer Collateral. Upon any such release of the Security Interests or release of Buyer Collateral, Seller will, at the expense of Buyer, execute and deliver to Buyer such documents as Buyer shall reasonably request to evidence such release including, without limitation, if applicable, the authorization to file a UCC termination statement.

February 6, 2008

Schedule 1 to Collateral Annex

Agreement Date:

Seller:

Buyer:

- A. Fully Funded Participation Amount percentage: [90]%
- B. Eligible Collateral does does not include Treasury Securities and Agency Notes.
- C. Value of Eligible Collateral other than U.S. dollars:

<u>[Remaining Maturity</u>	<u>Applicable Percentage</u>
Not more than 1 year	100%
More than 1 year but not more than 2 years	<u>[99%</u>
More than 2 years but not more than 5 years	98%
More than 5 years but not more than 10 years	97%
More than 10 years	95%]

[The value shall be determined by Seller using its ordinary and customary methods and procedures, which may include using a pricing service.]

- D. Type and jurisdiction of organization of Buyer: _____

E. Trigger Events: [none] [each of the following shall constitute a “**Trigger Event**”:

(i) **Decline in Net Assets.** As of the close of business on any Business Day, the Net Asset Value of Buyer has declined by:

- (1) 15% or more from the Net Asset Value of Buyer (as defined below) as of the close of business on the last Business Day of the immediately preceding month; or
- (2) 25% or more from the Net Asset Value of Buyer as of the close of business on the last Business Day of the third preceding month; or
- (3) 35% or more from the Net Asset Value of Buyer as of the close of business on the last Business Day of the twelfth preceding month.

Net Asset Value of Buyer shall mean an amount in U.S. dollars equal to the total assets of Buyer minus the total liabilities of Buyer, calculated by Buyer or by Seller in its reasonable judgment, in either case, in accordance with U.S. generally accepted accounting principles or international accounting standards (in the event Buyer does not apply U.S. generally accepted accounting principles).

(ii) **Failure to Provide Interim Net Asset Value Calculation.** If, on any Business Day, Seller requests Buyer to provide a calculation of its Net Asset Value and Buyer fails to provide such estimate (or to cause the same to be provided) to Seller on or before the second Business Day following such request by Seller. The parties understand and agree that such calculation shall be Buyer’s estimate of its Net Asset Value as of the close of business on the most recent Business Day presented or determined in the form or manner customarily employed by Buyer to inform its investors of its Net Asset Value.]

F. [The following additional provisions, including any modifications to existing provisions, shall apply: _____.]

["**Minimum Transfer Amount**" means \$_____;]

[others]