

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Cr. No. H-02-0665
)
 ANDREW S. FASTOW,)
)
 Defendant.)
_____)

PLEA AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the United States Department of Justice by the Enron Task Force (“the Department”) and Andrew S. Fastow (“Defendant”) agree to the following (the “Agreement”):

1. Defendant will plead guilty to count two of the above-captioned Superseding Indictment, charging a violation of 18 U.S.C. § 371, conspiracy to commit wire fraud. Defendant also will plead guilty to count five of the above-captioned Superseding Indictment, charging a violation of 18 U.S.C. § 371, conspiracy to commit wire and securities fraud. Defendant agrees that he is pleading guilty because he is guilty, and that the facts contained in Exhibit A (attached and incorporated herein) are true and supply a factual basis for his pleas. Counts two and five each carry the following statutory penalties, which Defendant

understands will be imposed consecutively:

- a. Maximum term of imprisonment: 5 years
(18 U.S.C. § 371)
- b. Minimum term of imprisonment: 0 years
(18 U.S.C. § 371)
- c. Maximum term of supervised release: 3 years, to follow any term of imprisonment; if a condition of release is violated, Defendant may be sentenced to up to two years without credit for pre-release imprisonment or time previously served on post-release supervision
(18 U.S.C. §§ 3583 (b) & (e))
- d. Maximum fine: \$250,000 or twice the gain/loss
(18 U.S.C. § 3571(b)(3))
- e. Restitution: As determined by the Court pursuant to statute
(18 U.S.C. §§ 3663 and 3663A)
- f. Special Assessment: \$100
(18 U.S.C. § 3013)

Sentencing Guidelines

2. Defendant's sentence is governed by the United States Sentencing Guidelines, in effect on October 24, 2001. Defendant understands that his sentence is within the discretion of the sentencing judge. The parties agree that Defendant's sentence under the Sentencing Guidelines shall include 120 months in the custody of the Bureau of Prisons. Defendant agrees that he will not move for a downward departure from the offense level or guideline range calculated by the

Court and that no grounds for a downward departure exist.

3. The Department will advise the Court and the Probation Office of all information relevant to sentencing, including criminal activity engaged in by Defendant, and all such information may be used by the Court in determining Defendant's sentence.

Waiver of Rights

4. Defendant will not appeal or collaterally attack his convictions or guilty pleas. Defendant will not appeal or collaterally attack his sentence unless the Court imposes a term of imprisonment greater than 120 months.

5. Defendant waives all defenses based on venue (but reserves the right to request a change of venue), speedy trial under the Constitution or Speedy Trial Act, or the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed in the event that (a) Defendant's conviction is later vacated for any reason, (b) Defendant violates any provision of this Agreement, or (c) Defendant's plea is later withdrawn.

6. Defendant understands that by pleading guilty he is waiving important rights including: (a) the right to persist in his previously entered plea of not guilty; (b) the right to a jury trial; (c) the right to be represented by counsel - and if necessary to have the court appoint counsel to represent him - at trial and at every

other stage of the proceedings; (d) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses; and (e) the right to additional discovery and disclosures from the Department. The Defendant waives any right to additional disclosure from the government in connection with the guilty plea.

Defendant's Obligations

7. Defendant will provide truthful, complete, and accurate information to and will cooperate fully with the Department, both before and after he is sentenced. This cooperation will include, but is not limited to, the following:

- a. Defendant agrees to make himself available at all meetings with the Department and to respond truthfully and completely to any and all questions put to him, whether in interviews, before a grand jury, or at any trial or other proceeding.
- b. Defendant waives all claims of attorney-client privilege, whether in his personal or official capacity, as to communications with any attorney or law firm that represented Enron, LJM Cayman, LJM2, or any related entity, where such communications concerned or related to Enron, LJM Cayman, LJM2, or any related entity. Defendant agrees to provide all documents and other material that may be relevant to the investigation and that are in his possession or control.
- c. Defendant agrees not to reveal any information derived from his cooperation to any third party without prior consent of the Department, and to instruct his attorneys to do the same.

Defendant agrees to inform the Department of any attempt by any third party to interview, depose, or communicate in any way with him regarding this case, his cooperation, or any other information related to Enron or transactions involving Enron.

- d. Defendant agrees to testify truthfully at any grand jury, court, or other proceeding as directed by the Department.
- e. Defendant consents to adjournments of his sentencing hearing as requested by the Department and agrees that his obligations under this Agreement continue until the Department informs him in writing that his cooperation is concluded.

8. The Department and Defendant further agree that Defendant's counsel may be present at any meetings or debriefings between Defendant and the Department, and the Department will endeavor to provide reasonable notice of such meetings or debriefings, but counsel's presence is not required and Defendant agrees to be present and cooperate notwithstanding his counsel's unavailability.

9. Defendant agrees not to accept remuneration or compensation of any sort, directly or indirectly, for the dissemination through books, articles, speeches, interviews, or any other means, of information regarding his work at Enron Corporation, the transactions alleged in the above-captioned Superseding Indictment, or the investigation or prosecution of any civil or criminal cases against him.

10. Defendant will voluntarily surrender to the institution designated by the United States Bureau of Prisons following the release from custody of Lea W. Fastow.

The Department's Obligations

11. The Department agrees that, except as provided in paragraphs 1, 5, and 24, no further criminal charges will be brought against Defendant for any act or offense in which he engaged in his capacity as an officer and/or employee of Enron, LJM, or related entities, or arising out of such employment.

12. The Department further agrees that no statements made by Defendant during the course of his cooperation will be used against him in any criminal proceedings instituted by the Department, except as provided in paragraphs 1, 3, 5, and 24.

13. The Department is not obligated to and will not at any time in the future file any motion for a reduction in Defendant's sentence under U.S.S.G. §5K1.1, 18 U.S.C. § 3553, or Fed. R. Crim. P. 35, based on information provided by Defendant related directly or indirectly to Enron, any entity related to Enron, or any transaction involving Enron or any entity related to Enron.

14. If and when, in its sole and exclusive judgment, the Department determines that Defendant has cooperated fully and truthfully, and otherwise

complied with all the terms of this Agreement, and in consideration of Defendant's cooperation, it will move to dismiss the remaining counts of the Superseding Indictment and the underlying indictment with prejudice. Defendant hereby waives all defenses based on the speedy trial clause of the Constitution and the Speedy Trial Act with respect to such charges, which may be tried in accordance with this Agreement.

15. The Department agrees that, provided Defendant fulfills the financial obligations imposed by this Agreement and any obligations required under any agreement with the Securities and Exchange Commission, it will recommend that no additional fine, forfeiture or restitution be ordered by the Court against Defendant at the time Defendant is sentenced. The Department agrees that this amount is appropriate and fully satisfies the fine, forfeiture, and restitution provisions of the law. Defendant understands that the Department's recommendation is not binding on the Court, and the Court may order Defendant to pay an additional fine, forfeiture or restitution notwithstanding the Department's recommendation. Should the Court order Defendant to pay additional forfeiture sums, restitution or a fine, he will not be permitted on that basis to withdraw his guilty plea.

Forfeiture and Monetary Penalties

16. Defendant agrees to pay the special assessment of \$200 by check payable to the Clerk of the Court at or before sentencing. 18 U.S.C.

§ 3013(a)(2)(A); U.S.S.G. §5E1.3.

17. Defendant agrees to forfeit the following specific assets, which have an approximate value of \$23,800,000 and constitute proceeds of the offenses to which he will plead guilty:

- a. The following bonds, worth approximately \$13,049,809.10 (as of June 30, 2003), contained in Fidelity Brokerage Services Account number Z11-068497, in the name of Lea W. Fastow and Andrew S. Fastow:

Number	Name of Bond	Date Purchased	Quantity
1	City of Austin Imp	10/13/00	1,000,000
2	Texas A&M Univ Revs Financing	08/06/01	300,000
3	Katy Independent School District Tex Perm Sch Fund	08/07/01	500,000
4	San Antonio Independent School District	08/30/01	1,050,000
5	Irving Independent School District	09/13/01	1,000,000
6	Hays County Tax Genl Purpose Fund	09/18/01	500,000
7	Comal Independent School District	09/24/01	1,000,000

8	University of Texas Univ Rev Financing Sys	10/02/01	500,000
9	University of Texas Univ Rev Financing Sys	10/02/01	500,000
10	University of Texas Univ Rev Financing Sys	10/02/01	500,000
11	Carrolton Farmers Branch Independent School District	11/01/01	1,110,000
12	Port of Houston Auth Tex Harris County Port	11/29/01	500,000
13	Port of Houston Auth Tex Harris County Port	11/29/01	1,000,000
14	Port of Houston Auth Tex Harris County Port	11/29/01	500,000
15	City of Austin Tex Wtr & Water Sys Revs Ref	12/20/01	1,000,000
16	Waxahachie	08/24/01	1,000,000
17	Round Rock	08/27/01	800,000
18	Texas Public Finance	08/16/01	605,000

- b. The contents of JP Morgan Chase account number Q65183-00-8, in the name of the Fastow Family Foundation, which contained approximately \$4,121,362.00 at the time of restraint;
- c. The contents of JP Morgan Chase account number 054-05023866, in the name of Lea W. Fastow and Andrew S. Fastow, which contained approximately \$1,000.89 at the time of restraint;
- d. The contents of JP Morgan Chase account number Q62603-00-8, in the name of Andrew S. and Lea W. Fastow, TIC, which

contained approximately \$2,079,805.62 at the time of restraint;

- e. The contents of JP Morgan Chase account number 340160, in the name of Lea W. Fastow and Andrew S. Fastow, which contained approximately \$780,029.80 at the time of restraint;
- f. Currency on deposit with the United States Marshal in the amount of \$3,341,694.50, which represents the net sales proceeds of real property known as 3005 Del Monte Dr.;
- g. All of defendant's right, title, and interest in real property known as 3216 Musket Lane, Galveston, Texas;
- h. All of defendant's right, title, and interest in real property known as 208 Happy Hill Road, Norwich, Vermont.

18. Defendant warrants that he and his wife, Lea W. Fastow,¹ are the sole owners of all of the property listed above, with the exception of the property listed in paragraph 17(b), and agrees to hold the United States, its agents and employees harmless from any claims whatsoever in connection with the seizure or forfeiture of property covered by this Agreement. Defendant's wife, Lea W. Fastow, also agrees to waive her right, title, and interest in the property forfeited under this Agreement; the execution of this waiver is a condition of this Agreement.

¹ Lea W. Fastow is entering into a separate agreement with the Department pursuant to which she agrees to enter into the forfeiture provisions noted in this Agreement. This Agreement refers to her obligations thereunder because her entering into such obligations is a condition of this Agreement with Andrew S. Fastow.

19. Defendant agrees that he will not contest forfeiture of the properties identified above in connection with the related civil forfeiture actions in Civ. No. H-02-3974, United States v. Contents of Charles Schwab account no. 1104-2180 and Civ. No. H-02-3844, United States v. Real Property Known as 3005 Del Monte Dr. Defendant agrees to enter into stipulations of settlement regarding forfeiture (attached hereto as Exhibit B) and to fully assist the government in effectuating the surrender of the forfeited assets. Defendant's wife, Lea W. Fastow, also agrees to sign stipulations of settlement, waiving any right, title, and interest she may have in the properties. Her entering into the stipulations of settlement is a condition of this Agreement.

20. Defendant further agrees to waive all interest in any asset listed above for forfeiture in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. Defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Defendant acknowledges that he understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the court to advise him of this, pursuant to

Rule 11(b)(1)(J), at the time his guilty plea is accepted.

21. Defendant knowingly and voluntarily agrees to waive his right to a jury trial on the forfeitability of the assets identified for forfeiture, and to waive all constitutional and statutory challenges of any kind (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment or that it violates the Ex Post Facto Clause of the Constitution.

22. Defendant agrees to take all steps as requested by the United States to pass clear title to the forfeitable assets to the United States, and to testify truthfully in any judicial forfeiture proceeding. Defendant agrees not to seek a refund from the United States Treasury of the amount of any taxes paid in connection with the receipt of any proceeds from Enron, LJM Cayman, LJM2, or any related entity from 1997 to the present, or with respect to any offense to which he will plead guilty, and waives his right, title, and interest to the taxes paid on such amount.

Bankruptcy Waiver

23. Defendant agrees not to avoid or attempt to avoid paying any forfeiture, fine, or restitution imposed by the Court in this proceeding through any proceeding pursuant to the United States Bankruptcy Code. Defendant waives all rights, if any, to obtain discharge or to delay payment of any fine or restitution

obligation arising from this proceeding or alter the time for payment by filing a petition pursuant to the Bankruptcy Code. Defendant stipulates that enforcement of any fine or restitution obligation arising from this proceeding by the Department is not barred or affected by the automatic stay provisions of the United States Bankruptcy Code and that enforcement of any forfeiture, fine, or restitution obligation arising from this proceeding by the Department is a valid exercise of its police or regulatory power within the meaning of Title 11, United States Code, Section 362(b). Defendant stipulates and agrees not to institute or participate in any proceeding to interfere with, alter, or bar enforcement of any forfeiture, fine, or restitution obligation arising from this proceeding pursuant to the automatic stay or other provision of the Bankruptcy Code in any case filed by Defendant or his creditors. Upon request of the Department, Defendant will execute a stipulation granting the Department relief from the automatic stay or other Bankruptcy Code provisions in order to enforce any forfeiture, fine, or restitution obligation arising from this proceeding. Defendant stipulates that any forfeiture, fine, or restitution obligation imposed by the Court in this proceeding is not dischargeable pursuant to Title 11, United States Code, Section 523 in any case commenced by Defendant or his creditors pursuant to the Bankruptcy Code. Defendant stipulates that the Forfeiture Amount that is contained in the accounts

identified in this Agreement is not exempt under any state or federal exemption, whether arising under 11 U.S.C. §524(b)(1) - (2), or under any applicable state law. Nothing in this Agreement shall constitute a modification or waiver of Defendant's state or federal exemptions with respect to property other than the Forfeiture Amount. Defendant's waivers, stipulations, and agreements set forth in this paragraph are made in exchange for the Department's entering into this Agreement.

Breach of Agreement

24. Defendant must at all times give complete, truthful, and accurate information and testimony, and must not commit, or attempt to commit, any further crimes, including but not limited to perjury and obstruction of justice. Should it be determined by the Department, in its sole and exclusive discretion, that Defendant has violated any provision of this Agreement, Defendant will not be released from his guilty pleas but the Department will be released from all its obligations under this Agreement, including its promise not to prosecute Defendant for any offenses charged in the Superseding Indictment and the underlying indictment, and other offenses arising from his employment at Enron or any related entity. Defendant agrees that, in any such prosecution, all statements and other information that he has provided at any time, including all statements he

has made and all evidence he has produced during proffers, interviews, testimony, and otherwise, may be used against him, regardless of any constitutional provision, statute, rule, prior agreement, or other term of this Agreement to the contrary.

25. This Agreement is conditioned upon the following: the defendant Lea W. Fastow (the "covered defendant") entering a guilty plea to Count 6 of the Indictment in the case of United States v. Lea Fastow, H-03-150. If the covered defendant does not satisfy this condition, or violates any provision of her agreement with the United States, the Department will be released from all its obligations under this Agreement, including its promise not to prosecute Defendant for any offenses charged in the Superseding Indictment and the underlying indictment, and other offenses arising from his employment at Enron or any related entity, and its promise not to use any statements made during his cooperation against him. In addition, if Defendant breaches this Agreement, the Department, in its sole and exclusive discretion, may void its agreement with the covered defendant and proceed to trial.

Hyde Amendment Waiver

26. Defendant agrees that with respect to all charges contained in the indictments returned by the grand jury in the above-captioned action, he is not a “prevailing party” within the meaning of the “Hyde Amendment,” Section 617, PL 105-119 (Nov. 26, 1997), and will not file any claim under that law.

Scope

27. This Agreement does not bind any federal, state, or local prosecuting authority other than the Department, and does not prohibit the Department or any other department, agency, or commission of the United States from initiating or prosecuting any civil or administrative proceedings directly or indirectly involving Defendant.

Complete Agreement


28. Apart from the written proffer agreement originally dated December 18, 2003, no promises, agreements or conditions have been entered into by the parties other than those set forth in this Agreement and none will be entered into unless memorialized in writing and signed by all parties. This Agreement supersedes all prior promises, agreements, or conditions between the parties, including the written proffer agreement. To become effective, this Agreement must be signed by all signatories listed below and in the addenda.

Dated: Houston, Texas
January 14, 2004

LESLIE R. CALDWELL
Director, Enron Task Force

ANDREW WEISSMANN
Deputy Director, Enron Task Force

By:




JOHN H. HEMANN
LINDA A. LACEWELL
MATTHEW FRIEDRICH
Assistant United States Attorneys

LAUREL LOOMIS
Senior Trial Attorney

ADDENDUM FOR DEFENDANT FASTOW

I have consulted with my attorneys and fully understand all my rights with respect to the Superseding Indictment and the underlying indictment. I have consulted with my attorneys and fully understand all my rights with respect to the provisions of the U.S. Sentencing Commission's Guidelines Manual which may apply in my case. I have read this Agreement and carefully reviewed every part of it with my attorneys. I understand this Agreement and I voluntarily agree to it.

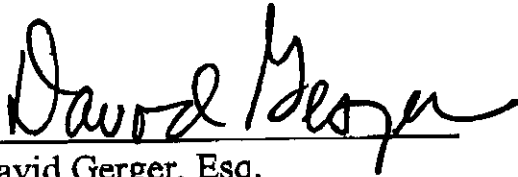


Andrew S. Fastow
Defendant

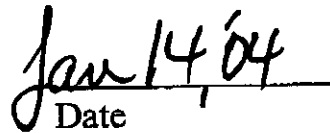
1/14/04
Date

ADDENDUM FOR DEFENSE COUNSEL

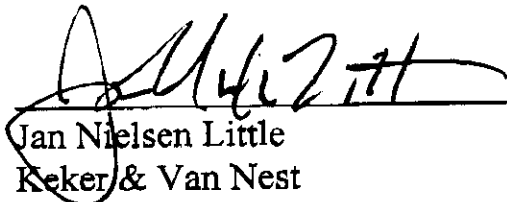
I have fully explained to Defendant Fastow his rights with respect to the pending Superseding Indictment and underlying indictment. I have reviewed the provisions of the U.S. Sentencing Commission's Guidelines Manual and I have fully explained to Defendant the provisions of those Guidelines which may apply in this case. I have carefully reviewed every part of this Agreement with Defendant. To my knowledge, Defendant's decision to enter into this Agreement is an informed and voluntary one.



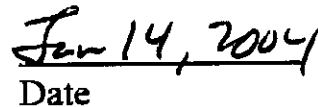
David Gerger, Esq.
Gerger & Associates
Attorney for Defendant Fastow



Date



Jan Nielsen Little
Keker & Van Nest
Attorney for Defendant Fastow



Date

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,)
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 Plaintiff,)
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 v.) Cr. No. H-02-665
)
 ANDREW S. FASTOW,)
)
 Defendant.)
_____)

SENTENCE DATA SHEET

DEFENDANT: ANDREW S. FASTOW

CRIMINAL NO: H-02-665

GUILTY PLEA: Count Two (Conspiracy to Commit Wire Fraud);
Count Five (Conspiracy to Commit Wire and Securities Fraud)

SUBSTANCE OF
AGREEMENT: Pursuant to Fed. R. Crim. P. 11(c)(1)(B), Defendant will plead
guilty to counts two and five of the Superseding Indictment
(conspiracy to commit wire and securities fraud). The parties
agree that the sentence should be the statutory maximum for
those charges, a total of ten years.

COUNT TWO: Conspiracy (18 U.S.C. § 371)

COUNT FIVE: Conspiracy (18 U.S.C. § 371)

ELEMENTS: 1) An agreement between two or more persons,
2) to commit a crime against the United States, and

3) an overt act committed by one of the conspirators in furtherance of the agreement.

PENALTY: On each count: Imprisonment not to exceed 5 years and a fine not to exceed \$250,000 or twice gain/loss. 18 U.S.C. §§ 371 and 3571(b)(3). Supervised release after imprisonment of not more than 3 years. 18 U.S.C. §§ 3559(a)(4) and 3583(b)(2).

SENTENCING GUIDELINES: Applicable.

SPECIAL ASSESSMENT: \$200. 18 U.S.C. § 3013(a)(2)(A) (\$100 per each count).

ATTACHMENT: Plea Agreement

DEFENDANT WAIVED HIS RIGHT TO APPEAL: Yes

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,)
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Plaintiff,)
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v.)
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ANDREW S. FASTOW,)
)
Defendant.)

Cr. No. H-02-0665

Exhibit A to Plea Agreement

This statement by defendant Andrew S. Fastow is submitted to provide a factual basis for my plea of guilty to Counts 2 and 5.

1. I was the Chief Financial Officer (“CFO”) of Enron Corporation (“Enron”) from March 1998 until October 24, 2001. While CFO, I and other members of Enron’s senior management fraudulently manipulated Enron’s publicly reported financial results. Our purpose was to mislead investors and others about the true financial position of Enron and, consequently, to inflate artificially the price of Enron’s stock and maintain fraudulently Enron’s credit rating.
2. I also engaged in schemes to enrich myself and others at the expense of Enron’s shareholders and in violation of my duty of honest services to those shareholders.
3. Certain of these fraudulent transactions and schemes, for which I accept responsibility, are detailed below.

Manipulation of Financial Statements - Count Five:

4. I conspired with others at Enron to manipulate the company’s financial statements by, among other things, causing Enron and the LJM entities under my control, including LJM Cayman and LJM2 (collectively “LJM”) to enter into improper transactions. The purpose of certain of these transactions was to improve the appearance of Enron’s financial statements by (1) generating improper earnings and funds flow; (2) enabling Enron to set inflated “market” prices for assets; and (3) improperly protecting Enron’s balance sheet from poorly performing and

volatile assets. Certain LJM transactions lacked economic substance and were improper for accounting purposes, in part because I and others secretly agreed that LJM would not lose money through participation in the transactions.

5. Among the improper Enron-LJM transactions were four special purpose entities (“SPEs”) known as the “Raptors.” The Raptors purported to be independent, unconsolidated entities with which Enron would hedge the value of certain assets. I and others knew that the Raptors were not sufficiently independent from Enron and should not have been deconsolidated. As a result, Enron overstated its earnings. I and other members of Enron’s senior management knew the impact of the Raptors on Enron’s financial statements.
6. The first Raptor vehicle, Talon, was created in April 2000 to protect Enron’s balance sheet from decreases in the value of certain investments. Talon was capitalized mainly by Enron through a promissory note and Enron’s own stock. The remainder of Talon’s capitalization came from LJM2’s payment of \$30 million. The purpose of this \$30 million payment was to provide Talon the “outside equity at risk,” required for accounting purposes, to qualify Talon as an independent third party entity. The structure of Talon was used as the model for two of the remaining three Raptor entities.
7. I and others at Enron, including Enron’s Chief Accounting Officer, had an unwritten agreement that LJM2 would be paid the return of its investment, plus a profit, prior to Talon engaging in any hedging, in exchange for my agreement to allow Enron to flexibly determine what assets would be hedged by Talon and the values at which they were hedged.
8. To fulfill this agreement, I and others arranged for Enron to pay \$41 million to LJM2 before Talon, the first Raptor, would engage in the hedging transactions for which it was created. The \$41 million payment was accomplished by Enron and Talon entering into a “put” agreement, that is, a transaction that purportedly served to hedge Enron against a decline in its own stock value. In September 2000 Enron paid LJM2 the \$41 million¹ and, thereafter, dictated the assets that would be hedged by Talon and their values. The put was designed as an ostensible reason to make a distribution of \$41 million to LJM2, economically providing a return both of and on capital.

¹Approximately \$6 million was placed back into Talon pursuant to an unwritten agreement I had with Enron’s Chief Accounting Officer.

9. Following the payment of the \$41 million, Enron exercised control over Talon and used it fraudulently to meet Wall Street expectations regarding Enron's financial performance. I, on Talon's behalf, allowed Enron to place numerous problematic assets in Talon, without regard to the present or future value of the assets or to their potential effect on Talon's financial viability. I understood Talon was set up as a way to conceal the poor performance of certain Enron assets, and that the hedging of these assets at values set by Enron misled investors by fraudulently improving the appearance of Enron's financial statements.
10. One example of how the Raptors were improperly used by me and others involved a "hedge" of an investment Enron made in a fledgling technology company known as AVICI ("the AVICI hedge"). I and others, including Enron's Chief Accounting Officer, agreed to date the AVICI hedge August 3, 2000, in order to lock in the value of AVICI (a volatile stock) at its all-time high and not incur the known and quantifiable loss from the AVICI stock having declined after August 3, 2000. Although this agreement provided no economic benefit to LJM2, it took place because LJM2 already had received its money and guaranteed profit from Enron in the form of the \$41 million payment.

Self-Dealing Transactions – Count Two:

11. I also conspired with others to and did engage in transactions designed to enrich myself and others in violation of my duties to Enron's shareholders.
12. One of these transactions involved an SPE called LJM Swap Sub, LP ("Swap Sub"). The general partner of Swap Sub was LJM Cayman, which I controlled, and the limited partners were affiliates of National Westminster Bank ("NatWest") and Credit Suisse First Boston ("CSFB"). As explained below, in March 2000, in my capacity as general partner of Swap Sub, I misled Enron so that Swap Sub would improperly obtain approximately \$19 million. I knew that the money was to be distributed to individuals and entities who were not entitled to receive it, including employees of Enron and LJM.
13. In June 1999, LJM Cayman and Swap Sub entered into a series of derivative transactions with Enron concerning a company that Enron invested in called RhythmsNetconnections, Inc. ("RhythmsNet"). The purpose of these derivatives was to afford Enron price protection in the event that the share price of RhythmsNet declined. In exchange for these derivatives, Swap Sub received approximately 3.1 million shares of Enron stock and approximately \$3.75 million.

14. Due to a dramatic increase in the market price of Enron stock, the value of Swap Sub (whose primary asset was Enron stock) had also increased dramatically. I was, however, barred from profiting from any increase in the value of Enron stock held by Swap Sub. In approximately February 2000, I and others, including three bankers employed by NatWest, participated in a scheme to extract this increased value by defrauding Enron and NatWest.
15. Enron paid \$30 million for the Swap Sub buyout. That price was based on my misleading representation to Enron that the limited partners of Swap Sub had agreed to sell their interests in Swap Sub for \$20 million and \$10 million, respectively. In fact, NatWest had agreed to sell its interest in Swab Sub for only \$1 million, not \$20 million. I knew that the NatWest bankers induced NatWest to sell its interest in Swap Sub for \$1 million at a time that they knew the interest was worth significantly more.
16. As a result of their participation in the scheme, the three NatWest bankers together received approximately \$7.3 million in proceeds. The balance of the remaining proceeds went to individuals and entities who were selected as "investors" in an entity called Southampton Place LP ("Southampton"). The Southampton "investors" were (1) a foundation in the name of my family, which contributed \$25,000 and received approximately \$4.5 million; (2) Enron employee Michael Kopper, who contributed \$25,000 and caused another entity under our control to loan an additional \$750,000, and received approximately \$4.5 million; and (3) five Enron and LJM employees agreed upon by Kopper and me, who contributed a total of less than \$20,000 and received a total of approximately \$3.3 million. I caused the foundation, called the Fastow Family Foundation, to be created for the purpose of receiving funds from the sale of Swap Sub. I intended to use and did use the foundation to make charitable contributions that I might otherwise have made from my own assets for the purpose of enhancing my position and stature in the community. In addition, by allowing the LJM employees to "invest", I personally benefitted as I did not have to pay these employees year-end bonuses out of money that would otherwise have gone to me as general partner.

* * * * *

17. I understood that these schemes would have a material effect on Enron's financial statements (which Enron shareholders and potential shareholders relied upon in making investment decisions) or would have an otherwise deleterious impact on the company. Enron's stock was traded on the New York Stock Exchange. I also understood that interstate wire transmissions would be and were used in furtherance of each scheme. Specifically, I knew that the payment of proceeds to

me and others, and filings by Enron with regulators of misleading financial statements, would be sent and received by means of interstate wires.

18. The preceding statement is a summary, made for purpose of providing the Court with a factual basis for my guilty pleas to Counts 2 and 5 of the Superseding Indictment. It does not include all of the facts known to me concerning criminal activity in which I and other members of Enron's senior management engaged. I make this statement knowingly and voluntarily and because I am in fact guilty of the crimes charged.



Andrew S. Fastow

1/14/04
Date